Tax Treaty Policy Consultation
Tax Division
Department of Finance
Government Buildings
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Submitted to taxtreatypolicy@finance.gov.ie

7 May 2021

Dear Sir/Madam

PwC Ireland response to the Tax Treaty Policy Consultation

First and foremost, PwC Ireland would like to take this opportunity to welcome this consultation process by the Department of Finance in relation to the formulation of Ireland's future double tax treaty ("DTT") policy.[1]

As one of the most open economies in the world, Ireland's current DTT policy and extensive DTT network has been an important tool in supporting cross-border trade and both inbound and outbound investments.

This submission first addresses some general considerations as regards Irish DTT policy. It then goes on to specifically answer both aspects raised in the consultation, being (i) the role that Ireland's DTT policy plays in benefitting the Irish economic and business environment, and (ii) the Irish policy in concluding DTTs with developing countries.

PwC Ireland recommends that Ireland's future DTT policy continues to reflect the current policy of removing obstacles for Irish companies operating abroad and facilitating inward trade and investment from partner countries.

[1] Department of Finance, Tax Treaty Policy Ireland – Public Consultation, 7 April 2021.

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As outlined in our submission overleaf, PwC Ireland's other key recommendations are as follows:

- Ireland's DTT policy should continue to seek the elimination of withholding taxes on dividend, interest and royalty payments in source States;
- We would encourage that the Irish DTT policy continues solving the question of dual residence of companies by virtue of their place of effective management as opposed to a competent authority agreement;
- Ireland's DTT policy should reinforce its position taken as regards the definition of "permanent establishment" in the context of the OECD's Multilateral Convention to implement DTT related measures to prevent Base Erosion and Profit Shifting ("MLI");
- Ireland should seek to expand its DTT network to better serve certain industries, such as the aircraft leasing and the financial services sectors, in particular, by focusing on concluding DTTs with South American and Asia-Pacific countries;
- We would encourage the Irish government to continually expand Ireland's DTT network with developing countries, including with countries on the African continent, with a view to enhance trade and the offering of Ireland and the counterparty.
- We recommend that Irish tax treaties explicitly confirm the tax transparency of certain funds, including common contractual funds ("CCFs") and investment limited partnerships ("ILPs") in the future.
- Ireland's DTTs should seek to establish a consistent policy of taxing payments under the Approved Retirement Fund ("ARF") and Personal Retirement Savings Accounts ("PRSA") regimes in the residence State only.
- Ireland should continue to use the OECD Model Tax Convention ("OECD MC") for concluding, or renegotiating, existing treaties, with both developed and developing countries.

We are acutely aware that, as we write this response, discussions are ongoing on the OECD/G20 Pillar One and Pillar Two discussions at the Inclusive Framework on Base Erosion and Profit Shifting ("BEPS") ("Inclusive Framework") and at the EU on agreeing further reforms to the international tax framework.

Further, as per Ireland's Corporation Tax Roadmap Update published earlier this year, we note that the consultation on the possible move to a territorial system of taxation is intended to commence in the course of 2021.

We would welcome a further consultation on Ireland's DTT policy as soon as there is more clarity on the outcomes of both of these matters. In the meantime, we are available to discuss our recommendations and look forward to future opportunities to engage with you on Ireland's DTT policy.

Yours sincerely

Peter Reilly

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General DTT Policy Considerations

Ireland's DTT Network

Ireland has currently signed DTTs with 74 countries (73 are in effect). Negotiations have also been concluded with a further 4 countries. Ireland signed the MLI[2] in June 2017. Ireland deposited its ratification documents with the OECD on 29 January 2019 and the MLI entered into force for Ireland on 1 May 2019.

Generally, whilst each individual DTT has a particular reason for coming into existence, the main reasons for countries to conclude DTTs is to encourage cross-border economic activity through the elimination of double taxation of income and capital and to prevent international tax avoidance and evasion. DTTs also provide certainty in tax matters, prevent discrimination and support transparency through exchange of information between contracting States. Concluding DTTs may also serve additional purposes, such as strengthening political ties with the partner country.

