Submission from the American Chamber of Commerce Ireland to the Department of Finance's Public Consultation on the OECD International Tax Proposals

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AMERICAN CHAMBER of COMMERCE IRELAND

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

The American Chamber of Commerce Ireland 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

We are delighted to have the opportunity to submit the views of our members on the questions raised by the Department of Finance related to the OECD Tax Proposals. We have engaged in a comprehensive consultation with our members reflecting the importance of the juncture we are at in the development of the global tax landscape.

Detailed responses to the seven specific questions raised by the Department are contained in this submission. However, we thought it might be helpful to summarise the thematic elements of the views of our members at the outset.

1. The American Chamber of Commerce Ireland ("AmCham") commends the Department on having this consultation on the OECD proposals, which is unique to the best of our knowledge. It should be recognised that this is the latest in a number of consultation processes on taxation matters that the Department has initiated in recent years. 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.

2. AmCham has been consistent in our support of the Government's defence of the 12.5% rate of tax as a legitimate form of tax competition. The 12.5% rate has been a centrepiece of Ireland's tax offering since its enactment almost a quarter of a century ago. Its unchanging nature is a symbol of Ireland's commitment to predictability and stability in tax matters. The so-called "race to the bottom" has never been part of Ireland's industrial policy, and in this context Ireland's long-standing rate of 12.5% is widely regarded as an acceptable minimum tax rate. Ireland's defence of its sovereign rate has been favourably commented on by AmCham members as evidence of its commitment to a pro-business Irish landscape.

3. It is important that the OECD proposals are grounded in clear, consistent, equitable and understandable principles that give both companies and countries a degree of certainty in their planning. However, it appears to our members that the evolution of the OECD proposals in recent months is grounded more in expediency with, for example, big countries lobbying for carveouts to suit their particular markets. AmCham urges Ireland to keep a principles-based approach to the forefront of the OECD deliberations.

4. AmCham noted and supported the Minister for Finance's statement in July that he could not sign up to the OECD proposals at that point. Given the absence of detail on some key areas, not least of which was the exact rate that a minimum tax would be imposed at, this was a sensible course of action. The use of the

wording “at least” in the OECD proposals regarding a minimum corporate tax rate does not provide clarity on the actual rate which would be implemented under an agreement. An ideal outcome for global trade and business is a global agreement which gives certainty to companies and countries. In the event that a detailed global agreement is finally reached in late 2021 / early 2022, AmCham does not believe that staying outside such an agreement serves Ireland’s best interests.

5. One of the features of the uncertainty in the tax landscape in recent years was the emergence of unilateral taxes and levies by some countries which were inconsistent, and in some cases incompatible, with the existing global landscape. The EU has also referenced plans to introduce its own digital levy. These actions have not only led to tax uncertainty but have also introduced growing uncertainty to trade and investment globally. AmCham believes that any ultimate global agreement on tax should see the elimination of such unilateral measures since the underlying rationale for their imposition would no longer apply.

6. There is still a significant amount of technical detail to be negotiated and decided. We have highlighted these in our submission. While there is a lot of general focus on Pillar 2 and the minimum rate of tax, AmCham recommends that the Department continue their focus on Pillar 1 and, in particular, the debate around the calculation of “Amount A” and, consequently, the impact on Ireland’s future corporate tax yield.

7. The current OECD debate will present an opportunity for Ireland to modernise and simplify its tax system, elements of which still date back to the 19^{th} century. The tax code should be modernised for the 21^{st} century. Reforms of areas such as the Schedular system, three rates of tax for companies, interest limitation and foreign tax credits are long overdue.

8. While Ireland has at times been in a reactive mode on legitimate tax competition over the last decade, an overall agreement will allow Ireland to be consistently progressive, nimble and agile in ensuring that the key elements of its tax offering are among the best in class globally.

9. Given the substantial two-way nature of the US-Ireland business relationship and Ireland’s reputation as a gateway to European and other international markets, it is important that Ireland, in reforming its tax system post any agreement, has regard to both US and other relevant international reforms. Ensuring that Irish headquartered multinationals with operations in the US and US companies with operations here are not disadvantaged by any US changes is of paramount importance. In seeking to ensure that the Irish tax system “works” for outbound and inbound companies, it is important that Ireland, within the relevant international context, seeks to avoid mismatches with the US tax regime that hinder international trade.

