Ten Earlsfort Terrace, Dublin 2, D02 T380, Ireland | **tel:** +353 1 920 1000 | **dx:** 27 dublin | **email:** dublin@arthurcox.com

ARTHUR COX

DUBLIN | BELFAST | LONDON | NEW YORK | SILICON VALLEY

Our Reference: 2527/PGCI/003/

30 January 2018

Review of the Corporation Tax Code – Public Consultation
Tax Division
Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2

BY EMAIL TO: ctreview@finance.gov.ie

Re: Public Consultation – Review of the Corporation Tax Code

Dear Sir/Madam,

Introduction

We welcome the opportunity to respond to the Department of Finance consultation on the Corporation Tax Code. We consider it hugely beneficial that the Department engages in regular and detailed consultations, on a broad range of tax policy matters. Accordingly, we would encourage the Department to continue to consult and also to publish all draft tax legislation for technical consultation from practitioners and policy input from stakeholders, as opposed to merely publishing for the first time technical amendments in the Finance Bill. Engaging in such a process will ensure that Ireland maintains an open, transparent, stable and competitive corporate tax regime. Detailed and consistent consultations with the various stakeholders prior to the adoption of new tax legislation is key to ensuring that the policy objectives that the legislation in question seeks to achieve are in fact are obtained.

1. Recommendations

Set out below is a brief summary of our recommendations in relation to the transposition of certain elements of the Anti-Tax Avoidance Directive (EU 2016/1164) (the "**ATAD**"). These recommendations are expanded upon in further detail under the appropriate headings in the body of the text. We recommend as follows:

Further Consultation
All of the issues that are addressed in ATAD are complex and we consider that it is imperative for draft legislation to be published so that the full range of policy issues can be considered in the context of the actual rules.

GAAR

Our GAAR goes further than required under ATAD. It catches arrangements where it is "reasonable to consider" that they are tax avoidance arrangements even where there is, in fact, no tax avoidance. It should be aligned with EU norms and the ATAD.

CFC/Dividend Taxation

(a) The CFC regime and the dividend taxation regime should be considered as a single policy item; whether Ireland should tax profits that do not arise in Ireland. It must be recalled that modern transfer pricing and permanent establishment rules will result in profits that truly arise in Ireland being taxed here. Any structures that are used to avoid Irish tax (including tax that ought to arise under transfer pricing and permanent establishment rules) will be countered by the GAAR. Accordingly, there is no need for CFC rules if a territorial system is sought to be implemented. Also, all CFC rules are inherently restrictions on the free movement of capital and/or the freedom of establishment which can only be justified to counter tax avoidance. They must therefore be limited in scope. Specifically:

(i) The CFC regime should be limited only to those countries that are on the EU blacklist of non-cooperative jurisdictions for tax purposes. This is because any other jurisdictions are determined by the EU to be sufficiently compliant with information sharing and other international norms so that transfer pricing, permanent establishment and GAAR can be used to address any avoidance.

(ii) There should be a full exemption from corporation tax on all dividends, as profits of non-Irish companies should not be taxed, other than under transfer pricing, permanent establishment, GAAR and CFC rules. This would make Ireland's system more consistent with other EU national systems.

(iii) Both Option A and Option B, as set out in Paragraph 2 of Article 7 of the ATAD, give rise to significant operational issues from a policy and administrative perspective for taxpayers and Revenue. Historically, Ireland did not have a policy need for CFC rules (and this has not changed) so Irish companies and Revenue are not accustomed to applying them. Accordingly, a cautious approach should be adopted.

