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AMERICAN CHAMBER of COMMERCE IRELAND

Pillar Two Minimum Tax Rate Implementation

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

July 2022

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 contribute to the Department of Finance's public consultation on the implementation of the Pillar Two Minimum Tax Rate.

Ireland has an increasingly complex tax regime. The implementation of Pillar Two will increase the compliance burden on business and add additional complexity. There is an urgent need to use the implementation of Pillar Two as an opportunity to also simplify the overall tax code to ensure it is able to cater for the needs of 21st century business. Reducing complexity and the administrative burden associated with the Irish taxation regime would in itself be a competitive advantage, allowing for greater ease of doing business in Ireland.

Stability and certainty for business has long been a key pillar of the Irish taxation system, which has ensured Ireland remained an attractive location for inward investment. AmCham believes that this stability is essential as we move towards the implementation of Pillar Two. As such, it is vital that timely and regular opportunities are provided for engagement with business through the use of feedback statements.

While it is too early to make a final determination on the most appropriate approach for Ireland to take in relation to the implementation of the Pillar Two minimum tax rate, the Qualified Domestic Top-Up Tax approach is likely to emerge as the preferred option for implementation in many countries. Successive Irish governments have steadfastly defended Ireland's 12.5% corporate tax rate which must be commended. Should the QDTUT approach be advanced in Ireland, it would allow for the retention of the 12.5% rate, ensuring that the corporate tax regime remains attractive for businesses not in scope of Pillar Two, while also providing certainty for business in Ireland.

Uncertainty remains with regard to US tax reform. In the context of Pillar Two implementation, changes to the US tax code must be continuously monitored to ensure that there is a full understanding of the impact on US MNCs operating in Ireland. This is important given the scale of the two-way US-Ireland business relationship. US MNCs in Ireland employ over 190,000 people directly, and indirectly support a further 152,000 jobs in the Irish economy. Each year, US companies in Ireland invest €6.5 billion on capital expenditure and spend €12.4 billion on payroll and €8.8 billion on goods and services. Irish companies in the US employ 100,000 people, and Ireland is the 9th largest source of FDI into the US.

In this context, the manner in which GILTI will coexist with Pillar II is unclear. AmCham believes that it is essential that no double taxation obligations are placed on business as a result of this.

General

1. **Are there any specific features of the Rules that warrant particular attention with regard to their implications for Ireland's tax code and tax policy?**
2. **When implementing the Rules, are there any specific issues which should be considered with respect to implications for the Irish tax code arising from US corporate tax reform proposals, with particular reference to the significance of US MNEs operating in Ireland?**
3. **Are there other considerations of significance that should be taken into account when implementing the Rules in domestic legislation?**
4. **Are there any amendments needed to Ireland's existing tax code to ensure that existing legislation does not result in any unintended outcomes under the Rules when they are implemented in domestic legislation?**

Implementation approach

AmCham is of the view that at this point, it is still quite early to make an exact determination as to the best implementation approach. While the Qualified Domestic Top-Up Tax approach appears to be the most sensible route forward, more details are needed to provide greater clarity before the final approach is chosen.

US tax reform

US corporate tax reform must be monitored to fully understand the impact of any changes on business in Ireland. AmCham believes that there must be no double taxation liabilities on business – either an Irish QDTUT must be creditable in the US for GILTI purposes or vice versa. Furthermore, clarity must be provided that, under GloBE rules, GILTI is classified as a CFC charge.

It is not clear as to how GILTI rules will interact or coexist with Pillar Two. In this context, AmCham is of the view that, should the current GILTI regime not be classified as an Income Inclusion Rule, then the current GILTI tax expense should be the amount used for the purposes of the calculation of the QDTUT. Clarity in this regard should be provided via guidance from the Department, or in the implementing legislation. GILTI should preferably be considered a qualifying IIR, and if not should be considered a CFC charge under the Pillar Two rules. Its interaction with a QDTUT must be clear - either a QDTUT is creditable against GILTI or vice versa. In addition, BEAT (if not revised to be a qualifying UTPR) should be included as a Covered Tax in the ETR calculation. In addition, in order to ensure no double taxation arises, to the extent possible the Irish IIR, UTPR, and QDTUT (if adopted) rules should be implemented such that they are capable of being creditable for US tax purposes.

