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Ref: PV/PC/DM

Dear Sir/Madam,

PUBLIC CONSULTATION PAPER – REVIEW OF IRELAND'S CORPORATION TAX CODE

We are writing to you in relation to the consultation launched following the publication of the review of Ireland's corporation tax code (Coffey Report).

Grant Thornton is Ireland's fastest growing professional services firm, with over 1,000 people across eight offices. We have been in Ireland since 1899 and during this period have been a leading provider of services to dynamic and entrepreneurial businesses.

While the views expressed in this letter are those of Grant Thornton, they also reflect soundings taken from many of our clients in recent months.

Tax transparency is critical in formulating domestic and international tax policy, and the legislative measures already undertaken by Ireland in this regard demonstrate our commitment to greater tax transparency. Having been an international leader in the implementation of such transparency policies, Ireland needs now to ensure that this does not put us at a disadvantage, and we therefore need to carefully consider how we position Ireland for the next phase of global uncertainty and change.

Fiscal data shows that notwithstanding Ireland's low headline 12.5% corporation tax rate, corporates continue to make a substantial and growing contribution to Irish tax revenues. This has been the result of careful positioning of Ireland's tax and business offering over many decades of international development.

At this juncture, we need to be careful, to ensure that our offering remains competitive and diversified, and attractive to international and domestic corporates alike, particularly in the context of the many competing international pressures facing such groups.

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The questions raised in the Public Consultation Paper on Ireland's International Tax Strategy are as follows:

1 Article 6 of ATAD requires the transposition of a General Anti-Abuse Rule (GAAR) by 1 January 2019. As Ireland already has a robust GAAR, what changes, if any, are needed to ensure this meets the minimum standard required by the Directive?

Ireland has long been at the forefront on the implementation of general anti-avoidance rules. Our rules, which have only recently been updated, are quite thorough and effective. Consequently, in our view, no further changes are required to such rules, at least until such time as other jurisdictions have introduced equally or more effective rules.

2 Article 7 of ATAD requires Member States to implement Controlled Foreign Company (CFC) rules by 1 January 2019. What are the key considerations regarding the implementation of CFC rules? In terms of the options for CFC legislation set out in Article 7, what are the key factors in determining the preferred approach for Ireland?

In considering how to implement CFC rules, Ireland needs to consider the impact not just on the FDI community but also on Irish plc's with overseas subsidiaries. Thus, while we would generally favour Option B, it is important that both perspectives are taken into account. Further consideration and consultation on this important topic should take place. We would also broadly welcome the de-minimus tests included in the ATAD under both Options A and B.

3 Article 5 of ATAD requires Ireland to have an exit tax in four particular circumstances by 1 January 2020. Ireland currently has an exit tax which will be replaced by the ATAD exit tax. What are the key considerations in transposing Article 5?

To a growing extent, transfers of intangible assets are linked with the creation of jobs in the jurisdiction to which the intangible assets are transferred, as we move towards a closer alignment of taxable profits and real substance. We thus need to carefully consider the impact of making further changes to our existing exit tax rules, noting that these rules are likely to require amendment following ATAD.

In considering any changes required to our existing rules, we should also carefully examine the applicable exit tax rate, currently 33%. Ireland now has three key corporate tax rates, being 12.5%, 25% and 33%. We believe that there is no longer a requirement for the three rates and that consideration should be given to reducing the exit tax rate to 12.5% where the relevant assets were used in an Irish trade.

4 Article 9 of ATAD originally set out concise anti-hybrid rules applicable to intra-EU payments. In February 2017, the ECOFIN Council agreed an amendment to ATAD, ATAD 2, which extended the hybrid mismatch rules

to third countries. ATAD 2 delays the implementation date for the introduction of any anti-hybrid rules to 1 January 2020 and allows a longer period, until 1 January 2022, to implement the elements of the rules which target so-called 'reverse hybrids', a type of hybrid entity that is treated as transparent for tax purposes in the payor jurisdiction and a taxable entity in the payee jurisdiction. What are they key considerations regarding the implementation of the hybrid mismatch rules?

While at a high level we do not expect the hybrid legislation to have a significant impact given our existing rules, we also recognise that this is a very complex area, which possibly has knock-on implications for other proposed changes. Hence, ideally there would be a consultation phase launched well in advance of the 1 Jan 2022 deadline date.

5 Following their adoption by the OECD Council in June 2016, the 2017 Transfer Pricing Guidelines are now the appropriate reference point for the transfer pricing rules. Recommendation 6 of the Review of Ireland's Corporation Tax Code states that's "*Ireland should provide for the application of the OECD 2017 Transfer Pricing Guidelines incorporating BEPS Actions 8,9 and 10 in Irish legislation*." When incorporating the OECD 2017 Transfer Pricing Guidelines, what are the key considerations?

It is important to note that to date many countries have not yet brought the 2017 OECD Transfer Pricing Guidelines into their respective domestic legislative provisions. We need to ensure that we are not at a competitive disadvantage by introducing updated Transfer Pricing rules earlier than other jurisdictions.

In our view, the 2017 Transfer Pricing Guidelines differ quite fundamentally from the existing guidelines. Thus we would also recommend consultation with companies doing business in Ireland who will be impacted by the changes, so that the impact of the new rules can be considered in advance.

It is also worth noting that the 2017 Guidelines will place a further administrative burden on businesses, with additional reporting required.