(iv) It is our preference that Option B should be adopted, but subject to caveats. We need to reflect paragraph 12 of the preamble to the ATAD: *"in order to ensure that CFC rules are a proportionate response to BEPS concerns, it is critical that Member States that limit their CFC rules to income which has been artificially diverted to the subsidiary precisely target situations where most of the decision-making functions which generated diverted income at the level of the controlled subsidiary are carried out in the Member State of the taxpayer.*" We also need to be compliant with *Cadbury Schweppes*[1] and retain an effective "substantive economic activity" carve-out for Option B –

[1] C-196/04 – Cadbury Schweppes Plc, Cadbury Schweppes Overseas Ltd –v- Commissioners of Inland Revenue.

the Court of Justice of the European Union ("**CJEU**") stated that this was a general rule and was not limited to Option A. This can be consistent with the "non-genuine arrangements" exclusion from Option B, i.e. where the non-Irish subsidiary has staff, equipment, assets and premises and actually controls the activities of that subsidiary, and an Irish member of the group also has staff, equipment, assets and premises, unless the Irish group member actually controls the non-Irish activities, Ireland should only tax the Irish activities. In fact, if transfer pricing and permanent establishment rules do not apply to attribute income to Ireland, it is difficult to see how a CFC rule should or can, under *Cadbury Schweppes*, apply since there is no avoidance. This approach would need to be explicitly stated in the legislation or published guidance.

(b) To prevent double taxation, any CFC rules introduced must allow a credit for all foreign taxes actually paid, including any tax assessed on intermediate companies under the CFC regime in those intermediate jurisdictions. Our view is that a viable credit system cannot be implemented in a manner that is consistent with the FII case[2], whilst retaining an Irish to Irish dividend exemption. The concept of simplifying the credit system is practically impossible if it is to remain fair and EU law compliant.

(c) Any CFC rules introduced should not undermine any specific tax incentive regimes which are not considered to be harmful tax competition, e.g. OECD BEPS-compliant patent boxes. For example, the sale of shares by subsidiaries should not be attributable under CFC rules if a local participation exemption applies, i.e. Ireland should recognise valid sovereign choices of other countries. This is simply a recognition of *Eurowings*[3] principles.

(d) Irish taxpayers should not be required to look past subsidiaries/permanent establishments which are resident in EU Member States or other jurisdictions which impose OECD compliant CFC rules. This is to prevent double taxation, i.e. where there is a CFC in a blacklisted jurisdiction further down in the chain, such CFC profits should be taxed by the intermediate (EU or OECD compliant) jurisdiction and no further Irish tax should arise.

(e) To ensure that companies cannot circumvent CFC rules, by changing the legal form of their subsidiaries, CFC rules should be applied equally to permanent establishments that are exempt from Irish tax. In this context, we recommend that Ireland introduces a branch exemption as taxing the ongoing profits of a branch but not a subsidiary is a breach of the freedom of establishment.

(f) The full range of ATAD exemptions should be adopted, e.g. for CFCs that are taxed at the appropriate rate, have a low return, and earn a low proportion of their income from the items listed in Option A.

(g) The charge to tax under Section 590 TCA (attribution to participators of chargeable gains accruing to non-resident company) should no longer apply to corporates as the CFC rules would apply.

(h) Availing of a local tax regime (participation exemption, R&D, credit patent box) should not trigger a CFC charge as to do so undermines the tax policy of the investee jurisdiction and breaches the *Eurowings* principles.

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[2] *Case C-446/04 - Test Claimants in the FII Group Litigation v Commissioners of Inland Revenue.*

[3] *Case C-294/97 - Eurowings Luftverkehrs AG v Finanzamt Dortmund-Unna*

(i) A grandfathering period for existing transactions should be adopted.

Exit Tax

Any exit tax should be charged at 12.5%, particularly for capital assets that are used in a trade, including goodwill. Also, the fact that Section 626B TCA does not apply to an exit charge is anomalous and likely in breach of EU law.

Anti-hybrid Rules

Great care must be adopted in implementing this provision due to its complexity and scope. This is a point where it is particularly important to publish and consult on legislation over a reasonably lengthy time period. A lengthy grandfathering provision would also be necessary.

We believe that Ireland is the only EU Member State that charges interest withholding tax and dividend withholding tax. To prevent inconsistencies under the non anti-hybrid rules, interest withholding tax should be abolished as it does not exist in most EU countries.

Transfer Pricing Rules

If Ireland applied a single corporate tax rate of 12.5%, many of the difficult practical implications of domestic transfer pricing rules would be avoided. Also a lengthy grandfathering period would be of great assistance.