10. In our 2021 Report "Building Bridges Better", AmCham noted that Ireland follows best in class principles in tax policy and administration. Ireland has signed tax treaties with 73 countries. It has been externally validated for following best international practice on tax transparency. The OECD Global Forum on Transparency and Exchange of Information for Tax Purposes 2017 Report on Ireland found Ireland to be fully compliant (the highest possible rating) under all headings '… Ireland continues to perform well in all aspects of transparency and exchange of information.'

    This adherence to best practice and the constant innovation by the Irish Revenue Authority (including digitalisation) is an important element of Ireland's international reputation when it comes to inward investment. In preparation for the implementation of the OECD agreement, it is vitally important that the resourcing and expertise across the Revenue authority – and in particular in relation to the area of Competent Authority – remain aligned to international best practice. Multinationals will expect Ireland's Revenue Authority to be robust and capable of engaging with peer authorities across the world on an equal footing to deal with any disputes that might arise.

    On the broader agenda, AmCham has already set out our vision to Government on how inward investment can be protected and enhanced in our Budget 2022 Submission "Next Century Ireland" (also attached to this submission). The reinvigorated multilateral approach to tackling global challenges including the pandemic, corporate tax reform and the climate crisis as well as the rapid emergence of new ways of working and enhanced digitisation form the backdrop to our vision.

    We believe Ireland has an opportunity – but with a short window – to deepen its global reputation as a location of choice for talent and innovation. To maximise this opportunity, smart policy decisions are required in respect of people, place and impact.

This is an important time for Ireland, and we look forward to engaging with Government on these issues in the coming weeks.

Question 1: Do you have views on the broad policy objectives of the OECD international tax proposals?

AmCham supports the broad policy objective of designing an international tax system that endeavours to align taxable profits with economic substance. In addition, AmCham members want to ensure that the ultimate design of the OECD's proposals is principles-based, sustainable and acceptable and fair to all countries, regardless of their size.

To treat all nations with equity, the OECD's tax proposals must fit the needs of all countries. Small countries have legitimately used tax as a lever to compete with larger countries that have inherent and persistent advantages, including economies of scale, large markets, industrial histories, geopolitical influence and access to natural resources.

AmCham believes that Ireland's tax sovereignty is an integral component of the nation's strategy for attracting FDI and agrees with Minister Donohoe's statement that it 'is a form of economic sovereignty that needs to be increasingly exercised within particular parameters and inside particular guardrails.'[1]

We welcome and appreciate the efforts of the Government to negotiate a sustainable and binding agreement, including its acknowledgement that the proposals may come at a cost to the Irish exchequer but will bring stability to international tax frameworks. If global agreement is ultimately reached on the BEPS 2.0 measures, AmCham does not believe that Ireland's best interests will be served by staying outside of that global agreement.

However, much work is still required on both Pillar 1 and Pillar 2 before they are capable of being accepted and capable of being implemented by both companies and tax administrations alike. The Inclusive Framework statement of 1 July 2021 is extremely high level: it is clear that substantive technical points remain to be resolved with respect to both pillars.

For example, in addition to the detail required about how 'Amount A' in the Pillar 1 proposal would be calculated, further detail is also required in relation to how double tax relief mechanisms would work and how the dispute prevention and resolution mechanisms would work, amongst other matters. Clarity is also required in relation to the timeline for implementing Pillar 1. A reasonable and realistic implementation timeline – for both taxpayers and tax administrations alike – is critical for the successful execution of the agreement.

For Pillar 1 to bring stability not just to the international tax system but also to global trade and investment, unilateral measures such as Digital Services Taxes (DSTs), Diverted Profits Taxes (DPTs), Equalisation Levies and the EU Digital Levy proposals must be stood down and future adoption prohibited at the time the solution is agreed.

By expanding Pillar 1 beyond its initial focus on companies providing digital services and consumer facing businesses to a reform that targets the largest and most profitable multinational enterprises (MNEs), the OECD has increased the scope of its proposal so that companies with a global turnover of above EUR 20 billion and profitability (profit divided by turnover) of above 10% are subject to the Pillar 1 reform. This threshold means that only a limited number of companies are expected to be subjected initially to Amount A. Of those companies subjected, 64% are MNEs headquartered in the U.S.,[2] which is nearly six times the number of Chinese MNEs and more than twice the figure from all the other G-7 countries combined.[3] As an organisation that principally represents American MNEs, AmCham notes these figures with some concern.