Additionally, the Pillar Two rules require the calculation of income using the accounting standard used in preparing the consolidated financial statements of the group's ultimate parent. For many AmCham members (both US groups and Irish groups listed in the US) this will require the calculations to be based on US GAAP. The

differences between US GAAP and IFRS/FRS102 can result in material differences in the Pillar Two calculations and therefore the top-up tax which can apply. As such we believe that further work is required to eliminate these differences based solely on accounting standards.

Domestic tax considerations

There are a number of domestic tax considerations that AmCham wishes to highlight. Firstly, in the context of simplifying Ireland's taxation system, and being a preferred location for FDI, consideration should be given to reducing the number of tax rates from three to one. In particular, the complexity of analysing the different rules applying to each of the three tax rates and the potential applicability of CGT at 33% to transactions involving assets used by an Irish company in the course its trade are adding unnecessary complexity and reducing Ireland's competitiveness.

In addition, it is essential to be cognisant of any impact on s.291A TCA. By way of example, in instances where an MNC opts to claim relief over a 15-year period, rather than in line with accounts, the potential exists for a negative impact on the ETR calculation. This could result in a deferred tax liability which will not reverse within 5 years and therefore cannot be included in deferred tax adjustment for inclusion in covered taxes

Ireland must be cognisant of the importance of, for example the R&D tax credit, in attracting FDI into Ireland. AmCham, in its submission to the Department on the R&D tax credit outlined its view that it is imperative that the R&D tax credit architecture meet the conditions of a Qualifying Refundable Tax Credit (QRTC).

AmCham, in its submission on the R&D tax credit, recommended that:

- The Irish R&D tax credit is reconstituted to a fully refundable credit
- The credit is altered to become fully payable as a cash payment or a cash equivalent
- The full payment is issued within 4 years of the date when the entity is entitled to receive the refundable credit.

Any updates to the Irish R&D tax credit regime should also ensure that it's considered a refundable credit for US tax purposes.

Finally, in conjunction with the implementation of the Pillar Two rules in domestic legislation, AmCham believes that the transition to a territorial system of tax should be advanced, as outlined in AmCham's submission to the Department of Finance's public consultation on this topic.

AmCham believes that continued engagement in relation to the implementation of the Pillar Two rules is essential to address any outcomes that may arise. As such, the timeliness of feedback statements will be of paramount importance, allowing for

business to further engage in advance of implementation, and to identify any unintended consequences which may become apparent as the process progresses. AmCham acknowledges that resources within the Department will be focused on a number of priorities, however, in line with AmCham's submissions to the Department on a system of territorial taxation, and on the R&D tax credit, AmCham believes it should be a priority for the Department to make resources available to facilitate ongoing engagement with business on the implementation of the Pillar Two rules.

Scope

5. **Are there any aspects concerning the scope of the Rules, for example the definitions of a Group, a Constituent Entity or an Excluded Entity, that require further clarification in domestic legislation?**

   AmCham notes that the term 'domestic tax liability' is not defined within the rules and, through implementation, the Department should seek to provide clarity on this for business. AmCham further notes that covered income taxes must be clearly defined also, in order to provide certainty for business.

   However, continued engagement on this would be beneficial to ensure business has the opportunity, through the feedback statement process, to raise any additional items which require further clarification in domestic legislation.

Charging provisions

6. **Do you have any views on how the following provisions should be reflected in domestic legislation?**
   (i) the Income Inclusion Rule ('IIR')
   (ii) the Undertaxed Profits Rule ('UTPR')
7. **In relation to the UTPR, should this take the form of either (i) a top-up tax (ii) a denial of deduction against taxable income resulting in an amount of tax liability necessary to collect Ireland's portion of the UTPR top-up tax amount?**

   It is AmCham's view that clarification in domestic legislation that the QDTUT has priority over both the IIR and the UTPR. Furthermore, clarity should also be provided that, for countries which adopt a QDTUT approach, the STTR is not in effect for payments to those jurisdictions.