The purpose of preventing international tax avoidance and evasion has increasingly come into the focus of policymakers from both developed and developing countries. The OECD Base Erosion and Profit Shifting (BEPS) project[3] reflects the political importance of these issues. Ireland has fully engaged in those international tax discussions for many years and has implemented the majority of BEPS actions locally through domestic legislation and on a cross border basis through the MLI.

As the global economy continues to expand, and noting the rapid involvement of developing countries in international trade, Ireland will need to ensure that its DTT network is sufficiently broad to cater for Irish interaction with new and existing trading partners. Being one of the most open economies in the world, it is crucial that the Irish DTT policy will continue to reflect the goals of both capital import and capital export. On the one hand, in order to encourage inbound investment, Ireland must continue to attract foreign direct investment entailing the transfer of skills and technologies and thus fostering economic growth. This will support the recovery of the Irish economy from the global COVID-19 pandemic and build strength for the years ahead. On the other hand, it is equally important for Ireland to foster outbound investment and thus encourage the international expansion of domestic companies and those that choose to grow from Ireland.

At present, Ireland's DTT network appears to be narrower than peer countries, e.g. the UK currently has over 130 DTTs in place[4], Belgium has over 150 DTTs[5], France has 124 DTTs[6], the Netherlands has 102 DTTs[7], and Luxembourg has 82 DTTs[8].

Generally, countries tend to have DTTs in place with countries with which they have close economic ties.[9] Academic literature also suggests that economic and political interests motivate developed

[2] https://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-beps.htm
[3] https://www.oecd.org/tax/beps/beps-actions/
[4] https://www.gov.uk/government/collections/tax-treaties
[5] https://taxsummaries.pwc.com/belgium/individual/foreign-tax-relief-and-tax-treaties
[6] https://taxsummaries.pwc.com/france/individual/foreign-tax-relief-and-tax-treaties
[7] https://taxsummaries.pwc.com/netherlands/individual/foreign-tax-relief-and-tax-treaties
[8] https://taxsummaries.pwc.com/luxembourg/individual/foreign-tax-relief-and-tax-treaties
[9] J. Braun & M. Zagler, An Economic Perspective on Double Tax Treaties with(in) Developing Countries, 6 World Tax J. (2014), Journal Articles & Opinion Pieces IBFD

countries when choosing their DTT partners, and to a lesser extent, they also take into account the needs of developing countries.

Residence

Companies that are resident in Ireland may avail of the benefits of Ireland's DTT network. These DTTs, inter alia, secure a reduction or, in some cases, a total elimination of withholding tax on dividends, royalties and interest. As noted above, the MLI entered into force for Ireland on 1 May 2019. The changes to Irish DTTs introduced in the MLI will take effect only where the DTT is a Covered Tax Agreement and where the other State makes a "matching election" as regards the MLI provisions.

The majority of Irish DTTs seek to solve the question of dual residence by virtue of the company's place of effective management. However, a small number of Irish DTTs (either due to the application of the MLI or agreed in individual treaties, such as in the DTT with the Netherlands) now require a competent authority agreement for solving dual residence of companies. Under this provision, the competent authorities of the contracting States will endeavour to determine a sole jurisdiction of residence by mutual agreement having regard to that company's place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors.

In our view, solving the question of companies' dual residence by means of a competent authority agreement adds complexity and unnecessary administrative burden for taxpayers. Indeed, only a small number of countries (e.g. the UK and the Netherlands) seem to have taken up the MLI recommendation and the MLI model in this regard. Therefore, we would encourage the Irish DTT policy defaults to solving dual residence of companies by virtue of their place of effective management. In any event, should the contracting States ultimately disagree on the company's place of effective management, such disagreements could then be settled by a mutual agreement under the relevant DTTs.

Permanent establishment

We support Ireland's position regarding the changes to the definition of "permanent establishment" contained in the MLI (BEPS Action 7), especially as regards the MLI provisions concerning commissionaire arrangements (Article 12 MLI) and the specific activity exemptions (Article 13 MLI).[10]

Where possible, we would encourage the Irish government to continue following its position on the revised definition of permanent establishment in DTT negotiations.