With regard to Pillar 2, AmCham notes that further details and significant additional technical development is required to be undertaken before the proposal can be adopted. In that regard, work is still required in relation to key matters (such as the minimum rate itself and the interaction with the US GILTI provisions) and on the operation of various tools or provisions (such as the ordering of the proposed Subject to Tax (STTR) and Income Inclusion (IIR) and the Under Tax Payment (UTPR) rules).

Ireland's 12.5% rate has been a centrepiece of Ireland's tax offering since its enactment almost a quarter of a century ago. Its unchanging nature, regardless of economic challenges, is a symbol of Ireland's commitment to predictability and stability in tax matters. The so-called "race to the bottom" has never been part of Irelands industrial policy, and in this context, Ireland's long-standing rate of 12.5% is widely regarded as an acceptable minimum tax rate.

AmCham publicly supported the Government's decision in July not to sign-up to the proposals as they stood at that point until further clarifications were made and the implications for Ireland were fully understood. Given the absence of detail on some key areas in the OECD proposal, not least of which was the exact rate that a minimum tax would be imposed at, this was a sensible course of action.

In addition to having certainty about the proposed minimum rate, AmCham believes that companies must have clarity around how any new tax rules interact with Ireland's current tax system. The objective is for the OECD's proposals to sit side-by-side with the current tax regime; otherwise, the implementation of the proposals will create uncertainty for AmCham members as well as domestic companies.

Notwithstanding this, AmCham continues to support Ireland's participation in the global agreement and the process for reaching it, and AmCham believes that it would not be desirable for Ireland to remain outside if a global agreement is reached.

Lastly, given the massive changes that the implementation of the proposals will bring about for Ireland's tax policy, AmCham believes that it is increasingly important that Ireland maintains an agile, forward-thinking approach to tax competition that aligns with the contents of the agreed upon package.

Question 2: Are there specific implications for Ireland's corporation tax regime that would arise from adopting and implementing the OECD proposals that require particular consideration? What are the benefits and challenges for Ireland?

The timeline for implementation of the OECD proposals creates a significant challenge for MNEs and tax administrations. In its current form, the proposal lacks clarity on the precise methodologies for implementing both pillars. Setting up these systems will take time and come with increased compliance costs for companies, so, to prevent serious challenges for companies, the agreement must provide sufficient lead time for the implementation of new systems and processes as well as alignment with the current tax system.

The OECD's proposed effective date of 2023 for both Pillar 1 and Pillar 2 is neither reasonable nor realistic, and it would create significant challenges for taxpayers and tax administrations to meet their compliance obligations. Likewise, for Pillar 1, understanding the redistribution of profits for each market country will be a huge task for global companies, and to help ensure a smooth and effective transition, the OECD should provide a timeline and practical approach for implementation that takes into consideration the administrative and logistical challenges of enacting the reforms.

Although the economic effects of both pillars are difficult to predict, the Department of Finance estimates that the implementation of the agreement would cost Ireland more than €2 billion in annual tax revenue, which would be a challenge for Ireland.[4]

While the final outcome of the proposals is yet to be determined, one result may be an erosion of Ireland's competitive corporate tax rate of 12.5%. Knowing that such an outcome may be on the horizon, Ireland should maintain a proactive approach to its tax competitiveness. Ireland should enhance its tax offerings and simplify its existing tax regime so that it can retain a best-in-class tax policy that is innovative, competitive and aligns with the new global tax agreement.

Implementing the OECD proposals will require a major overhaul of the Irish tax system. This overhaul, however, provides Ireland with the opportunity to improve other aspects of its tax code, many of which are complex or require updating.

Other countries will be re-evaluating their tax regimes and implementing new tax policies that make them more attractive for FDI—Ireland must do the same or risk falling behind in terms of competitiveness.

To be at the forefront of tax competition, Ireland must enhance its domestic offerings, which includes exploring changes to the Double Tax Treaty network, participation exemption, passive tax rates and Capital Gains Tax rates for disposal of business assets. Below, AmCham has set out a list of specific areas where we believe changes are required if Ireland is to remain a competitive location for US MNEs to invest. These include:

- Moving to a more territorial system of taxation and simplify the double tax credit relief provisions—currently mainly contained in Schedule 24

- Simplify interest limitation rules in the context of adopting an ATAD compliant regime by 1 January 2022
- Moving to a single 12.5% rate of corporate tax for companies as opposed to a 12.5%, 25%, and 33% rate, with an additional minimum tax applying only to companies above a certain size (i.e., in scope of BEPS 2.0, if necessary)
- Reducing the marginal income tax rates and the thresholds at which they apply to encourage and retain a talented work force in Ireland
- Making the personal tax regime for key, in-demand individuals more attractive to encourage talent to move to Ireland. This could be done through the non-application of CAT and CGT to such individuals and through further enhancements to the SARP regime
- Remove Section 757 which provides for a Case IV charge on capital sums received for the sale of patent rights.