2. **Question 1:** ***Article 6 of ATAD requires transposition of a General Anti-Abuse Rules (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 does not need to make any legislative amendments to meet the minimum standard required under the ATAD.

The GAAR under Article 6 of ATAD targets arrangements which have a main purpose of obtaining a tax advantage and which are not genuine, meaning that they are not put into place for valid commercial reasons which reflect economic reality.

Under section 811C of the Taxes Consolidation Act 1997 (the "**TCA**"), Ireland has already implemented a comprehensive anti-avoidance regime which goes further than what is required under ATAD. Although we do not consider that it is necessary to amend the existing GAAR to make it compliant with ATAD as it is already compliant, we would recommend that consideration is given to amending the Irish GAAR to make it consistent with the ATAD GAAR. Consistency across the EU will be important so as to prevent double taxation or double non-taxation arising due to conflicting interpretations of what is "avoidance".

The Irish GAAR test is that "it would be reasonable to consider" that a transaction is an avoidance transaction. The ATAD GAAR test is the more familiar "main purpose or one of the main purposes" test so the Irish GAAR can apply where it would be "reasonable to consider" that the transaction was undertaken for the purposes of tax avoidance, albeit that its neither main purpose nor one of its main purposes was in fact the avoidance of tax. This is an obtuse outcome and not in accordance with the ATAD.

3. **Question 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 or Ireland?***

3.1 Introduction

Our response to this question should be read in conjunction with our response to Question 10 as we consider that these questions are inextricably linked. It is our view that there are fundamental illegalities in the current Irish dividend taxation regime, which a coherent CFC and dividend taxation regime could address. In designing a CFC and dividend taxation regime for Ireland, the key question is what non-Irish profits should Ireland tax?

CFC regimes are designed to deter profit shifting in arrangements that are purely tax driven and involve no substantial activities. CFC regimes should not affect legitimate investment and they should not enable jurisdictions to claim taxes on profits which are not properly attributable to those jurisdictions.

The quintessential harmful CFC structure would be one where a taxpayer in one jurisdiction was able to remove or reduce its tax liability in that jurisdiction by shifting profits generated in that jurisdiction to another low- or no-tax jurisdiction by routing those profits through a shell company. The current prevailing international consensus (as seen through both ATAD and the OCED BEPS reports) is that where such arrangements are set up, the taxpayer (referred to in this paper as the "**Controller**") should pay tax in its jurisdiction as if the profits generated by the CFC were generated directly by the taxpayer.

Article 7(1) of ATAD provides:

"The Member State of a taxpayer shall treat an entity, or a permanent establishment of which the profits are not subject to tax or are exempt from tax in that Member State, as a controlled foreign company where the following conditions are met:

(a) in the case of an entity, the taxpayer by itself, or together with its associated enterprises holds a direct or indirect participation of more than 50% of the voting rights, or owns directly or indirectly more than 50% of capital or is entitled to receive more than 50% of the profits of that entity; and

(b) the actual corporate tax paid on its profits by the entity or a permanent establishment is lower than the difference between the corporate tax that would have been charged on the entity or permanent establishment under the applicable corporate tax system in the Member State of the taxpayer and the actual corporate tax paid on its profits by the entity or permanent establishment.

For the purposes of point (b) of the first subparagraph, the permanent establishment of a controlled foreign company that is not subject to tax or is exempt from tax in the jurisdiction of the controlled foreign company shall not be taken into account. Furthermore the corporate tax that would have been charged in the Member State of the taxpayer means as computed according to the rules of the Member State of the taxpayer.

This follows the typical approach to CFC rules adopted by various jurisdictions which impose tax on foreign companies which are owned/controlled by residents except where the foreign company has already been subjected to an "acceptable" level of taxation in its jurisdiction or other exemptions apply.

Paragraph 2 of Article 7 provides two options for calculating the income to be taxed under CFC rules.

Option (A) specifies a list categories of passive income which should be included when calculating the tax on a CFC to the extent that passive income has not been distributed by the CFC. The rule will not apply to the extent the CFC carries on "*substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and* *circumstance*", though Member States are only required to implement that exception in respect of CFCs resident or situated in EU/EEA Member States.