Furthermore, we would appreciate additional clarity on the circumstances in which servers and data centres may be considered to constitute a permanent establishment under Irish DTTs.

We note that the Pillar One[11] proposal under the Inclusive Framework seeks to change the circumstances when a taxable presence would be deemed to exist in a foreign jurisdiction. It may, therefore, be appropriate to revisit Ireland's DTT policy as regards the definition of "permanent establishment" when

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[10] Ireland, Reservations and notifications under the MLI to implement tax treaty related measures to prevent BEPS, available at https://www.oecd.org/tax/treaties/beps-mli-position-ireland-instrument-deposit.pdf
[11] OECD (2020), Tax Challenges Arising from Digitalisation – Report on Pillar One Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting, available at https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-one-blueprint-beba0634-en.htm

the technical details in the context of Pillar One have been finalised. We would welcome a further consultation on Ireland's DTT policy as soon as there is more clarity on the outcomes of this matter.

Inbound and outbound investment

As regards inbound (in particular, foreign direct) and outbound investment, the Irish DTT network currently includes DTTs with major trade partners and EU Member States. The majority of these treaties seek to grant the exclusive taxing right over dividends and royalties to the residence State only. However, some older treaties that are based on the previous versions of the OECD MC, in particular with major trading partners, impose withholding tax on dividends (e.g. Canada, Australia), royalties (e.g. Japan, Australia) and interest (e.g. Australia). Conversely, Irish domestic tax policy clearly endorses the elimination of withholding taxes on outbound payments to DTT countries. Also, some newer DTTs, such as the DTT with the Netherlands, seek to allocate sole taxation rights over interest and royalty payments to the residence State only. Therefore, it is recommended that a similar approach be taken in Irish DTT policy in order to ensure that no source taxation arises on such payments.

Separately, we note that there is currently no DTT between Ireland and Brazil. However, in 2019, Brazil was the ninth largest economy in the world and the largest in South America, with a GDP of $1.84 trillion.[12] Further to this, bilateral trade between Ireland and Brazil totalled $744 million, and the Brazilian community in Ireland is estimated at 18,000 nationals.[13] The absence of a DTT with Brazil puts Ireland at a competitive disadvantage compared to peer countries, such as Luxembourg, the Netherlands, and Belgium.[14]

Digital services tax

The increasing digitalisation of the economy has given rise to debate about the effectiveness of existing international tax rules that primarily allocate taxing rights based on the physical presence of a business in the market jurisdiction (source State). Whilst the OECD has been working to achieve consensus at the Inclusive Framework on redesigning the existing tax system to meet the challenges of the digitalising economy (i.e., Pillar One[15] and Pillar Two[16] proposals), in the meantime, some countries have adopted unilateral measures including gross digital services taxes ("DSTs").

The United Nations, through its Committee of Experts on International Cooperation in Tax Matters, has approved recommended language for bilateral DTT rules to address taxing rights around income arising from Automated Digital Services (ADS). The new Article 12B and associated Commentary will form part of the 2021 version of the UN Model Tax Convention ("UN MC").[17] The new article would have an impact only when two contracting States negotiate (or renegotiate and amend) a DTT between them.

The application of Article 12B to provide for either a gross or net basis of taxing income from ADS in the source State is dependent on take-up in bilateral DTTs. A large minority of the UN's Tax Committee experts were not in full agreement with the details and the Commentary recognises that a number of

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[12] World Bank, available at https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=BR
[13] https://www.gov.br/mre/en/subjects/bilateral-relations/all-countries/ireland
[14] https://taxsummaries.pwc.com/brazil/individual/foreign-tax-relief-and-tax-treaties
[15] See footnote 11 above.
[16] OECD (2020) Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint, available at https://www.oecd.org/tax/beps/tax-challenges-arising-from-digitalisation-report-on-pillar-two-blueprint-abb4c3d1-en.htm
[17] https://www.un.org/development/desa/financing/sites/www.un.org.development.desa.financing/files/2020-08/TAX%20TREATY%20PROVISION%20ON%20PAYMENTS%20FOR%20DIGITAL%20SERVICES.pdf

countries may not include Article 12B in their DTTs. The Commentary also allows for countries to diverge from elements of the rules even if they do include a version of Article 12B.