Ireland must also ensure that cutting-edge research, development and innovation continues to incur in-country. To do so, AmCham believes that Government must reform and enhance the nation's R&D tax credit so that it remains competitive with other countries. Recommendations have been included in AmCham's Pre-Budget 2022 Submission, "Next Century Ireland" (attached to this submission).[5]

Once changes have been made to the domestic tax system, Ireland must provide certainty around the tax regime while making it easy to administer. Having unnecessary administrative complexity would decrease Ireland's attractiveness for FDI.

Since 2008, the global community has made significant progress in updating the international tax framework to address BEPS, and Ireland has reformed and modernized its tax code in line with international developments and EU Directives. While these changes have increased global tax fairness and transparency, they have also increased the complexity of Ireland's tax system. The different levels of tax and varying incentives available have resulted in a complex system that can be cumbersome for businesses to navigate.

Ireland should aim to simplify its existing tax regime. The State should revise its current tax code to increase its agility and adaptability so that the system aligns with 21st century business models and helps Ireland remain a competitive and attractive location for FDI.

Question 3: Are there specific features in the design of the Pillar One proposals which, in your opinion, may have particular implications for Ireland and our tax policy?

The precise methodology for implementing Pillar 1 lacks the clarity and detail necessary for a smooth and just transition to an international agreement.

For example, the final details of how Amount A (residual profit) would be calculated has yet to be determined. The Inclusive Framework statement indicates that the amount of residual profit to be reallocated will be in the range of 20-30% of profits exceeding a 10% profit threshold. However, a specific agreement has yet to be reached on the precise details of the calculation. Depending on these details, this agreement could have a material impact on companies with significant operations in Ireland and ultimately on the State's finances. Therefore, it is important that the Department of Finance continues to engage in the detailed design features of Pillar 1.

In addition, there are many other areas that require clarification. For example, the mechanism for providing for double tax relief needs to be clear and capable of being administered.

Binding dispute prevention and resolution mechanisms will be essential, and it is important that the Irish Revenue Commissioners are well resourced to ensure that they can participate fully in the expected increased activity in this area.

Further work will also be required in relation to 'Amount B' (safe harbours) and it will be important that this matter is addressed in due course.

AmCham calls for the abolition of targeted unilateral tax measures including but not limited to DSTs, Diverted Profits Taxes and Equalisation Levies at the time of agreement of Pillar 1. Additionally, the agreement must provide that similar measures cannot be adopted at a later date and that the proposals for the European Digital Levy should not be advanced.

If designed correctly, Pillar 1 should not negatively impact one industry more so than others. Carveouts and exemptions should be minimised. If any carveouts are made, each carveout should include a clear and narrow definition of its scope as well as a principled rationale for its exemption.

The requirement for segmentation should only arise in very limited circumstances, for example, to ensure that no market distortions arise. Any proposed segmentation requirements should not create significant additional compliance burdens but instead should be based on data/analysis already available.

MNEs and Tax Administrations will need a substantial amount lead time to implement these changes. The current effective date of 2023 is ambitious given the effort that will be required by MNEs and Government to make this transition in an efficient and effective manner.

Question 4: Pillar Two proposals include agreeing to adopt an Income Inclusion Rule, an Under-Taxed Payments Rule and a Subject To Tax Rule. Are there any specific features of introducing these rules that warrant particular attention with regard to their implications for Ireland's tax code and tax policy?

The outlined proposals as they currently stand provides for a minimum effective rate of 'at least 15%'. One of the objectives of this project is to dispel decades of global uncertainty, and cross-border mismatches that hinder trade, with an agreed approach that will stand the test of time. The minimum effective rate provision is a key provision – it needs precision – so that it can be implemented with certainty by all participating countries.

The detailed proposals will need to clarify precisely how the new rules apply in terms of priority (e.g., the Income Inclusion (IIR), Undertaxed Payment (UTPR) and Subject to Tax Rule (STTR)) and ensure that taxes are appropriately creditable. The Inclusive Framework statement mentions that tax paid under the STTR is creditable as a covered tax under the GLOBE rules (i.e., IIR and UTPR), which implies it applies first but this should be clarified. Ireland should not request a STTR in its treaties but should constructively engage with treaty partners in developing countries who may request a STTR.

