Tax Division
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2
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15 December 2021

Dear Sir/Madam

Subject: Public Consultation on New Taxation Measures to apply to Outbound Payments

We are writing to you in response to your invitation for submissions on the "Public Consultation on New Taxation Measures to apply to Outbound Payments" document as published by the Department of Finance on 5 November 2021.

First and foremost, we welcome the publication of this Public Consultation document. The publication thereof prior to the implementation of rules relating to outbound payments reflects Ireland's continued efforts to promote a business environment characterised by certainty and clarity, thereby giving confidence and foresight to key stakeholders in a time of unprecedented change in the international taxation arena.

As the leading advisor to a broad base of taxpayers, ranging from indigenous entrepreneurs and Irish-listed entities to foreign-owned multinationals, we can draw on our experience of dealing with complex taxation matters and reflect our concerns and insights with regard to the implementation of additional measures under Ireland's Corporation Tax Roadmap.

We welcome the opportunity to discuss the matters outlined below at your convenience.

Yours faithfully,

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Executive Summary

- The data used in preparing the European Commission Semester 2020 Report (which has ultimately led to this public consultation) is not reflective of the current position in terms of flows of outbound payments from Ireland to Offshore Financial Centers ("OFCs"). The latest data on such flows shows that outbound payments to OFCs have decreased dramatically. It is critical that a data-led approach is adopted in any review of Ireland's regime regarding the taxation of outbound payments, and this indeed needs to be made clear to the authors of future European Semester Reports.
- The range of measures under consideration to address the taxation of payments (primarily royalties, interest and dividends) to uncooperative jurisdictions demonstrates that the issue is live at both the EU and OECD levels. Various EU measures currently under discussion may, in time, come to be passed via Directives. It is therefore not appropriate to make changes to Irish domestic legislation relating to outbound payments prior to the relevant EU decisions being taken. To do so might leave Ireland in an uncompetitive position relative to its EU neighbors in the future, and might create unnecessary uncertainty (which will almost certainly impact investment into Ireland).
- Aside from the comprehensive BEPS measures recently introduced into Ireland's domestic legislation, Ireland has - for decades - had robust and detailed domestic provisions in place in relation to outbound payments of interest, royalties and dividends. These domestic provisions effectively restrict such payments in appropriate circumstances by either denying a deduction or imposing a withholding tax ("WHT") where avoidance is a concern, and allow for specific exemptions from such denial or imposition in appropriate circumstances. This is in contrast to many of our EU neighbours and other countries who have only recently introduced such measures (or indeed have no such measures in place).
- Any further measures that might be taken in Ireland without an international mandate (at EU/OECD level) weakens our international competitiveness as an investment location. For example, we are already at a competitive disadvantage to other jurisdictions that have less complex rules for tax deductions for business related financing costs and/or apply very limited or no withholding tax on interest (or other outbound payments).

The need for this consultation

As per the January 2021 update to Ireland's Corporation Tax Roadmap, Ireland is committed to:

- Considering additional defensive measures in respect of countries on the EU list of non-cooperative jurisdictions (Commitment 6); and
- Considering broader actions that may be needed in respect of outbound payments (Commitment 7).

It is fully acknowledged that meeting these commitments is key to improving the efficiency and fairness of tax systems, and that the spillover effects of aggressive tax planning strategies adopted by taxpayers call for a coordinated action of national policies that are consistent with developments in the OECD BEPS process and parallel developments within the EU.

We note the recommendation of the European Commission ("EC") in the European Semester Country Report for Ireland 2020[1] ("the February 2020 Semester Report") that Ireland take action in 2020 and 2021 to, inter alia, "*Step up action to address features of the tax system that facilitate aggressive tax planning, including on outbound payments*"[2].

We further note that, following this recommendation in February 2020 and the publication of the Updated Roadmap in January 2021, two reforms proposed in Ireland's National Recovery and Resilience Plan ("NRRP")[3] are that Ireland (i) conducts a public consultation on outbound payments to listed and no-tax jurisdictions (i.e. this consultation), and (ii) if considered appropriate, make any necessary legislative changes to apply to outbound payments to "*take effect from 1 January 2024 at the latest*"[4]. Consequently, domestic changes to specifically address concerns relating to outbound payments to listed and no-tax jurisdictions (to the extent that they are required) will only be required to be legislated by Ireland by 1 January 2024. This will afford Ireland some time to take account of broader changes mandated at OECD and EU level (and implemented in Ireland) before Ireland is required to introduce any domestic changes to specifically address outstanding concerns relating to outbound payments that are not addressed by those broader changes.