We expect that there will be considerable interest from some developing countries in pursuing the elements reflected in Article 12B, particularly if they may be dissatisfied with a potential global consensus and prefer a bilateral mechanism rather than resorting to unilateral measures.

Ireland, on the other hand, has consistently vocalised its preference for a global multilateral solution to addressing the tax challenges of the digital economy. Use of the UN MC's Article 12B would be a considerable departure from the Irish position thus far.

We would recommend a further consultation on Ireland's DTT policy in respect of digital taxation as regards both developed and developing countries as soon as there is more clarity on the outcome of this matter at the Inclusive Framework and the relevant EU initiatives.

Aviation leasing

The aircraft and aircraft engine leasing sector is a key financial services sector in Ireland, attracting and retaining investment as well as creating highly skilled jobs.[18] The air travel industry is expected to recover from the impact of the global COVID-19 pandemic and expand significantly in the next two decades, particularly in Asia.[19] In the past number of years, Ireland's policymakers have recognised the potential benefits of a strong aviation leasing industry. Therefore, policymakers have sought to provide a globally competitive and efficient environment for lessors for doing business in Ireland.

From an aircraft leasing perspective, the Irish DTT policy adopted to date has been broadly positive. The terms agreed by Ireland in its DTTs are generally supportive of the industry, mainly compared to aviation lessor competitors in the United States, China, Hong Kong, Singapore, Qatar and the United Arab Emirates ("UAE"). However, Irish lessors find themselves at an increasing competitive disadvantage due to the absence of an Irish DTT (e.g., Indonesia, Brazil) or the existence of an unfavourable DTT (e.g., Japan, Australia). In this context, in order to support the Irish aviation leasing sector, a broad and effective DTT network is key to removing trade barriers in the form of foreign withholding taxes and encouraging airlines and aircraft operators to finance the renewal and expansion of their aircraft fleet in the future.

Funds

Ireland plays a leading role in the global funds industry, providing a solid platform for both international investors and investments. As at February 2021, Irish domiciled funds held approximately €3.4 trillion of assets.[20] As such, the Irish funds industry forms a significant part of Ireland's financial services sector, particularly in creating highly skilled jobs in the fund and asset management business and the relevant service providers that support that industry.

Generally speaking, funds are designed to be collective investment vehicles to allow efficient and regulated pooling of investors' funds into a single vehicle to invest into diversified pools of assets. The advantages of collective investment through an investment undertaking are globally recognised and

[18] Sources: Central Statistics Office 'Aircraft Leasing in Ireland 2007 - 2016' and PwC 'Taking Flight - 2018'
[19] PwC 'Taking Flight-2018, available at https://www.pwc.ie/survey/taking-flight-2018.html
[20] Irish Funds, Irish domiciled funds, February 2021, available at https://www.irishfunds.ie/facts-figures/irish-domiciled-funds

include substantial cost savings for investors through economies of scale, ability to diversify through a liquid investment which generally includes an ability to reinvest returns, and the benefit of the market experience and insights of a professional money manager. The current Irish policy is to exempt Irish corporate funds (i.e. tax opaque funds) from taxation and does not tax non-Irish investors in Irish funds. This ensures tax neutrality by eliminating additional taxes on investors that they would not have incurred had they invested directly in the underlying assets.

In order to ensure tax neutrality of investment through collective investment vehicles, it is essential for Irish corporate funds to be able to access Ireland's DTTs in respect of their cross-border investments. Absent DTT benefits for corporate funds, investors are unlikely to be entitled to DTT benefits in their residence State on the basis that there is a "blocker" (i.e., corporate fund vehicle) interposed between investors and the investments. To date, the Irish DTT policy has consistently sought to allow Irish corporate funds to be entitled to the benefits of Ireland's DTT network. This is supportive and consistent with the general policy and objective of collective investment vehicles, as detailed above.