The proposals indicates that companies financial accounts (as adjusted for certain items) will be used to determine the tax base for the Effective Tax Rate (ETR) calculation. This may require companies to keep separate sets of books specifically to comply with Pillar 2. This will add additional complexity and add to the compliance burden.

In addition, the specifics of the methodology for these calculations, for example, the accounting framework and definition of net income as well as how the rules interact both with the Irish tax system and the domestic tax regimes of other countries—especially the current and proposed U.S. regime—is crucial to understanding the implications for Ireland. Clarity is also required in relation to the definition of intercompany payments to which the STTR applies, how losses would be addressed or to what extent deferred tax accounting will apply.

Further clarity is needed around the interplay of the Pillar 2 rules with Ireland's existing tax provisions, for example, the impact on companies claiming capital allowances on acquired assets. The OECD proposals anticipate a calculation based on net profits whereas the Irish tax code has a focus on tax adjusted profits. For successful implementation of the proposals, AmCham members believe that companies' concerns about the interplay of the rules and domestic regimes need to be addressed prior to implementation.

The details of which taxes will be covered taxes for the purposes of the ETR calculation are outstanding and require clarification.

Any de minimis exclusions should be set at a meaningful level to minimise the administrative burden.

It will be important that dispute prevention or resolution mechanisms are also adopted for Pillar 2.

Likewise, AmCham is of the view that it is important that jurisdictions implementing BEPS 2.0, including the changes proposed in the US by the Biden Administration, are as closely aligned as possible to the BEPS 2.0 proposals and ideally that GILTI would be deemed a compliant Pillar 2 regime. AmCham also supports a globally aligned approach to the implementation of these rules across countries as opposed to a unilateral approach. Global alignment on implementation would also prevent the unnecessary complication of companies having to deal with different justification implementing the proposals at different times.

A long-standing principle of international tax reform and the BEPS project is that businesses should be taxed where substance is located and that genuine business location decisions should not be penalised. It is not clear that this principle still applies given the direction of travel that BEPS 2.0, Pillar 2, has taken in recent months. On the basis that it does still apply, then the substance-based carveout proposed within Pillar 2 should be as wide as possible and should include not only tangible assets and payroll but also, for example, leased tangible assets, intangible assets (specifically those that are eligible for the OECD modified nexus criteria agreed as part of BEPS 1.0) and regulatory capital for regulated entities. If the BEPS 2.0 project is indeed designed to build on BEPS 1.0 and to address the digitisation of the global economy, it cannot disregard the key principles of the BEPS 1.0 process such as the location of intangible assets – assets which play a significant role in the global economy, a role that should only increase over time.

Regarding substance-based carveouts, the proposal should at a minimum allow the tax paid in respect of income that is carved out of the tax base to be taken into account as a covered tax in calculating the minimum rate for the purposes of Pillar 2.

Ensuring that the R&D Tax Credit remains available and competitive for US-based investors in Ireland is of critical importance to AmCham members. Relief and incentives that promote RDI have been encouraged and approved by the OECD and EU, and it’s important that they remain available and consistent with DEMPE provisions after the international agreement takes effect.

Question 5: Are there any specific issues which should be considered in respect to implications for the Irish tax code arising from the GILTI, SHIELD and other US corporate tax reform proposals, with particular reference to the significance of US MNEs in Ireland?

Although there will be issues specific to the Irish tax code, AmCham believes that until we see detail about the foreign aspects of this, it is hard to provide specifics.

The co-existence of GILTI (as it currently stands together with any future changes) as Pillar 2 compliant is critical for US MNE's with Irish operations. The Inclusive Framework Statement is unclear on this point, and clarity is required.

Should the Stopping Harmful Inversions and Ending Low-Tax Developments (SHIELD) proposal be enacted in the US, significant consequences could arise for MNE groups with US and Irish entities if the Irish ETR were less than the global minimum rate prescribed by Pillar 2.

If enacted, it would deny a tax deduction to a US-based company for payments made to companies located in countries where the income is subject to (or deemed to be subject to) an effective tax rate that is below a designated minimum tax rate. SHIELD applies where a group has global turnover of more than \$500m (compared to the €750m proposed under Pillar 2).

Essentially, where the effective tax rate in the jurisdiction of the recipient of a related party payment from a US taxpayer is less than a minimum rate, e.g., 15%, deductions will be denied in the US on the full amount of the payment. This proposed reform means that if the ETR in the recipient jurisdiction was 14.9%, the full payment would be denied. Under the UTPR in Pillar 2, a deduction would only be denied in collecting the additional 0.1%. The ETR for SHIELD purposes is calculated under US tax principles which creates a further challenge for Ireland in responding to these reform proposals.