Option (A) potentially breaches free movement of capital principles (see paragraph 2.4 below) by failing to exclude from the ambit of the CFC rules genuine commercial arrangements protected by free movement of capital.

Option (B) would impose tax on all non-distributed income, irrespective of its nature, of the CFC arising from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage. ATAD specifies for that for these purposes, an arrangement or a series thereof shall be regarded a non-genuine to the extent that the CFC would not own the assets or would not have undertaken the risks which generate all, or part of, its income if it were not controlled by a company where the significant people functions, which are relevant to those assets and risks, are carried out and are instrumental in generating the CFC's income.

The lack of an explicit carve-out in Option B for substantively economic activities on its face seems to be a breach of the decision in *Cadbury Schweppes* which limited the permissible scope of CFC rules where a fundamental freedom applies (such as capital or establishment) as follows:

"*that incorporation must correspond with an actual establishment intended to carry on genuine economic activities in the host Member State......that finding must be based on objective factors which are ascertainable by third parties with regard, in particular, to the extent to which the CFC physically exists in terms of premises, staff and equipment*."[4]

The only way to reconcile the judgment with the ATAD is by interpreting the proviso to paragraph 2(b), Article 7 ATAD to effectively include a carve-out for substantive economic activities. In effect, where and Irish company establishes a subsidiary, if that subsidiary has sufficient staff, equipment, assets and premises to enable it to carry out the functions which generate the relevant profits, then the arrangements would not be regarded as "non– genuine". It cannot be the case that simply because the Irish Controller also has staff, equipment, assets and premises that would enable it to carry out business (but they do not actually do so) that a CFC attribution should arise. If this were not the case, the freedom of establishment and free movement of capital provisions would be fundamentally undermined. In this regard, Article 7(2)(b) of the ATAD provides that "an arrangement or series thereof shall be regarded as non-genuine to the extent that the entity or permanent establishment would not own the assets or would not have undertaken the risk which generate all, or part of, its income if it were not controlled by a company where the significant people functions, which are relevant to those assets and risks, are carried out and are <u>instrumental</u> in generating the controlled company's income".

Both options offer carve-outs for non-genuine activities (Option (A) refers to "substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstance" (though this carve-out may not be sufficient to comply with free movement of capital requirements, see below) and Option (B) refers to "non-genuine arrangements"). This is clearly a reference to the *Cadbury Schweppes* case.

[4] *C-196/04 Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue,* at paragraph 66 and 67.

3.2 Commentary

Interaction with GAAR

As discussed in response to Questions 1, Article 6 of ATAD imposes a requirement for EU Member States to implement a GAAR, which targets arrangements which have a main purpose of obtaining a tax advantage and which are not genuine, meaning that they are not put into place for valid commercial reasons which reflect economic reality. It is difficult to see how an arrangement could fall foul of the CFC tests of "substantive economic activity" or "non-genuine arrangements" but not be caught by the ATAD GAAR. Thus the scope of the Irish CFC rules will be very limited in practice. Also, as all EU resident companies will be within the scope of the ATAD GAAR, no EU subsidiary should be subject to the CFC rules. Accordingly, Revenue should issue practice to discuss the interaction of any CFC rules with both the ATAD GAAR and the Irish GAAR contained in Section 811C TCA.

More broadly, to reduce the administrative burden for Revenue and taxpayers, the CFC rules should be limited to companies resident in one of the jurisdictions on the EU blacklist of non-cooperative tax jurisdictions. This list identifies jurisdictions which fail to meet the standards expected for transparency and fairness in a tax system and in its interactions with other jurisdictions' tax systems. The three main factors which determine whether jurisdictions are included on the list is compliance with acceptable standards around transparency, fair tax competition, and real economic activity. It is our view that only companies operating from those jurisdictions included on the blacklist should be considered to be capable of carrying on non-genuine activities giving rise to an avoidance of tax.