On the other hand, it is essential that tax transparent funds, including common contractual funds ("CCFs") and investment limited partnerships ("ILPs") are treated as transparent for the purposes of the relevant DTT and that the members or investors in such funds benefit from DTTs. In order to ensure legal certainty and eliminate the risk of double taxation of income derived through tax transparent funds, it is important to ensure that Irish DTTs explicitly clarify this position. This clarification (that Irish CCFs and ILPs are to be treated as tax transparent for the purposes of a DTT) would further ensure that Ireland is regarded as being fully compliant with the OECD MLI and other international tax reform (e.g. the EU's anti-taxation avoidance directive). Having the clarity in respect of the tax transparency of CCFs and ILPs will ensure that there is no opportunity for any mismatch or hybridity to arise.

We note that the recent Irish DTT policy is to explicitly confirm that CCFs are to be treated as tax transparent for the purposes of the relevant DTT. We recommend that such an approach (in respect of CCFs and ILPs) continue to be taken for Irish DTTs in the future, either through negotiation of new DTTs or renegotiation of existing DTTs.

Pensions

Irish DTTs typically grant the exclusive taxing right over pension payments to the residence State. However, with the introduction of the ARF and the PRSA regimes, the position of taxpayers residing in Ireland or abroad has become difficult to navigate. As pensions have evolved, there has been a shift to defined contribution pension plans and, correspondingly, the majority of pension income in the future is expected to be by virtue of ARF/PRSA distributions rather than the traditional pension/annuity.

The taxation of ARF/PRSA distributions varies significantly depending on the current agreement between Ireland and the relevant DTT country:

1) ARF distributions taxed solely in Ireland - The DTTs with the Netherlands (ARF & PRSAs), Germany (ARFs only) and Pakistan (ARFs only) give taxing rights solely to Ireland. Of note is that the Germany and Pakistan provisions are silent on PRSA distributions, which will create uncertainty and challenges in respect of these payments. It is noted that PRSAs are, under the

recent Report of the Interdepartmental Pensions Reform and Taxation Group ("IDPRTG") report[21], one of the recommended approaches for future pension drawdowns.

2) Capital Articles in the DTT - Only a few Irish DTTs currently include an article for the taxation of capital (e.g. Switzerland). In these treaties, the capital portion of an ARF/PRSA distribution is subject to the capital article, and income and gains are dealt with per the income articles of the DTT. The income and gains must be categorised into the relevant income article with further analysis required around whether the income/gains arise whilst Irish resident versus being resident abroad.
3) Remaining DTTs - The Irish approach in the remaining DTTs is a split of capital and income/gains. This raises many issues, such as the taxation of ARF/PRSA distributions under the pension article of the DTT (exclusive taxing right in the residence State) or conflict of qualification of the income, resulting in double taxation in the source State and residence State.

The current regime on the taxation of ARF and PRSA distributions appears to have been developed in a fragmented manner. The current regime is unworkable for certain countries, and often results in double taxation of the income. Accordingly, the current regime creates a barrier to free movement within the EU and further afield. In our view, a consistent treatment should exist in relation to the drawdown of pension funds. Our recommendation for Irish DTT policy going forward would be to give the exclusive taxing right over ARF and PRSA distributions to the residence State at the time the distributions are made.

We would also advocate that Ireland adopt a policy of seeking to have taxing rights on dividends limited to the country in which the relevant claimant under the DTT is resident for tax purposes, in the case of pension funds. This policy is a feature of many international DTTs and in view of the significant underfunding of pensions would encourage further contributions to be made. Ireland already operates a generous domestic dividend exemption regime for qualifying residents, which includes most DTT residents. Therefore, any cost to the exchequer should be negligible, while at the same time potentially enhancing the return for Irish pension funds.

Capital Acquisitions Tax

Ireland has only two capital acquisitions tax ("CAT") treaties in effect, one with the UK and the other with the US. As foreign investments by individuals are becoming more common, it may be appropriate to consider concluding new CAT tax treaties, particularly with the EU Member States.