Concerns of the EC Semester Report and the current situation regarding outbound payments

In the February 2020 Semester Report, the EC expressed the concern that "*the high level of royalty and dividend payments as a percentage of GDP suggests that Ireland's tax rules are used by companies that engage in aggressive tax planning, and the effectiveness of the national measures will have to be assessed*"[5].

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[1] 26 February 2020. Chapter 4.1.3. Available at https://ec.europa.eu/info/sites/info/files/2020-european_semester_country-report-ireland_en.pdf
[2] Recommendation 4 of the February 2020 Semester Report.
[3] Formally adopted by the Council of the EU on 8 September 2021, available here.
[4] Project 3.6 of Priority Component 3 of the NRRP.
[5] At paragraph 23.

Essentially, the EC's concern at the time was that royalty and dividend payments from Ireland to OFCs[6] were proportionally very high[7] and that this facilitated aggressive tax planning on the basis that such payments are not taxed in OFC recipient jurisdictions.

The report notes that Ireland had, at the time of the issuing of the Report, taken steps to reform its tax rules in light of BEPS risks, and it is important to note that a number of key measures in this regard have been introduced by Ireland in the interim. One such reform was the amendment of Ireland's tax residence rules announced as far back as 2014. The relevant changes to these rules have taken full effect as of 1 January 2021[8]. The rules were changed to avoid multinational enterprises taking advantage of the mismatch in residency rules between Ireland and other countries.

Almost all of the measures implemented by Ireland will, to a greater or lesser degree, have an effect on the treatment of outbound payments, and will therefore mitigate aggressive tax planning and avoidance associated therewith. The commitment that Ireland has shown (and its achievements in recent years) in relation to the implementation of measures aimed at addressing aggressive tax planning should not be understated.

It has been a policy imperative of Ireland to support the work of the OECD BEPS project, as well as parallel and complementary reforms mandated by the EU. Ireland has been at the fore in implementing the recommendations of the BEPS project. Ireland has also met all of the commitments to implement measures mandated by the EU arising from the Anti-Tax Avoidance Directives and information exchange initiatives.

Ireland's corporate tax code has been substantially revised to accommodate, for example, changes to capital allowances on intangible assets, corporate tax residency reform, the introduction of Controlled Foreign Company rules (which apply in the context of the EU list of non-cooperative jurisdictions), anti-hybrid mismatch rules, changes to the exit tax regime, extended transfer pricing rules, reporting of certain transactions via DAC6, the ratification of the Multilateral Instrument, and (more recently) the introduction of interest limitation and reverse hybrid rules with effect from 1 January 2022.

It is also important to recognise that none of these measures were necessarily designed to reduce the levels of outbound payments from Ireland. The level of such payments from any jurisdiction is, primarily, a function of investment into that jurisdiction (particularly in the case of

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[6] Offshore Financial Centres as defined in the Eurostat Glossary, available here
[7] It must be noted that the data used by the EC in coming to this conclusion is from 2017/2018, and that (as is evident from data on outbound royalty presented in the consultation document from the study conducted by Mr Seamus Coffey in 2021 ("*The changing nature of outbound royalties from Ireland and their impact on the taxation of the profits of US multinationals,* available here")), the current situation is likely to be significantly different.
[8] Section 23 A Taxes Consolidation Act, 1997.

payments of dividends and interest), as well as economic activity in the jurisdiction (particularly in the case of royalty payments).

Accordingly, BEPS measures introduced in recent years have not had a significant impact on the total value of outbound payments from Ireland. What has happened, however, is that these measures, in combination, have had a significant impact on the location of recipients of outbound payments from Ireland. We note, from the latest available data[9], that there has been a significant decrease in the amount of royalties paid to OFC's in recent years and that such payments typically now are paid to companies in the US, EU and countries with which Ireland has a DTA. As a result, it is clear that the policy concern has fundamentally already been addressed and that the risk of base erosion and tax avoidance has already been significantly minimised.