With the introduction of OECD Permanent Establishment rules, development, enhancement, maintenance, protection and exploitation of intangibles ("**DEMPE**") substance requirements, a modified nexus approach, and transfer pricing rules, profits are taxed where the activity that generates those profits occurs. Add on GAAR and what hole does CFC plug in practice? Irish policy should adopt as restrictive an approach as possible under ATAD / ATAD 2.

Problems with CFC regimes

The difficulties with CFC regimes largely arise from the grey areas that exist between the clear-cut cases of non-genuine commercial arrangements (i.e. avoidance) and cases where entities choose to locate various aspects of their business in different jurisdictions for a multiplicity of reasons, e.g. availability of suitably qualified staff, access to necessary resources, access to relevant markets, social, economic and legal factors, and of course for tax reasons. CFC rules that are too strict will discourage international investment and this leads to inefficiencies in capital allocation leading to reduced economic growth.

EU Law

A further risk in the implementation of the required CFC rules is that, notwithstanding that the requirement to impose CFC rules arises under secondary EU law, if implemented too broadly, such rules could be in breach of primary EU law. Although direct taxation is a matter which falls within the competency of each Member State, the CJEU has consistently held that Member States must nonetheless exercise this competency in a manner which is consistent with fundamental freedoms.

Article 7 must be transposed in a manner that does not conflict with the Freedom of Establishment principle under Article 49 of the Treaty on the Functioning of the European Union (**TFEU**) or the Free Movement of Capital principle under Article 63 of the TFEU.

Freedom of Establishment

Freedom of Establishment involves the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, under the conditions laid down for its own nationals by the law of the Member State where such establishment is affected. It entails, for companies having their registered office, central administration or principal place of business within the European Union, the right to exercise their activity in any Member State through a subsidiary, branch or agency.

Any restriction on this freedom is only permissible if it is justified by overriding reasons of public interest and its application must be appropriate to ensuring the attainment of the objective thus pursued and not go beyond what is necessary to attain it[5]. In order for a restriction to be justified on the grounds of prevention of abusive practises, the specific objective of such a restriction must be to prevent conduct involving the creation of wholly artificial arrangements which do not reflect the economic reality, with a view to escaping the tax normally due on the profits generated by activities carried out on national territory.

Free Movement of Capital

The free movement of capital means that all restrictions on capital movements and payments have been removed, both between Member States and with third countries. Exceptions are largely confined to capital movements relating to third countries. Legislative provisions that have the effect of dissuading nationals of a Member State residing in another Member State from investing their capital in companies which have their seat in another state are prohibited. In *C-35/98 Staatssecretaris van Financiën v B.G.M. Verkooijen* the **CJEU** defined capital movements as financial operations essentially concerned with the investment of funds and this would include funding a subsidiary, subsidiary for shares etc.

CJEU Case Law on CFCs

CJEU case law imposes limitations on CFC rules that apply within the EU. This policy consideration also affects investments in subsidiaries in all jurisdictions, including third countries. If a different standard applies to EU and non-EU subsidiaries of Irish companies, multinational groups would have to assess investment in the EU differently from non-EU investments. This would be administratively burdensome and lead to inefficient capital allocation decisions.

In *Cadbury Schweppes* and subsequent cases, the CJEU has stated that CFC rules and other tax provisions that apply to cross border-transactions and that are justified by the prevention of tax abuse must "*specifically target wholly artificial arrangements which do not reflect the economic reality and whose only purpose would be to obtain a tax advantage*".

The Irish implementation of the CFC rules under the ATAD must not go beyond the boundaries established by the CJEU in *Cadbury Schweppes*. In that case, it was held that any restrictions imposed by CFC rules on the freedom of establishment is only justifiable where "*...the CFC is a fictitious establishment not carrying on a genuine economic activity in the territory of the host Member State… [and is] regarded as having the characteristics of a wholly artificial arrangement*".