The implementation of SHIELD could have far-reaching consequences for Ireland. Several AmCham members are Irish or foreign headquartered with significant investments and business activities in the US. If these measures are implemented as proposed—and we appreciate that there is no certainty on that—it could mean that US-based businesses are penalized from buying products and services from Irish-based companies if those Irish companies are not taxed at a designated minimum effective rate (as calculated using US rules and principles). If SHIELD does go into effect and Ireland has not yet implemented the minimum global corporate tax rate, then the targeted companies won't be able to claim deductions on payments to Ireland.

AmCham believes that implementation of the OECD proposals should be aligned globally so that all countries should move at the same time with enacting the global agreement. It is important that the global community acknowledge that the OECD 2023 timeline for implementation does not provide sufficient lead time for effective enactment of the agreement and creates a mismatch between the timeline for implementing the reforms and the proposed enactment of SHIELD. This mismatch has serious repercussions for the targeted MNEs.

While at this point there is no certainty that SHIELD will be enacted, Ireland must closely monitor and assess the impact of any related US legislative changes on companies operating in Ireland, including the timing of those changes, and be ready to respond to ensure that these businesses are not disadvantaged

Another important factor for US-based international businesses operating not just in Ireland but in any jurisdiction will be whether they must calculate local profits, e.g., in Ireland, under three sets of rules in assessing which tax liabilities apply to them, i.e., Irish tax principles, US tax principles and OECD Pillar 2 principles. Ensuring the GILTI is a compliant Pillar 2 regime would help to alleviate some of the additional complexity that will arise.

A number of changes to GILTI could potentially make Ireland less competitive for FDI, which increases the importance of Ireland's need to revise its tax regime and offerings so that these systems remain nimble and able to respond to changes in other jurisdictions. Moving forward, the flexibility and adaptability of Ireland's tax system will be crucial to remaining as competitive as possible in response to external challenges.

Question 6: Are there specific considerations of particular significance that should be taken into account in deciding how any final agreement should be implemented?

Ireland's tax system has undergone many significant changes in the past. Comprehensive consultation with stakeholders, done in a public and transparent manner, is an important part of the change process. AmCham is of the view that in responding to the Inclusive Framework proposals, the State has followed the appropriate process by engaging stakeholders via consultation before signing up to the agreement. By having a long-established approach for bringing in change, Ireland has helped create an environment that provides businesses with certainty.

This reassurance is one of many reasons that businesses invest and stay in Ireland. Similarly, in adopting change, Ireland provides a reasonable timeframe for companies to implement changes, which has contributed to Ireland's reputation as an attractive place to do business. As part of any international tax agreement, the State must ensure that businesses are granted the appropriate lead time for implementing change so that companies can operate with stability they've come to expect by doing business in Ireland.

It's critical that any final agreement is sufficiently clear to ensure consistent implementation across all jurisdictions and minimise taxpayer compliance burdens. A high-level agreement, lacking specific detail, would be open for interpretation and may be implemented differently by countries. If that was the case, it would prove difficult for businesses to implement and would give rise to significant uncertainty and disputes. As noted above, unilateral measures (including DSTs) must be removed at the time of agreement as a first step in advance of implementation of the Pillar 1 proposals. In addition, the proposals for the European Digital Levy should not be advanced.

The goal of legislating for both Pillars in 2022 with effective dates in 2023 is not realistic. Governments will need to implement the measures (and legislation will be required in most cases), and Tax Authorities and companies will need to build systems necessary to deal with the changes and the additional compliance requirements.

Therefore, the implementation timeline for both the Pillar 1 and Pillar 2 proposals must be altered to reflect the significant changes required for enacting the agreements. Sufficient lead time to implement the changes is crucial for success.

AmCham broadly supports the use of a Multilateral Instrument (MLI) as the best method for implementing the Pillar 1 proposal since an MLI will bring more certainty and require consensus to alter moving forward. However, we also recognize that the additional difficulties that may arise from getting many countries to sign up to one MLI.

Additionally, AmCham recognizes that each country must be very clear about the timing and procedures it requires to join the MLI. For instance, some countries will have to go through a parliamentary process to do so. Likewise, some countries may need lead time to withdraw their unilateral levies, which should be completed on agreement.