[21] Department of Finance, Report of the Interdepartmental Pensions Reform and Taxation Group, published on 13 November 2020

Responses to Specific Consultation Questions

Economic Considerations

A. *Does Ireland's tax treaty policy sufficiently cater for the evolving economic and business environment?*

Generally, Ireland's DTT policy has been a crucial element to the success of the Irish economy, in particular in the context of inbound and outbound investment and the financial services industry.

As the global economy continues to expand, and noting the rapid involvement of developing countries in international trade, Ireland will need to ensure that its DTT network is sufficiently broad to cater for Irish interaction with new and existing trading partners.

As detailed above, Ireland's current DTT network is lagging behind the DTT networks of its peer countries (e.g. the Netherlands, Luxembourg, the UK). Moreover, some DTTs may put Irish-based businesses at a tax disadvantage compared to competitors based in some other jurisdictions due to the application of withholding taxes on payment flows in the source State under certain DTTs, including DTTs with major trading partners (e.g. Canada, Australia, Japan). Therefore, it is crucial that the Irish DTT network continues to evolve and expand as new competitive threats and market opportunities emerge.

B. *Do you have any suggestions on how could Ireland's tax treaty policy be enhanced, as a means to continue to facilitate economic opportunity into the future?*

Based on our comments detailed above, the Irish DTT policy could be enhanced as follows:

- Solving dual residence of companies by virtue of their place of effective management as opposed to mutual agreement procedure between competent authorities of the contracting States to avoid unnecessary complexity and administrative burden.
- Revisiting/updating older DTTs that do not achieve current objectives, in particular, as regards the application of withholding taxes on outbound payments in the source State.
- Expanding the DTT network to remove gaps in certain regions and thereby increase Ireland's competitiveness in the international tax landscape, in particular as regards the aviation leasing industry (please see our further comments below in response to question C).
- We recommend that Irish DTTs explicitly confirm the tax transparency of certain funds (such as CCFs) to create certainty as regards the elimination of double taxation.
- Ireland's DTTs should seek to establish a consistent policy of taxing payments under the Approved Retirement Fund ("ARF") and Personal Retirement Savings Accounts ("PRSA") regimes in the residence State only.
- Ireland should continue to use the principal purpose test ("PPT") as a precondition for the application of the relevant DTT in order to provide comfort to taxpayers as regards the availability of DTT benefits in the counterparty jurisdictions.

C. *Does Ireland's tax treaty network sufficiently serve all business sectors in the economy?*

As detailed above, whilst Ireland currently has a solid DTT network, there are some gaps in particular as regards the aviation leasing industry. This is particularly relevant as regards Ireland's DTT network with South American and Asia-Pacific jurisdictions.

The following countries are countries with which we see increasing interaction and trade, and with which we would like to have treaties in place:

- Brazil (Singapore and the UAE have DTTs)
- Colombia (the UAE has a DTT)
- Argentina (Qatar and the UAE have DTTs)
- Cambodia (Hong Kong and Singapore have DTTs)
- Philippines (Singapore, UAE, Qatar have DTTs)
- Indonesia (all competitors noted above have DTTs)

In addition, we recommend that outdated treaties, which lack conformity generally with the current OECD MC[22] and Irish DTT policy, should be renegotiated. We would particularly like to see the DTTs with both Japan and Australia renegotiated in the short term.

D. *How can Ireland optimise its tax treaty priorities in the context of recent international tax reforms, notably at the OECD?*

PwC Ireland supports Ireland's commitment to the OECD BEPS process, including the conclusion of the MLI. In our view, Ireland's continued commitment to the OECD BEPS process will be essential to the continued expansion of the Irish DTT network. In this context, we are supportive of a number of positions adopted by Ireland as regards the MLI, in particular, as regards the definition of "permanent establishment" and the application of the PPT for DTT entitlement. However, in our view, solving dual residence of companies by virtue of competent authority agreements adds unnecessary complexity and increases administrative burden. In our view, Irish DTTs should continue to solve companies' dual residence by virtue of their place of effective management.