[5] Cases C-250/95 *Futura Participations SA and Singer v Administration des Contributions; Case C-9/02 Hughes de Lasteyrie du Saillant v Ministere de l'Economie, de Finances et de l'Industrie;* and C446/03 *Marks & Spencer plc v David Halsey (Her Majesty's Inspector of Taxes)*

Difference between the freedoms

The free movement of capital is not restricted to intra-EU situations, but applies also to capital movements to and from third countries (on a non-reciprocal basis). In *Fidium Finanz AG v Bundesanstalt für Finanzdienstleistungsaufsicht*[6], the CJEU stated that where a measure restricts both the free movement of capital and another freedom, and one freedom is more directly in point than the other, then the measure should be analysed for its compatibility with only the freedom to which it most closely relates.

Where the nature of the interest in a company will confer on the holder definitive influence over the company's decisions and allow it to determine the company's activities, the provisions on freedom of establishment tend to be more frequently applied[7]. The provisions on freedom of capital will restrict the ambit of Irish CFC rules where, for example, control is less than 50% (and so the freedom of establishment principles do not apply) but there is an entitlement to profits of more than 50% (so the CFC rules apply). This could be the case where an Irish company holds non-voting preference shares in a non-Irish resident company including a non-EU company. Any proposed CFC rules must therefore be tested for their compliance with both freedom of establishment and free movement of capital principles. Whilst it would be possible to have two regimes (one where fundamental freedoms applied and a more intrusive one where they did not tax due to administrative and policy reasons, a single compliant regime is strongly recommended.

Additional taxes not considered in CFC computation

A further issue which should be considered when implementing a CFC regime is on what basis the CFC is taxed. Article 7 of ATAD calculates the tax due in respect of CFCs by reference to the "actual corporate tax paid" on the CFC's profits. Where a CFC operates from a branch in a third country and pays tax in that third country either on the profits generated by that branch or suffers withholding taxes on profits remitted from that branch, such taxes should also be considered in the computation of the CFC taxes on the Controller.

Tax incentives permitted in other jurisdictions

Certain jurisdictions have created tax incentives for particular activities by reducing the tax rate applicable to those activities provided certain conditions are met. Such incentives are not necessarily a form of harmful tax competition, for example, an OCED BEPS-compliant patent box which permits profits arising in respect of defined R&D activities to avail of a much lower rate of tax. Where a CFC avails of such a regime, Irish CFC rules should not undo the effect of such incentive by imposing further taxes in Ireland. This could be the case where there is a similar relief in Ireland with slightly different conditions. For example, the patent box regime in Country A may require the innovation to occur in Country A. If one re-computes under Irish rules, the tax payable by the company in Country A, the Irish Knowledge Development Box would not apply as it requires the innovation to occur in Ireland. CFC rules should not apply here. To do so would breach the principles set out in the *Eurowings* case.

Our suggested approach:

As CFC rules do not currently exist under Irish tax law, it will be necessary to introduce new legislative provisions with effect from 1 January 2019 in order to comply with our obligations under ATAD and ATAD 2. Irish taxpayers with cross-border operations will likely end up

[6] *C-452/04 Fidium Finanz AG v Bundesanstalt für Finanzdienstleistungsaufsicht*

[7] *C-251/98 C.. Baars v Inspecteur der Belastingen Particulieren/Ondernemingen Gorinchem; C-436/00 X and Y v Riksskatteverket; and C-196/04 Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue.*

paying little tax under a new CFC regime but will have an increased administrative burden. Thus, Ireland should seek to minimise this burden.

As mentioned above, we expect all of the concerns regarding base erosion and profit shifting by Irish taxpayers into foreign jurisdictions will be dealt with through the GAAR (both that required by ATAD and by OECD BEPS), revised permanent establishment rules and revised transfer pricing rules. From a policy perspective, therefore, there should be no need to implement CFC rules as Ireland should not be seeking to tax profits that arise outside of Ireland. Furthermore, paragraph 12 of the preamble to the ATAD states that in "*order to ensure that CFC rules are a proportionate response to BEPS concerns, it is critical that Member States that limit their CFC rules to income which has been artificially diverted to the subsidiary* ".

However, as such rules are required under ATAD, we suggest that the recommendations previously set out should be applied to such rules.