For Pillar 2, AmCham also supports the use of an MLI to set the minimum rate and prevent the future risk of upward change to the rate. To promote certainty and stability, the changes made should be for the long term and should require a consensus agreement to change. AmCham also acknowledges that the implementation of a minimum rate will likely require an EU Directive. The EU should not press ahead with a Directive before a comprehensive Pillar 2 agreement is reached, including certainty as to whether the US GILTI rules will be treated as Pillar 2 compliant. We discourage the adoption of any EU Directive that goes further than the agreement reached in the OECD proposals.

Because the changes put forth in the OECD's proposals are major changes to the global tax system, disputes will inevitably arise. As part of the implementation process, the proposals must set up a binding prevention and resolution mechanism for all disputes. It should complement current competent authority processes and aim to resolve disputes in an efficient manner.

The structure of any proposed mechanism for dispute resolution must respect the systems and authority of small countries as well as large ones. Wherever they operate, MNEs need reassurance about the authority of the domestic system. When local Revenue Authorities are faced with global disputes, they must be able to uphold their positions and have the resources to do so. The Department of Finance must ensure that the Revenue Commissioners are appropriately resourced to tackle challenges associated with the implementation of an international agreement. The State should invest in additional resources for the Revenues Competent Authority and MAP teams to ensure that double taxation disputes are satisfied quickly in a way that creates certainty. Similarly, other countries must commit to dedicating resources to their competent parties.

AmCham believes that in light of the global reforms to how multinationals are taxed, the international standing and reputation of Ireland's Revenue Authority will have an even greater bearing on Ireland's ability to retain and attract inward investment. Just as Ireland rightly defends and protects its global brand, AmCham's members expect that any country in which they have operations to have a Revenue Authority that is equipped to implement domestic tax policy and the international obligations flowing from the OECD agreement with certainty, consistency and technical competence.

Multinationals with Irish operations will expect to be able to engage with the Irish Revenue Authority to obtain prompt and clear guidance on administrative issues that arise from implementation of the final proposal as enacted. We recommend that existing administrative procedures – such as the Cooperative Compliance Framework - be enhanced to meet this expectation.

AmCham members will also expect that the Irish Revenue Authority, the Competent Authority and related Government bodies will be in a position to engage with their international counterparts – including those from the world's largest economies – on an equal footing, equipped with the requisite expertise and digital capacity. We believe this is essential, and we suggest Government conducts a thorough assessment to ensure any additional resources/investments are in place well in advance of implementation of the final OECD agreement.

Question 7: Are there any further considerations that should be taken into account, including in respect to Ireland's wider industrial policy arising from the OECD proposals?

AmCham supports Ireland's long-held position that tax and industrial policy are matters of national sovereignty that should be respected, especially given the need for smaller countries to compete with the inherent advantages of larger ones. Ireland has always adapted and responded to changes in the external environment while maintaining its position on tax sovereignty and tax competitiveness, including the adoption of EU ATAD 1 and 2 measures and the BEPS 1 measures.

With its tax sovereignty, Ireland has offered a consistent corporate tax rate of 12.5% for over two decades. At the same time, it has implemented income taxes, VAT and CGT policies that are in line with rates of other EU countries and in many cases tend to be slightly higher than those countries. By maintaining a consistent corporate tax rate and applying a full range of both direct and indirect taxes to a broad base, Ireland has an approach to taxation that causes minimal distortion to economic growth—an approach highlighted by the OECD in 2010.[6]

Ireland's independent Revenue Authority operates best practice to foster compliance and penalise non-compliance. Revenue's 2020 Report showed a 97% compliance rate for Large Business.

When making changes to its tax regime, Ireland has always provided companies with the support they need to implement changes, including consulting with stakeholders about proposed alterations and providing sufficient lead time to implement any adjustments required. As the State works through the current OECD proposals, Ireland must remain steadfast in providing that stability for businesses.

As Ireland engages in the process of adopting an international agreement that could result in an overhaul of its tax system, the Government must take advantage of the opportunity to enhance its domestic tax offerings so that the country's tax policy remains nimble and competitive.

Ireland's competitor nations will be moving ahead with their own domestic tax reforms, creating innovative policies to ensure that they remain attractive to FDI after the implementation of the global agreement. As a small country, Ireland must do the same, or it will fall behind. An important component of staying competitive will be the reform of the nation's R&D tax credit.