We would recommend a further consultation on Ireland's DTT policy in respect of digital taxation as regards both developed and developing countries as soon as there is more clarity on the outcome of these matters at the Inclusive Framework and the relevant EU initiatives.

E. *What should the criteria be for prioritising the negotiation and renegotiation of specific tax treaties in the years ahead? Are there any significant gaps in Ireland's tax treaty network by reference to those criteria?*

As noted above, Ireland's current DTT network is smaller than a number of other European countries. The ability to successfully conclude a DTT depends on several factors and we appreciate that some of these factors may be driven by the potential counterparty jurisdiction.

[22] Model Tax Convention on Income and on Capital: Condensed Version 2017
https://www.oecd.org/tax/treaties/tax-treaties-2017-update-to-oecd-model-tax-convention-released.htm

Generally, the criteria for prioritising the negotiation and renegotiation of specific Irish DTTs include:

- The opportunities available to Irish businesses in South American and Asia Pacific jurisdictions;
- Jurisdictions that have a potential to invest in Ireland and/or base their international operations in Ireland.
- Older/outdated DTTs that do not reflect the current DTT policy of Ireland or the counterparty jurisdiction, or that are inconsistent with the current version of the OECD MC, may provide indication of a need for modernisation.

As noted above, there appears to be a significant gap in terms of DTT network with certain regions in the world (mainly South American and Asia-Pacific jurisdictions, but also the African countries which are likely to become more important in the coming years). We would strongly encourage the Irish government to take a targeted approach to DTT negotiations with these jurisdictions. We appreciate that the current capacity levels for DTT negotiations/ re-negotiations may be limited and, therefore, we would recommend a greater investment in the number of people working in this area being made. It also goes without saying that PwC Ireland would be delighted to support the Irish government in any further analysis needed to increase the number of high-quality DTTs with other countries and, in particular, to leverage our international network for the counterparty data and information that will be important to any such dialogue.

Finally, the modernisation of Irish DTTs under the global and EU digital tax reforms, and the safeguarding of Ireland's interests depending on the agreed global minimum tax rate, should drive the modernisation initiative. We would welcome a further consultation on Ireland's DTT policy as soon as there is more clarity on the outcomes of both of these matters.

Policy on Developing Countries

A. *Are there any specific areas of Ireland's treaty policy which should be modified or tailored, in relation to developing country?*

Whilst we consider that having a DTT in place with a developing country may make trade somewhat easier between the two jurisdictions, in our view DTTs, by themselves, may not be an efficient and effective means of promoting investment in developing countries generally. Indeed, the traditional belief of developing countries that a DTT with a developed country will increase foreign investment has not been consistently proven by scientific research.[23]

In the context of Ireland, the spillover analysis carried out by IBFD in 2015 concluded that Irish foreign direct investment towards the set of emerging and developing countries included in the analysis is very small and plays a marginal role at best in the overall FDI stock of those countries. Moreover, the available data does not indicate a distinction between DTT and non-DTT countries in relation to FDI investments from Ireland, which suggests an insignificant impact of bilateral tax treaties on the size and destination of outward FDI from Ireland to these countries.[24]

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[23] Gonzalo Garfias von Fürstenberg, Allocation of taxing rights in Tax Treaties between Developing and Developed countries: Re-thinking principles, available at https://cris.maastrichtuniversity.nl/en/publications/allocation-of-taxing-rights-in-tax-treaties-between-developing-an

[24] IBFD Spillover Analysis, Possible Effects of the Irish Tax System on Developing Economies, available at http://budget.gov.ie/Budgets/2016/Documents/IBFD_Irish_Spillover_Analysis_Report_pub.pdf

That being said, as a small open economy, whilst the analysis suggests that our FDI will unlikely make a considerable difference in terms of enhancing the economy of emerging and developing countries, concluding DTTs with these countries may enhance trade and the offering of Ireland and the counterparty. Therefore, we would encourage the Irish government to continually expand Ireland's DTT network with developing countries, including with countries on the African continent.