(a) The CFC regime should be limited only to those countries that are on the EU list of non-cooperative jurisdictions for tax purposes (the "**Blacklist**") for determining in which cases CFC-taxation shall take place. Only profits arising to companies resident solely in countries listed on the Blacklist should be taxed under the CFC rules. If not, the same rules should be applied for EU and non-EU subsidiaries. This is because the lack of information flow from these countries can effectively prevent the transfer pricing, permanent establishment and GAAR rules.

(b) To prevent double taxation, any CFC rules introduced must allow a credit for all foreign taxes actually paid, including any tax assessed on intermediate companies under the CFC regime in those intermediate jurisdictions. Any rules introduced in relation to foreign tax credits should be crafted so as to ensure that there are no artificial limitations which would result in double taxation as other jurisdictions have made this error.

(c) Any CFC rules introduced should not undermine any specific tax incentive regimes which are not considered to be harmful tax competition, e.g. OCED BEPS-compliant patent boxes and other local policy choices. The sale of shares by subsidiaries should not be attributable under CFC rules if a local participation exemption applies. (i.e. Ireland should accept that other sovereign state can have equivalent but slightly different tax rates).

(d) Irish taxpayers should not be required to look past subsidiaries/permanent establishments which are resident in EU Member States or other jurisdictions which impose adequate CFC rules; where there is a CFC in a blacklisted jurisdiction further down in the chain, such CFC profits should be taxed by the intermediate jurisdiction and no further Irish tax should arise.

(e) To ensure that companies cannot circumvent CFC rules, by changing the legal form of their subsidiaries, CFC rules should be applied equally to permanent establishments. In this context we recommend that Ireland introduces a branch exemption as taxing the ongoing profits of a branch but not a subsidiary is a breach of the freedom of establishment.

(f) As provided in the ATAD, a tax rate exemption should be provided which would allow companies that are subject to an effective tax rate that is sufficiently similar to the tax rate applied in Ireland not to be subject to CFC taxation. Regard should also be had to other exemptions such as law reform, small businesses, CFCs, etc.

(g) A full participation exemption for dividends should be introduced as CFC rules (together with transfer pricing rules, DEMPE substance requirements, permanent establishment rules etc.) already tax income in the right place.

(h) The charge to tax under Section 590 TCA (Attribution to participators of chargeable gains accruing to non-resident company) should cease to apply to companies and be limited for individuals so that double taxation is avoided.

(i) Availing of a local tax regime (participation exemption, R&D, credit patent box) should not trigger a CFC charge as to do so undermines the tax policy of the investee jurisdiction and breaches *Eurowings*[8] principles.

(j) A grandfathering period for existing transactions should be adopted.

4. **Question 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?***

Fundamentally, the imposition of an exit tax is incompatible with the freedom of establishment under Article 49 of the TFEU. However, the CJEU has found it to be permissible provided certain conditions are satisfied.

Article 5(1) ATAD imposes an exit tax in the following circumstances:

(a) a taxpayer transfers assets from its head office to its permanent establishment in another Member State or in a third country insofar as the Member State of the head office no longer has the right to tax the transferred assets due to the transfer;

(b) a taxpayer transfers assets from its permanent establishment in a Member State to its head office or another permanent establishment in another Member State or in a third country insofar as the Member State of the permanent establishment no longer has the right to tax the transferred assets due to the transfer;

(c) a taxpayer transfers its tax residence to another Member State or to a third country, except for those assets which remain effectively connected with a permanent establishment in the first Member State;

(d) a taxpayer transfers the business carried on by its permanent establishment from a Member State to another Member State or to a third country insofar as the Member State of the permanent establishment no longer has the right to tax the transferred assets due to the transfer.

Currently, domestic tax legislation incorporates the main elements of the exit tax provisions contained in Article 5(1) of the ATAD through a combination of our current exit tax regime under section 627 TCA 1997 and general capital gains disposal rules.