It seems, from the recent draft report *A European Withholding Tax Framework*[10], that the current position with regard to flows of royalty payments from Ireland to OFCs has not been made known to the policymakers updating the EU WHT rules and that there is a risk that the new framework will, as a result, be unduly harsh. This concern is not only a concern in the Irish context - we are also aware that the work done by the Netherlands (to ensure that payments to countries regarded as uncooperative are taxed) has also not been fully appreciated. Our concern is that the next European Semester Report to be published in early 2022 will again paint an unrealistic and outdated picture of the details of Ireland's outbound payments.

<u>Ongoing and future developments at EU level and arising out of the OECD BEPS process</u>

There are a number of significant ongoing and future developments that will almost certainly have a fundamental impact on measures mandated by the EU relating to the tax treatment of outbound payments of interest, royalties and dividends by Member States. We set out below a brief outline of these developments.

Recast of the Interest & Royalties Directive ("I&RD")

EU Directive 2003/49/EC provides for a common tax system applicable to interest and royalty payments made between associated companies of different EU Member States. The Directive eliminates WHT for interest and royalty payments arising in a Member State and paid to a company in the same group where the beneficial owner of the payment is a company or permanent establishment in another Member State. The recast Directive would make the elimination of WHT on intra-group cross-border interest and royalty payments conditional on the payments being subject to tax in the destination state.

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[9] *Ibid 7*
[10] Note 12, see pages 9 and 40.

For the last decade, efforts have been underway to expand the I&RD by bringing more companies within its scope, but also by ensuring that recipient companies in the EU who receive gross payments under the Directive are subject to tax on the income deriving from those payments at a rate not lower than 70% of the average statutory corporate tax rate applicable in the Member States, taking into account hybrid instruments and entities.

These changes have stalled at EU Council level for almost a decade on the basis that some Member States requested a minimum ETR on interest and royalty income in order to benefit from the I&RD, whilst other Member States did not agree to such a provision[11].

However, given that the work on the OECD Pillar II proposals have moved the dial in favour of a minimum effective tax rate ("ETR") of 15%, the question arises again of recasting the I&RD to include a minimum ETR as a prerequisite to access to the Directive[12]. Whether the controversial elements of the recast I&RD will be politically acceptable following the implementation of Pillar II in the EU remains unknown. However, it is not unreasonable to expect a recast I&RD to be agreed upon which will alter the taxation at source rules at EU level and align the rules with a Pillar II minimum tax in the medium term.

Withholding Tax initiative underway from the European Commission

Earlier this year, the EC released an Inception Impact Assessment ("IIA")[13] outlining a number of policies that are intended to eliminate tax barriers to cross-border investment from inefficient WHT procedures, and to eliminate the risk of tax abuse within the EU.

The policy options under consideration by the EC include:

- Option 1: Several measures to improve WHT refund procedures to make them more efficient, quicker and transparent, including the establishment of common EU standardised forms and procedures for withholding tax refund claims irrespective of the Member States concerned, and the obligation to digitalise current paper based relief processes.

- Option 2: Establishment of a fully-fledged common EU tax relief at source system whereby the correct WHT rate applicable under a double tax agreement is applied at the

[11]https://www.europarl.europa.eu/legislative-train/theme-economic-and-monetary-affairs-econ/file-interest-and-royalty-payments-recast
[12] See recent calls for a recast I&RD aligned to the OECD proposals in the document containing amendments to the draft report on A European Withholding Tax Framework, p20 (Amendment 39), published 25th November 2021, available here.
[13] Withholding taxes – new EU system to avoid double taxation, published 28th September 2021, available here

time of payment by the issuer of the security to the non-resident investor, thereby preventing the incurral of double taxation.

- Option 3: A reporting and subsequent mandatory exchange of beneficial owner-related information between countries, on an automated basis, that would verify entitlement to DTA benefits and ensure the correct level of tax is applied to the investor.

While the policies proposed by the EC appear to lean towards simplification of the WHT system in order to ensure administrative ease for investors, tax authorities and intermediaries, there is also a strong anti-tax avoidance element at play. Ensuring that the correct rates of WHT, as provided in the relevant DTA, are applied at source would also reduce the opportunity for double non-taxation in respect of payments leaving the EU.