Because of the major overhaul needed to comply with the international agreement and to increase the competitiveness the current tax regime, Government should provide additional resources to Revenue and the Department of Finance to help them with the administrative and legislative burdens that accompany implementing the agreement. At the same time, AmCham acknowledges that resourcing for this support will also require substantial lead time, which is yet another reason that the OECD's proposed effective date of 2023 is not sufficient for participating countries.

Ireland's competitive corporate tax rate has been one of many factors that has led to the growth in American MNEs locating in Ireland. Based on a recent AmCham public opinion survey, 81% of Irish residents believe American MNEs are crucial to the future of Ireland's economy, and 93% believe that they are critical to the post-Covid recovery period. American MNEs create jobs and grow the Irish tax base. They also employ high-income earners who pay high personal income tax and USC rates. US companies in Ireland employee 180,000 people, indirectly support 140,000 jobs in the wider economy, spend €10 billion on payroll and invest €5 billion in capital expenditure.[7] The existence of these companies enables the funding of many of Ireland's public investment priorities.

A competitive, certain and transparent corporate tax regime will be an important component in Ireland's campaign to win future inward investment. That is why AmCham commends the Irish Government for its constructive engagement with the OECD process – recognising that an agreement is the best way forward, provided it respects the position of small, open economies.

Ireland has long attracted inward investment because of the stability and certainty provided by its tax regime, and it has not fluctuated its corporation tax rate as part of its industrial policy. However, Ireland attracts inward investment for a myriad of factors, including Ireland's rich talent pool and international workforce, high quality of life, research capabilities and record of operational excellence.

AmCham also believes that the future of inward investment will be as much about where people want to live as where companies want to go. For the next wave of advanced manufacturing investment, the public-private commitment to investment in cutting-edge research, development and innovation is vital. In our recent Report to Government "Next Century Ireland" (attached) we have set out our vision of how Ireland can implement reforms and policies that will ensure it remains a location of choice for inward investment including:

- Reform the R&D Tax Credit
- Increase R & D investment as a % of GNI to 3% by 2025
- A-Z review of the planning system
- The development of additional grid capacity with increased interconnection points for new renewable energy projects
- Improve broadband access
- An accommodation roadmap aimed at existing and potential multinational investors in Ireland and individuals
- Continue the upward trend of participation in life-long learning
- Provide the necessary additional funding to IDA Ireland to ensure it can compete internationally for inward investment to Ireland
- Commit to not to increase any personal tax burdens
- Speedy completion of the digitalisation of ISD and the Employment Permits Unit's service

As AmCham has outlined throughout our submission, much clarity is needed on both Pillar 1and Pillar 2 proposals. Ireland must continue to ensure a principles-based approach is to the forefront of discussions on the OECD proposals. It is essential that both detail and clarity are provided on the OECD proposals for businesses and countries, particularly in relation to providing certainty on the exact minimum rate of tax which would be imposed under the proposals. Furthermore, AmCham is clear that unilateral tax measures should be removed if an international tax agreement is to be implemented and that the Revenue Commissioners should be adequately resourced and prepared to deal with any disputes which may arise.

The discussion of an international tax agreement also provides Ireland with the opportunity to modernise and reform its tax code, as outlined in this submission, ensuring Ireland continues to be competitive and has a tax offering which is among the best in the world.

While much technical detail remains to be negotiated, and the provision of significant detail is required to fully ascertain the potential impact the implementation of Pillar 1 and Pillar 2 proposals may have, if a detailed international tax agreement is reached, AmCham does not believe that staying outside of such an agreement would be in Ireland's best interests.

[1] https://www.rte.ie/news/europe/2021/0621/1229574-paschal-donohoe/
[2] https://www.econpol.eu/sites/default/files/2021-07/EconPol_Policy_Brief_36_Who_Will_Pay_Amount_A_0.pdf
[3] https://www.taxnotes.com/tax-notes-federal/digital-economy/amount-g-20-calling-tune-and-us-multinationals-will-pay-piper/2021/08/02/76y2x
[4] https://www.irishtimes.com/business/economy/ireland-one-of-9-countries-to-hold-out-on-signing-oecd-global-tax-deal-1.4609129
[5] https://www.amcham.ie/getattachment/a109c11b-95a0-40ba-82a7-110ac521c548/Final-2022-AmCham-IRL-Pre-Budget-Submission-(2).pdf.aspx
[6] https://www.oecd.org/berlin/46391708.pdf
[7] https://www.amcham.ie/getattachment/c56d0295-5828-40a7-b1dd-183667f8325c/Building-Bridges-Bettter-US-Ireland-Partnership.pdf.aspx?ext=.pdf