Consultation on Measures to apply to Outbound Payments,
Tax Division,
Department of Finance,
Government Buildings,
Upper Merrion Street,
Dublin 2
D02 R583
By email: intltax@finance.gov.ie

20 Dec 2021

Dear Sir or Madam

Re. Consultation on New Taxation Measures to apply to Outbound Payments

The Irish Debt Securities Association ("**IDSA**") welcomes the opportunity to input to the Consultation on New Taxation Measures to apply to Outbound Payments (the "Consultation") regarding any potential introduction by the Irish Government of measures to prevent double non-taxation in relation to outbound payments of interest, royalties and dividends. As noted in the Consultation the potential measures under consideration include either a denial of a deduction for the outbound payment or the imposition of a withholding tax charge.

IDSA is an industry organisation established with the aim of promoting and developing the environment and infrastructure to support the global structured finance, debt securities and the specialist securities industries. As such and given the nature of the sector, we have limited our comments in relation to the outbound payment of interest and not commented on payments of dividends or royalties. Also, rather than replying to the questions as raised we have provided some key overarching principles which should be considered when implementing any of these measures to ensure that the imposition of any new tax rules regarding outbound payments do not adversely impact ordinary commercial transactions within the financial services sector or impact Ireland's attractiveness as a jurisdiction for foreign direct investment.

Existing and upcoming corporate tax reform

As noted in the Consultation, Ireland has been an active member of the Organisation for Economic Co-operation and Development ("OECD") Base Erosion and Profit Shifting ("BEPS") process in addition to engaging in the parallel discussions within the European Union ("EU") and has implemented significant corporate tax reform in line with the new international standards, addressing mismatches between jurisdictions and ensuring tax authorities have the information they require to ensure compliance.

It is clear that the significant corporate tax reform implemented in Ireland over recent years that is in line with the OECD and the EU proposals have limited perceived tax avoidance transactions. Such measures include the EU Anti-Tax Avoidance Directive ("ATAD") interest limitation rules and anti-hybrid rules. In addition, upcoming reform should further limit BEPS including the OECD Inclusive Framework Pillar 1 and Pillar 2 proposals and the EU's proposed directive on "Fighting the use of shell entities and arrangements for tax purposes".

Any proposed changes to the tax treatment of outbound payments should be considered in light of already significant past and upcoming tax reform and should not exceed any measures in place across other EU Member States or OECD countries. We note that numerous countries across the EU do not levy domestic interest withholding tax on outbound payments including Luxembourg, Hungary and Germany so in this regard, Ireland's existing interest withholding tax charge already goes beyond other EU Member States withholding tax position on outbound interest payments.

Ireland's existing provisions

When determining the appropriate tax measures which should be applied to outbound interest payments, Ireland's current rigorous deductibility provisions should be considered which already provide protection against BEPS including:

- Measures introduced as a result of the EU ATAD including the interest limitation rules and anti-hybrid rules which seek to limit excessive interest deductions and also non-taxation through hybridity respectively,

- Allowable interest deductions only being available in a limited capacity including where the proceeds of the loan are used for the purposes of a trading or rental business or interest as a charge under s247 Taxes Consolidation Act 1997 ("TCA 97"). In addition, there are comprehensive anti-tax avoidance provisions associated with claiming interest deductions including under s249 TCA 97 which again limit tax avoidance transactions,

- Reclassification of interest expense under s130 TCA 97 as a distribution which could deny an interest deduction in certain instances,

- Deductibility restrictions for certain interest payments made by "qualifying companies" under s110 TCA 97,

Irish legislation currently applies a 20% withholding tax charge on the payment of Irish source interest as a base case. The legislation also allows for relief from this charge for normal commercial trading transactions and transactions with certain entities located in countries that Ireland has concluded a double tax treaty with or an EU Member State where the risk of BEPS is minimal.

In addition, interest payments on listed debt ("Quoted Eurobonds") (subject to further conditions) and s246A TCA 97 wholesale debt instruments are also relived from this withholding tax charge. It should be noted that the United Kingdom also provide for a Quoted Eurobond exemption from interest withholding tax but the conditions to avail of this relief are less onerous compared to the Irish counterpart.

These reliefs are typically availed of in the case of ordinary issues of debt instruments into the international capital markets which would generally be made through custodial and settlement systems resulting in the interest payor not knowing the identity of the ultimate beneficiary of an interest payment. As such, it is vital for the continued functioning of these capital markets transactions that any proposed measures must be proportionate to the goal of preserving existing structures that are used by businesses to access finance across the EU, are not contrary to the proposals for an EU capital markets union policy and do not inadvertently place obstacles in the way of ordinary international capital-raising, securitisation and investment transactions.

Conclusion

As noted above, Ireland already has a complex tax system which prevents BEPS related non-taxation as a result of outbound payments and in some instances goes beyond the tax measures introduced by other EU Member States. As such, any fundamental changes to the deductibility or withholding tax position of such payments could potentially place Ireland at a disadvantage relative to other EU Member States/OECD countries.

Ireland's current tax system coupled with the impending global tax reforms are already addressing any potential concerns arising from outbound payments. Any further changes beyond those highlighted as part of the global or EU reform could create additional uncertainty and complexity for companies operating in Ireland.

If changes were to be introduced, it would be preferable to limit such additional tax measures to payments to countries on the list of non-cooperative jurisdictions as a defensive measure to align with the objective of this list. Finally, any proposed measures to be introduced should involve timely engagement and communication with the relevant stakeholders to ensure that any adverse unintended outcomes are avoided and ensuring taxpayers have sufficient timing to address the impact of these changes on their business operations.

We would be very happy to engage with the Department of Finance if further clarification is required on any of our points raised below.

GARY PALMER

Chief Executive

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Ireland