The EC proposes to launch a public consultation on these policies imminently with a view to proposing legislation in 2022 to address the issues identified. Given that the adoption of such proposed EU measures would cover much of the ground which we understand is sought to be covered by the consultation that is the subject of this submission, we believe it is would be prudent to wait and see what the impact of an EU-led policy approach would be before considering any potential Irish domestic measures.

Tackling the misuse of shell entities and tax arrangements

One of the actions that was proposed under the EU Commission's "*Communication on Business Taxation for the 21st Century*" was to table a legislative proposal setting out union rules to neutralise the misuse of shell entities for tax purposes (ATAD 3) by Q4 2021.

A public consultation has already been conducted in relation to the introduction of possible anti-tax avoidance measures with a view to closing out any gaps that exist post-BEPS/ATAD, as well as to assess whether further action is needed to ensure entities have sufficient economic substance. One such suggestion was to deny tax advantages or benefits (including relief from double taxation) where a low-substance entity is involved. The EC will release further details in terms of policy responses to shell entities and arrangements on 22 December 2021.

Code of Conduct changes

Another initiative that has recently gained the support of MEPs in the European Parliament is the proposal to update the Code of Conduct of the EU ("CoC") and the governance of the CoC group.

This proposal would seek to designate a country as having a harmful tax practice where that country does not impose a minimum effective tax rate (aligned to Pillar II), followed by review of the economic substance requirements in that country.

Changing the CoC to focus primarily on the application of a minimum ETR imposed by Pillar II (and noting that the potential consequences for a country of having a regime or an aspect of a tax regime designated as harmful can be severe and includes potentially being listed in the EU list of non-cooperative jurisdictions) requires careful consideration by policymakers.

In the event that this change were to be proposed formally by the EC and adopted in its current guise, this would potentially mean that the making of payments to locations where the minimum ETR is not met might result in the existence of a harmful tax regime in Ireland. The exact remit of the proposed CoC changes is not yet known. However, it might reasonably be expected that to allow payments between an Irish and foreign entity who are in a multinational group that is not in-scope for Pillar II (or where the entities involved are “excluded entities” or the application of the STTR on a payment does not sufficiently meet the minimum ETR for the purpose of the new CoC requirement) might be classified as a harmful tax regime. It is also notable that the new CoC might pave the way for EU Member States to be listed as uncooperative for the purpose of the EU list of non-cooperative jurisdictions.

While the expectation is that any proposed changes to the CoC will not be as far reaching as currently proposed[14], it is nonetheless prudent to anticipate the impact of a new set of criteria in the CoC when considering the taxation of payments to foreign locations.

The effect of the above ongoing and future developments

Making changes to the domestic Irish WHT regime while a number of important policy debates have yet to play out in the EU may prove to be hasty in the longer term and make Ireland less competitive relative to other countries. This is particularly the case considering that various policies have yet to be fully debated and considered (such as better alignment of taxpayer information and live recognition of DTA benefits, economic substance requirements having a bearing on double tax relief, and the I&RD and CoC moving towards minimum effective tax rates). We believe it would be wise to wait and see how these develop so that their recommendations may be fully and appropriately taken into consideration.

In certain cases, such as in respect of ATAD3 and the EU WHT initiative, Ireland may be required to transpose EU legislation with increased requirements for taxpayers wishing to access reduced WHT rates. Given that this may necessitate changes to the domestic rules, we

[14] Noting that the ECOFIN meeting of 7th December 2021 failed to adopt the CoC reform proposals and there are at least two EU member states who withhold support for these proposals at the time of writing.

do not believe that introducing additional measures now impacting withholding taxes on outbound payments is advisable.

Given the number of changes to the corporate tax code in recent years (and noting the considerable changes that will be required to reflect the OECD proposals in coming years) taxpayer certainty is of utmost importance. Further amending elements of the Irish tax code in advance of policy-making decisions that may ultimately require more substantive changes is not conducive to taxpayer certainty.

Measures targeted at payments to low-tax or EU black or grey-listed jurisdictions

The question arises as to whether it would be appropriate to simply levy a withholding tax and/or deny a deduction in respect of any payment of a dividend, interest or a royalty to any entity located in, for example, a country on the EU list of non-cooperative jurisdictions. Arguably, the adoption of such an approach would both address the concerns that have given rise to the need for this consultation and keep any legislative intervention as simple as possible.