   Safe harbours give certainty makes things simpler for both taxpayer and tax administration, AmCham is of the view that Ireland should fully adopt all permitted safe harbours under OECD and EU rules. AmCham is of the view that the safe harbours should result in no requirement for the calculation of GloBE income in situations where an effective tax rate of 15% already likely applies. The use of existing country-by-country reporting data could be leveraged in this regard.

With regard to the safe harbour position in respect of QDTUT's which result in no further top-up tax once a QDTUT applies, it would be most beneficial to allow for the calculation of the QDTUT under FRS 101 or FRS 102, in line with the definition of acceptable financial accounting standard within the GloBE rules.

AmCham is of the view that the UTPR should take the form of a top-up tax. Given that a top-up tax is the most efficient for revenue authorities to administer, and similarly will provide ease of compliance for business, it is the model which should be advanced when implementing the Pillar Two minimum tax rules.

Computation of GloBE Income or Loss

8. **Do you have any comments on the Computation of GloBE Income or Loss provisions contained within the Rules and how these could be implemented in domestic legislation?**
   In particular, do you have any comments on:
   (i) the determination of the Financial Accounting Net Income or Loss
   (ii) the adjustments to determine the GloBE Income or Loss?
9. **Are there any aspects of the Computation of GloBE Income or Loss provisions that require further clarification in domestic legislation?**
10. **Do you have any views on the rules regarding the allocation of Income or Loss to entities/jurisdictions as they could apply to domestic legislation?**

As referenced above, the current rules appear to result in material differences in the GloBE calculations depending upon whether US GAAP or IFRS applies. For example, on the intra-group transfer of assets, the asset is generally recognised at fair market value in the acquiring company under IFRS, whereas the asset is generally not recognised under US GAAP (but a deferred tax asset may instead be recognised).

AmCham believes that further work is required to fully understand the impact of the differences in accounting standards and that the rules must seek to eliminate any material differences in the GloBE calculations.

In terms of the computation of GloBE income or loss, AmCham is of the view that greater clarity will come as a result of further detail, and AmCham looks forward to engagement further on this through the feedback statement process.

Additionally, as referenced above, a territorial regime should be introduced for foreign dividends and branches.

Computation of Adjusted Covered Taxes

1. **Do you have any comments on the Computation of Adjusted Covered Taxes provisions and how these could be implemented in domestic legislation?**
2. **Are there any aspects of the Computation of Adjusted Covered Taxes provisions that require further clarification in domestic legislation?**
3. **Do you have any views on the rules on:**
   (i) the allocation of covered taxed between entities
   (ii) the mechanism to address temporary differences
   (iii) post-filing adjustments as they could apply to domestic legislation?

AmCham is of the view that, with regard to the allocation between entities resident in Ireland, the allocation of any tax due under Pillar Two should be proportional to the GloBE income of such entities.

In relation to any transfer pricing adjustments for tax periods in advance of the effective date, such adjustments should be disregarded to ensure the covered tax for the period is not adversely impacted.

AmCham is of the view, that the rules in relation to credibility deductions for withholding taxes in Ireland should be simplified in a manner which aligns with the acknowledgement that it is a covered tax under the GloBE rules

AmCham is further concerned that in the event that the commitment to abolish DSTs does not come into force that account needs to be taken of the existence of DSTs giving rise to double taxation in the future.

Qualified Refundable Tax Credits

14. **Do you have any comments on the potential interaction of tax credit provisions, as currently set out in the corporation tax code, with the definition of "Qualified Refundable Tax Credit"?**

As AmCham outlined in its submission to the Department's consultation on the R&D tax credit, with regard to the QRTC, if this is treated as income subject to tax under the GloBE rules, the R&D tax credit would be subject to the minimum 15% tax rate. This would result in the dilution of the monetary value of the R&D tax credit, and therefore increase the cost of undertaking R&D activities in Ireland. As such, it is vital the competitiveness of the R&D tax credit is retained. In this context, AmCham has recommended:

1. Amend the Irish R&D tax credit regime to provide for a fully payable R&D tax credit that meets the definition of a QRTC.

2. Provide enhancements (i.e., rate increase/broadening the expenditure base) to the Irish R&D tax credit regime given that the R&D tax credit will become taxable under the GloBE rules.