In our view, given how different countries are implementing transfer pricing changes in separate ways, and at different times, disputes between jurisdictions are inevitable. Hence, regardless of the timing of Ireland's implementation of the 2017 Guidelines, sufficient resources need to exist within the Irish Revenue Commissioners to deal with this expected dispute increase.

6 The Coffey Review recommends that "*domestic transfer pricing legislation should be applied to arrangements the terms of which were agreed before 1 July 2010*." What are the key considerations regarding the implementation of this recommendation?

Care needs to be taken with any changes made to the existing grandfathering provisions for transfer pricing arrangements in place prior to 1 July 2010. It is important that any changes to the transfer pricing rules would apply to future periods only and with sufficient advance notice so that appropriate transfer pricing documentation can be put in place going forward.

We would suggest that if the grandfathering provisions are to be removed, the new rules should only apply to periods starting on or after 1 January 2020.

7 The Coffey Review recommends that "*consideration should be given to extending transfer pricing rules to SME's, having regard to whether the concomitant imposition of the administrative burden associated with keeping transfer pricing documentation on SMEs would be proportional to the risks of transfer mispricing occurring*." If Ireland is to introduce transfer pricing rules for small and medium sized enterprises (SMEs) what are the key considerations? Should all enterprises be subject to transfer pricing rules or should the scope of the rules exclude entities below a certain threshold? If Ireland introduces transfer pricing rules for SMEs what would be the appropriate documentation requirements?

In our view, there is no requirement for transfer pricing to be extended to the SME sector. It is doubtful whether this would raise any significant tax receipts and it would most certainly add significantly to an SME's compliance burden. Possibly now more than ever, we need to be supporting our SME sector, particularly Irish owned businesses. Introducing a transfer pricing requirement would have the opposite effect.

8 The Coffey Review recommends that "*consideration should be given to extending domestic transfer pricing rules to non-trading income. There is a strong rationale to extend domestic transfer pricing rules to non-trading income where it would reduce the risk of aggressive tax planning. Consideration should also be given to extending transfer pricing rules to capital transactions, having regard to whether such an extension would improve the existing provision which already apply arm's length values to companies' transactions relevant to chargeable gains and capital allowances*." In relation to the extension of transfer pricing rules to non-trading income, what are the key considerations of this proposal? In relation to the extension of transfer pricing rules to capital transactions, what are the key considerations of this proposal, bearing in mind existing market value rules?

We do not believe there is significant benefit in extending transfer pricing rules to non-trading transactions, particularly as the anti-hybrid rules under ATAD1 / ATAD2 mean that the ability to claim a tax deduction on the "other side" of, for example, low rate intra group financing, is significantly curtailed.

In the event that transfer pricing is extended to non-trading transactions, we believe that it should be looked at in tandem with the removal of the existing 25% tax rate, to avoid any potential miss-match in terms of deductibility and taxability.

As Ireland has existing rules in respect of the transfer of capital between connected parties, we do not believe that there is any requirement to extend transfer pricing to capital transactions.

9 The Coffey Review recommends that "*there should be a specific obligation on Irish taxpayers who are subject to domestic transfer pricing legislation to have available the transfer pricing documentation outlined in Annex I and II of Chapter V of the OECD 2017 Transfer Pricing Guidelines to ensure implementation of BEPS Action 13.*" Since May 2016, Annex I and II of Chapter V of the OECD Transfer Pricing Guidelines contain a list of the information which should be included on the master file and local file respectively. When providing for Annex I and II what will be the effects for business?

The compliance burden for companies is likely to increase once the 2017 Transfer Pricing Guidelines become part of Ireland's tax code. As noted above, there is no requirement for Ireland to be an early adopter in this regard and we need to ensure that Ireland remains competitive vis-à-vis other countries. If we are not competitive, Irish jobs are at stake.

10 With the introduction of CFC rules under Article 7 of ATAD, the Coffey Review recommends that "*consideration should be given to whether it is appropriate to move to a territorial corporation tax base in respect of the income of the foreign branches of Irish-resident companies and, in respect of connected companies, the payment of foreign-source dividends.*" Would moving to a territorial corporation tax base be a positive development for Ireland? What would be the effects for Ireland of such a move? To what extent does Ireland's ultimate choice of how CFC rules are implemented under Article 7 of ATAD impact on the question of moving to a territorial corporation tax base? The Coffey review recommends that should Ireland not move to a territorial corporation tax base, Schedule 24 should be simplified on a policy and tax neutral basis. Could such a simplification be an appropriate alternative to a territorial corporation tax base, particularly in the context of specific CFC implementation choices? How might such simplification be achieved?

In our view, moving to a territorial regime would be positive for Ireland. Our existing foreign tax credit system is extremely complex and typically adds a considerable additional administrative burden, with very little tax revenues given that foreign tax paid typically shelters the Irish tax liability.

We would recommend moving to a full participation regime in respect of the repatriation of both branch and subsidiary profits, similar to many of our EU competitors. A branch exemption could also form part of this offering, which should be a key part of the Irish tax regime once CFC legislation is introduced. Again, we would highlight the importance of advanced discussions on this important issue so that the views of impacted companies are heard.

We believe that in any event, Schedule 24 should be simplified. However, to reiterate, we believe that the best solution from Ireland's perspective is to move to a full participation exemption, with the option to choose a foreign branch exemption. We would suggest that companies be allowed to select whether they wish to avail of the foreign branch exemption or not, as otherwise losses incurred in a foreign branch may be lost.

Yours sincerely

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