Aside from the substantive complications that would need to be considered in adopting such an approach (including, for example, the need to appropriately carve out situations where payments are subject to a certain level of tax in the relevant jurisdiction, and therefore carry a low risk of base erosion), such an approach would give rise to a number of practical difficulties. These practical difficulties largely arise as a result of the fact that the EU list of non-cooperative jurisdictions is not static, and is subject to change (at least biannually). Aside from the difficulties that will be faced by taxpayers in simply keeping track of the jurisdictions on the blacklist, the administrative burden of maintaining and operating systems that apply the measures correctly to payments to such jurisdictions should not be underestimated. We refer again to the comments made earlier with respect to potential changes to the EU CoC, which may potentially change the number and/or profile of countries listed on the EU List of non-cooperative jurisdictions.

Existing measures

Introduction

Aside from the comprehensive BEPS measures already introduced by Ireland as discussed above, Ireland has had robust and detailed (and, in some circumstances, complicated) domestic provisions in place for decades that restrict the payment of interest, royalties and dividends in appropriate circumstances, and either deny a deduction or impose a withholding tax where avoidance is a concern. This is in contrast to many of our EU neighbours and other countries who have only recently introduced such measures, or indeed have no such measures in place. We also have existing general and specific deductibility rules, with specific criteria regarding deductibility of interest and royalties against taxable profits (again, in some instances with more complexity than our neighbours and competitors would have).

At the same time, to ensure that our pre-existing measures are not unduly restrictive, we have a range of long-standing withholding tax exemptions available for bona fide situations which are available subject to various certification, reporting, and tax return disclosure requirements (similar to the exemptions available in many other countries). This helps to ensure that measures to protect the tax base from erosion do not act as a disincentive to investment in Ireland by taxpayers.

We set out below a brief discussion of such measures.

Anti-avoidance measure curtailing possible abuse of the Parent-Subsidiary Directive

Section 831 TCA 1997, which has transposed the EU Parent Subsidiary Directive into Irish law, includes provisions aimed at preventing the insertion, for non-bona fide reasons, of intermediate holding companies in a jurisdiction with which Ireland has a DTA.

Transparency as a tool in the fight against tax avoidance

Outbound payments of dividends, interest and royalties are subject to a number of transparency measures. In this regard:

- Form CT1 requires disclosure of any payment of dividends, interest and royalties to persons in any jurisdiction that is on the EU Blacklist.
- DAC6, legislated for by Finance Act 2019, requires disclosure of information in relation to certain cross-border arrangements by intermediaries and taxpayers.

In this regard, tax transparency (a key measure in preventing tax avoidance) is a rapidly changing area and the issue of tax transparency is one that will likely feature heavily in the fight against tax avoidance in coming years. On 11 November 2021, the European Parliament voted to implement public country-by-country reporting ("CbCR") across the EU, and Ireland (as a member state of the EU) will be required to implement the public CbCR Directive by June 2023[15].

Once implemented, the public CbCR directive will require multinational enterprises ("MNEs") with group revenues of more than €750 million to disclose the amount of corporate tax they pay in EU countries, in addition to a range of other information, and will also apply to MNEs

[15] "*Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches*", published in the Official Journal of the EU on 1 December 2021, available here.

headquartered outside the EU that do business in the EU through subsidiaries or branches. This includes MNEs operating in countries on the EU's list of non-cooperative tax jurisdictions. Assuming that Ireland transposes the EU Directive by the mandated deadline of June 2023 (18 months after the Directive comes into force in December 2021), MNEs with a December year end will be reporting publicly their corporate tax information for tax years as early as 2025.

Interest and Royalties

Ireland already has an extremely complex and broad range of rules that govern both the deductibility of interest and royalty payments, as well as rules that cover the imposition of WHTs on such payments. The WHT rules are subject to a limited number of exemptions, with those exemptions having a strong policy rationale and having been tried and tested over many years.