As AmCham referenced earlier, any updates to the Irish R&D tax credit regime should also ensure that it's considered a refundable credit for US tax purposes.

Additionally, in relation to the Knowledge Development Box, the Irish KDB regime is an OCED approved regime and as such the impact of any benefit should be excluded from the calculation for minimum tax rate, or if not excluded, then the KDB could be amended in order to be a Qualified Refundable Tax Credit.

Computation of ETR and Top-up Tax

15. **Do you have any views on the Computation of Effective Tax Rate (ETR) and Top-up Tax provisions? In particular, do you have any views on the process to calculate ETR and Top-up Tax and how these could be implemented in domestic legislation?**
16. **Are there any aspects of the calculation of the ETR and Top-up Tax of investment entities, joint ventures or minority-owned constituent entities that require further clarification in domestic legislation?**

In relation to the computation of ETR and top-up tax, AmCham is of the view that the domestic legislation brought forward for implementation should closely align with the proposed European Directive.

AmCham further supports the use of existing, and widely applicable safe harbour methodologies to ensure that the administrative burden placed on business is not overly cumbersome, and the use of such methodologies should be defined within the implementing legislation.

With regard to the period of implementation, it is important that domestic legislation ensures there is a proportionate approach in relation to penalties, which includes the greatest possible level of engagement with business. Furthermore, should issues arise in relation to double taxation or differing interpretation, these issues should be addressed via a dispute resolution mechanism within the revenue authority.

Qualified Domestic Top-up Tax ('QDTUT10')

17. **In your view, should a QDTUT be implemented by Ireland? If so, what should be the features of such a QDTUT and how should it operate? In particular, please provide your view on the charging and administrative rules that should apply.**
For example, could a QDTUT form part of the corporation tax liability of a company and be returned as part of the corporation tax return? How should the jurisdictional calculation of the QDTUT be addressed in return filings, particularly where entities in an MNE group in scope in Ireland might have different intermediate parents?

As indicated above, AmCham is of the view that it is quite early to determine the final approach for the implementation of the Pillar Two minimum tax rate, however the QDTUT model may emerge as the preferred approach for implementation within Ireland. Should this occur, the preservation of Ireland's 12.5% corporate tax rate would remain a pillar of Ireland's overall competitiveness as an investment location, while the QDTUT model would provide stability and certainty for both businesses within scope of the Pillar Two rules, and companies who are subject to a lower corporate tax rate.

Given changing economic conditions, providing the greatest possible stability and certainty to business will ensure Ireland remains a destination of choice for inward investment, and the QDTUT approach may be best placed to support Ireland's attractiveness in this regard.

Furthermore, ensuring taxpayers have certainty in the approach to tax administration may be best advanced by the QDTUT model. In terms of filings, AmCham believes the most efficient approach is that business have the option to file one, group return within Ireland. Such an approach would ensure that compliance with the Pillar Two rules does not create an overly burdensome administrative barrier for business, and subsequently increase the cost of compliance by allowing companies to file one, group return, should that be their preferred option, while providing flexibility for companies who do not wish to file just one return.

Should Ireland adopt and calculate the QDTUT approach, as AmCham has outlined above, it would be most beneficial to allow for the calculation of the QDTUT under FRS 101 or FRS 102, in line with the definition of acceptable financial accounting standard within the GloBE rules. The importance of safe harbours is underlined by the increased level of certainty and simplicity they provide for business in an already complex system, and as such, there should be a list of countries who have adopted the QDTUT approach to ensure no recalculating takes place in other jurisdictions.

Administration – Payment and Filing

18. **Do you have any views on how the reporting obligations of entities that are in scope of the rules should be satisfied?**
19. **How should liabilities arising under the IIR or UTPR be reported and paid/collected? Do you have any views on the frequency of such payments and the deadlines that should apply?**
20. **Do you have any views on whether Irish constituent entities should be made joint and severally liable for any Irish GloBE liabilities of the Irish constituent entities of the same MNE Group? In this regard, would you differentiate between IIR liabilities and UTPR liabilities?**
21. **Do you have any views on whether Irish constituent entities should be made joint and severally liable for the QDTUT (if Ireland were to adopt such a provision) of the Irish constituent entities of the same MNE Group?**
22. **What group entity should be made initially liable for paying UTPR tax? Is your answer dependent on whether UTPR tax is collected by way of denial of deduction or direct charge?**