B. *Are there international best practices which Ireland can draw on to further enhance our approach to the specific circumstances of developing countries?*

One of the most notable challenges for taxpayers and tax authorities alike is the increasing complexity in the international tax arena. This is a particular challenge for the tax administrations of developing countries.

A tangible action by Ireland in this regard would be partaking in the OECD and UN joint initiative Tax Inspectors Without Borders, whereby Revenue would second staff to a tax authority in a developing country, sharing tax audit knowledge and skills. The initiative has been running since 2015 and has been recognised as giving attention "*to effective and efficient mobilisation of domestic resources in achieving the Sustainable Development Goals and the commitments made by the international community […] to strengthen international tax co-operation*"[25]. The UK and several EU Member States are participants in the initiative[26].

C. *When negotiating with developing countries, should more emphasis be placed on the UN Model Treaty? If so, please provide details.*

Based on academic literature, the actual status of the UN MC does not provide incentives for foreign investment in any special way. Instead, the UN's effort has been more related to a discussion on the source-residence distinction rather than to designing tax rules that aim to incentivise foreign investment in developing countries. In fact, even though the UN MC reinforces source country taxation more strongly than the OECD MC, it does not mean that the UN MC has achieved more fairness in relation to the allocation of taxing rights.[27]

The OECD MC has been constantly reviewed to address new tax issues that arise in connection with the evolution of the global economy.[28] It represents a global standard in tax treaties[29] and is currently used by Ireland as the basis for most of Ireland's DTTs (with some exceptions, such as the DTT with the US).

[25] http://www.tiwb.org/about/oecd-undp-partnership/

[26] We note that whilst Ireland is currently not TIWB partner administrator, it is a TIWB Donor through the OECD's "BEPS and Developing Countries" programme (http://www.tiwb.org/get-involved/donor-partners/)

[27] Gonzalo Garfias von Fürstenberg, Allocation of taxing rights in Tax Treaties between Developing and Developed countries: Re-thinking principles, available at https://cris.maastrichtuniversity.nl/en/publications/allocation-of-taxing-rights-in-tax-treaties-between-developing-an

[28] The 2017 edition of the OECD MC mainly reflects a consolidation of the DTT-related measures resulting from the work on the OECD/G20 BEPS Project under Action 2 (Neutralising the Effects of Hybrid Mismatch Arrangements), Action 6 (Preventing the Granting of Treaty Benefits in Inappropriate Circumstances), Action 7 (Preventing the Artificial Avoidance of Permanent Establishment Status) and Action 14 (Making Dispute Resolution More Effective).

[29] Whilst the OECD MC is primarily used in the DTT negotiation between the OECD member countries, it has also been used in negotiations between member and non-member countries and even between non-member countries, as well as in the work of other worldwide or regional international organisations in the field of double taxation and related problems. Recognising this growing influence of the OECD MC in non-member countries, it was agreed, in 1997, to add to the OECD MC the positions of a number of these countries on its provisions and Commentaries.

Globally, the OECD MC is used in more than 3,000 tax treaties[30]. We would recommend that Ireland remain consistent insofar as is possible and continue to use the OECD MC, including DTTs with developing countries.

As outlined above, the UN MC's new Article 12B which addresses taxing rights around income arising from ADS, also needs to be considered. Ireland has consistently vocalised its preference for a global multilateral solution to address the tax challenges of the digital economy. Use of the UN MC's Article 12B would be a considerable departure from the Irish position thus far.

D. Should any specific standard positions, e.g. on source taxation, be adopted for treaties with developing countries?

No, as outlined above we are in favour of using the OECD MC.

Additionally, we would like to draw your attention to the IBFD spillover analysis noted that "*other states* [Ireland has tax treaties with] *have voluntarily given up their taxing rights under their domestic law in order to attract FDI and the reduction of withholding tax is not caused by the provisions of the tax treaties*"[31].

[30] Model Tax Convention on Income and on Capital: Condensed Version 2017
https://www.oecd.org/tax/treaties/tax-treaties-2017-update-to-oecd-model-tax-convention-released.htm
[31] See footnote 24 above.