Adding further strength to the existing regime is the fact that significant disclosure requirements apply in the context of the payment of interest and royalties, including:

- Under section 452 (relating to payments of connected party interest in the context of a trade);
- Under section 64 (relating to payments of interest on quoted Eurobonds);
- CT1 disclosures on royalty payments to blacklisted jurisdictions; and
- DAC6 reporting including on Hallmark C1 (deductible cross-border payments).

Finally, in the case of interest, some of the deductibility restrictions have only been recently introduced (notably, the interest limitation rules), and taxpayers are yet to fully adjust to these recently introduced changes. More time is needed for the full application of the new rules to become clear. We therefore again stress that now is not the time to layer on further potentially restricting rules.

Dividends

Ireland already has an extensive and robust domestic dividend WHT regime, which is currently more stringent than some other EU countries (e.g. Hungary, Cyprus and Malta) and some of our other competitors (e.g. the UK) who do not apply any dividend WHT at all. In addition, we do not have a dividend participation exemption (which puts us at a competitive disadvantage in terms of our attractiveness as a holding company regime).

In terms of payments by Irish companies of dividends to non residents, our domestic dividend WHT exemptions are only available where the non-resident is ultimately beneficially entitled to the relevant distribution, are qualifying non-resident persons, and where declarations are in place attesting to those facts prior to the payment of the dividend.

Qualifying non-resident persons for purposes of the dividend WHT exemption are limited to companies (i) in jurisdictions with which Ireland has a DTA in place and that are not under the control of a person or persons who is/are resident for the purposes of tax in Ireland; or (ii) that are ultimately controlled (directly/indirectly) by a person or persons who is/are resident for the purposes of tax in a jurisdiction with which Ireland has a DTA; or (iii) that are directly/indirectly controlled by a company that is substantially and regularly traded on a recognised stock exchange in a DTA country (or on such other stock exchange as may be approved of by the Minister of Finance).

As noted above, the exemptions from dividend WHT are limited and require declarations to be in place to attest to ultimate ownership with a treaty country before any dividend can be paid free of dividend WHT.

<u>The approach of other jurisdictions</u>

Consideration should be given to the applicable rules of fellow EU member states (as well as other jurisdictions with which Ireland competes for investment) relating to the deductibility of (and withholding taxes applicable to) outbound payments. This is of utmost importance to ensure that Ireland maintains its international competitiveness as an investment location.

Certain of our counterparts currently apply no withholding taxes or withholding taxes only in very limited scenarios. We have not conducted a comprehensive review of all relevant jurisdictions in this regard, but the following should be noted:

- Germany: Generally, only interest paid by banks to a resident is subject to a WHT. Interest paid to non-residents other than on convertible or profit-sharing bonds and over-the-counter transactions is generally free of WHT.

- Hungary: In terms of Hungarian domestic legislation, there is no WHT on any outbound payment made to foreign business entities (i.e. there is no WHT on payments of dividends, interest or royalties payments made to non individuals).

- Cyprus: Cyprus does not levy a WHT on interest paid to non-residents of Cyprus.

- Malta: Interest income derived by non-residents is exempt from tax in Malta provided that certain conditions are complied with (i.e. the interest is not effectively connected to a permanent establishment of the recipient situated in Malta).

- Luxembourg: Interest paid to non-residents is generally not subject to WHT. Interest that represents a right to profit participation on a bond may be assimilated to a dividend and subject to WHT. A WHT of 20% is withheld on defined interest income paid by a

Luxembourg paying agent to resident individuals. Interest indirectly cashed through investment funds are out of the scope of this WHT.

- Sweden: There are no Swedish taxes on interest paid to non-resident corporations or individuals. Such payments to resident corporations and individuals are taxed as ordinary income. A new Withholding Tax Act has been proposed by the Ministry of Finance to enter into force in January 2022. However, the proposal has been subject to discussions and the legislative outcome is not yet entirely clear.

- Austria: Interest payments to non-resident companies are currently not subject to WHT (provided no Austrian real estate property is used as security).

- United Kingdom: no dividend withholding tax is imposed on outbound payments, and the recently introduced Qualifying Asset Holding Company regime in the United Kingdom provides for zero withholding tax on outbound payments of interest.