AmCham is of the view that the reporting obligations, and ensuring they are satisfied, should be done in the simplest manner possible in order to ensure the burden placed on business is not overly onerous. As such, the option to file one group return is important in this context. AmCham welcome, under the Model rules, the inclusion of a compliance system which will ensure that MNCs are subject to one filing requirement for their Pillar Two requirement, whereby the UPE jurisdiction has bilateral or multilateral arrangements to exchange the GloBE information return with the jurisdiction of constituent entities. However, it is important that this is underpinned with this return being subject to only one audit process in the UPE jurisdiction. In accordance with the GloBE rules, the filing deadline for the GloBE information return should be 15 months.

Confidentiality, the appropriate use of data, and the necessary data safeguards should be in place in relation to the administration of tax filings, and the use of a global return with no differing formats or information requirements would be important in ensuring compliance is not overly burdensome for business.

Furthermore, safe harbours will be important in reducing the compliance burden for business, whereby businesses subject to the rules in Ireland fall outside the scope in other jurisdictions. However, it is important, in AmCham's view, that safe harbours are implemented in as broad a manner as possible to most efficiently support companies in navigating the complexity of the rules and achieve compliance.

In relation to the reporting of liabilities under the IIR and the UTPR, AmCham is of the view that these can be reported within the one return. Allowing business to report liabilities for both the IIR and UTPR via two different sections of their tax return would

be the most efficient means of reporting, while ensuring business is not faced with an overly burdensome administration requirement in this regard.

In this context, it is AmCham's view that the filing of a tax return should be required once annually. This would be the most efficient approach for both revenue authorities and business. Ensuring the deadline for filing is different from the corporate tax deadline would further support business in being compliant by providing additional time, and not placing an onerous administrative burden on business at one particular time of the year.

In instances where a mistake has occurred resulting in the overpayment of QDTUT, or where a reassessment of CFC taxes has taken place, AmCham believes the amount identified as overpaid should be subject to mandatory refund.

Transition Rules

23. **Are there any aspects of the Transition Rules that require further clarification in domestic legislation?**

AmCham believes that the Transition Rules applying to the intergroup transfer of assets are too broad and are impacting on business transactions. This is particularly the case following M&A transactions whereby the acquiring group may look to integrate and centralise the ownership of key assets into their existing structure. AmCham believes these rules need to allow commercial transactions to procced without potentially resulting in double taxation, in particular where the disposing entity has been taxed on any gain arising on the disposal at a tax rate greater than 15%. Given Ireland is EMEA headquarters for many MNCs, ensuring that their intergroup transactions are not adversely impacted is of the utmost importance.

In addition, the Transition Rules will now apply for a much longer period than originally expected given the updated proposed implementation dates for Pillar Two.

In relation to the transition period itself, AmCham recognises that the implementation of the new rules, in addition to their application represent significant changes for both taxpayers and revenue authorities. As such, it would be beneficial to have a transition period, during which an understanding approach is taken in relation to any potential penalties.

Subject to Tax Rule ('STTR')

24. Should amendments to any domestic legislation be considered to address potential application of, or interactions with, the STTR?

In relation to the potential application of, or interaction with, the STTR, AmCham believes that it should not be applicable to countries which have adopted the QDTUT model given that relevant entities will have been taxed at the minimum 15% rate, or higher. Furthermore, AmCham is of the view that the implementation of the STTR in Ireland does not have to be advanced unless Ireland is requested to do so.

Tax competition remains a key consideration in a Pillar Two world, with competitor jurisdictions working to enhance their offerings to be competitive for investment. Ireland must have agility and adaptability within its overall tax offering to ensure it remains a destination of choice for FDI. In this context, AmCham believes that Ireland must consider the incentives which can be introduced to maintain its competitiveness.

Large Scale Domestic Groups

25. The proposed Directive on Pillar Two will also apply to large-scale domestic groups. Are there any aspects of the application of the Rules to large-scale domestic groups that require further clarification in domestic legislation?

AmCham looks forward to further engaging with the Department in relation to this, through the feedback statement process, as further detail is provided.