Promotion of investment and growth, as well as certainty

While Ireland must remain committed to addressing aggressive tax avoidance in the context of outbound payments, it is also important that our corporate tax system is competitive, fair and sustainable into the future. In this regard, the Updated Roadmap points out that Ireland must ensure that the new International Tax Framework acts as an enabler, and not an inhibitor, of growth and investment, and that this is particularly relevant in the context of the challenges faced by Ireland in endeavouring to emerge from the effects of the COVID-19 pandemic[16].

As Ireland plans its recovery from the worst effects of the pandemic and prepares for significant additional changes to the international tax landscape, it is of utmost importance that Ireland's tax policy is supportive of investment and growth, and that Ireland remains competitive relative to its peers.

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[16] As per Minister Donohoe's remarks in his Foreword to the Updated Roadmap. Specifically, in relation to Commitment 6 of the Updated Roadmap (the consideration of additional defensive measures in respect of countries on the EU list of non-co-operative jurisdictions), the Updated Roadmap itself states that "*The design of such measures would need careful consideration, and consultation, to ensure profits which are generated from actual substantive activities in listed countries are not unfairly impacted*". And in relation to Commitment 7 (the consideration of actions that may be needed in relation to outbound payments), the text of the Updated Roadmap states that "*While it is anticipated that issues raised in respect of outbound payments relate primarily to historical issues which have largely been remedied by US tax reform, a consultation on the issue would provide an opportunity to consider whether further action by Ireland may be necessary or appropriate. Any such action will … also [take into] account … developments at the Inclusive Framework*."

The need for tax measures to be supportive of investment and growth also finds expression in this May 2020 EU Commission report[17], which recommends that Ireland:

- "*take all necessary measures to effectively address the pandemic, sustain the economy and support the ensuing recovery. When economic conditions allow, pursue fiscal policies aimed at achieving prudent medium-term fiscal positions and ensuring debt sustainability, while enhancing investment*";

- "*continue to provide support to companies, notably small and medium-sized enterprises, especially through measures ensuring their liquidity. Front-load mature public investment projects and promote private investment to foster the economic recovery. Focus investment on the green and digital transition, in particular on clean and efficient production and use of energy, sustainable public transport, water supply and treatment, research and innovation and digital infrastructure*".

Key to growth and investment (as well as competitiveness in attracting investment) in Ireland is the certainty of Ireland's tax system, which is a cornerstone of Ireland's brand and reputation. The absence of certainty would act as a significant deterrent to investors. It must, of necessity, be acknowledged that there have been a significant number of far-reaching and fundamental changes to Ireland's corporate tax regime in recent years. Adjusting to this plethora of changes has been, and continues to be, a significant challenge for taxpayers, and the pre-existing complexity of the corporate Irish tax code merely compounds this challenge.

Conclusion

For the reasons outlined above, we do not believe that now is the appropriate or optimal time to seek to make changes to the taxation of outbound payments from Ireland.

Furthermore, the introduction of new measures in relation to outbound payments (including an additional layer of WHT rules and/or additional rules limiting the deductibility of such outbound payments) would not be appropriate at this point, for the following reasons:

- Comprehensive measures already exist in relation to outbound payments. Such measures address the issues identified by the BEPS Action Plans, and the introduction of additional measures at this point would, at best, have a marginal effect on the protection of Ireland's tax base.

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[17] "Recommendation for a Council Recommendation on the 2020 National Reform Programme of Ireland and delivering a Council opinion on the 2020 Stability Programme of Ireland", page 9, published May 2020, available here.

- The introduction of such measures would almost certainly increase complexity (and therefore compromise certainty) and place an additional administrative burden on Irish businesses and taxpayers, as well as Irish Revenue.
- This complexity and uncertainty will be compounded by ongoing developments arising out of developments both at EU level and arising out of BEPS 2.0.
- The introduction of such measures could disadvantage Ireland competitively relative to other countries (both EU and non-EU) with which Ireland competes for international investment.

Finally, it is acknowledged that the levels of payments to countries listed on the EU list of non-cooperative jurisdictions has, in the past, caused concern in terms of the ability of multinational groups to avoid tax or erode the tax base of Ireland. However, it is notable that the most recent data relating to the amounts of outbound payments that are made to these countries shows that these levels have reduced dramatically recently, with a corresponding increase in such payments to companies in the US, the EU and countries with which Ireland has a DTA. It is of utmost importance that due regard should be given to this recent data in the formulation of long-term policy.