Under Irish general capital gains disposal rules, transfers of assets transfers from an Irish company to a non-Irish subsidiary would generally not qualify for CGT group relief and instead would be deemed to occur for market value under section 547 and 549 TCA 1997. This amounts to an effective exit tax at a rate of 33%. It is possible that a transfer from an Irish resident company to a branch would fall outside the charge to section 627 TCA 1997 as this is currently not regarded as a disposal for capital gains tax purposes. However this could

[8] *Case C-294/97 - Eurowings Luftverkehrs AG v Finanzamt Dortmund-Unna*

be addressed in conjunction with the introduction of a branch exemption, as listed above at paragraph 2.2(e).

Although the transaction contemplated under Article 5(1)(c) of the ATAD is currently covered by domestic legislation, the interaction with section 626B TCA 1997 and the current Irish exit charge regime should be examined. Section 626B TCA 1997 provides for a participation exemption, granting relief from capital gains tax on gains arising on the sale of shares in a subsidiary company by its parent. However section 626B(3)(e) TCA 1997 excludes transactions where a deemed disposal under section 627 TCA 1997 arises. It is highly questionable whether this provision is compatible with the fundamental freedoms of the European Union. The transposition of Article 5 ATAD would be a valuable and timely opportunity to amend and delete the exclusion in section 626B(3)(e) TCA 1997. We note that although, section 628 TCA 1997 provides for a postponement of the exit tax in certain circumstances where a subsidiary company moves its tax residence out of Ireland, this relief is only justifiable where the charging clause is correctly applied. We do not believe this is the case here.

Current domestic legislation provides for both a postponement and deferral of an exit charge in certain circumstances. Section 628 TCA 1997 states that where a company falls within the current exit tax regime and is a 75% subsidiary of another company which is resident in Ireland, then the charge to tax may be postponed. The charge will however crystallise on the parent company within 10 years of the cessation of residence of the migrating company in certain situations. The postponement provisions represent an important component of Ireland’s holding company regime, in order to remain competitive in this regard, the provisions should remain.

Article 5(2) ATAD provides for a deferral of an exit tax where the company is making a transfer to another EU Member State. A deferral of exit tax is currently contained in section 628A TCA 1997 and broadly mirrors the provisions of deferred exit tax liabilities contained in Article 5(2) ATAD.

ATAD does not consider the implications of a situation where the sale of an asset to which an exit tax was imposed and a deferral taken subsequently generates a loss. This situation is manifestly unfair on the tax payer, a credit system should be introduced for the value of the exit tax imposed, where such a situation arises.

Article 5(5) ATAD states that “where the transfer of assets, tax residence or the business carried on by a permanent establishment is to another Member State, that Member States shall accept the value established by the Member State of the taxpayer or of the permanent establishment as the stating value of the assets for tax purposed, unless this does not reflect the market value”. When transposing this provision of ATAD it may be worthwhile to extend its benefits beyond EU member states.

ATAD does not provide a mechanism for measuring the tax value of assets that become chargeable assets, when they are transferred to a member stated from a third country. It is advisable that a legislative provision should be included which would allow the tax value of assets transferred into Ireland from a third country equal the market value of that asset when it becomes a chargeable asset for Irish capital gains tax purposes, this general “step-up” provision is common in other EU jurisdictions and should be introduced in Ireland.

Article 5 ATAD is silent on the tax rate to be imposed under the exit tax regime, it is recommended that the tax rate should be levied at 12.5% as opposed to the 33% rate. To impose a tax rate of 33% would be regarded as punitive, particularity in comparison to the rates levied by other Member States.

5. **<u>Question 4:</u>** ***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 the key considerations regarding the implementation of the hybrid mismatch rules?***

5.1 **ATAD Article 9 and ATAD 2: The current position**

The hybrid mismatch provisions contained in Article 9 of ATAD and in ATAD 2 are essentially minimum standards, such that there are narrow elements of optionality in adopting the provisions into Irish domestic legislation. Ireland is bound to transpose the provisions by 1 January 2020 and so it is right that attention turns to the key considerations regarding transposition and, in many ways more importantly, implementation at this stage.

5.2 **Preliminary steps: Preparation for transposition and implementation**

There is no doubt that the introduction of these hybrid mismatch rules, in particular their extension to non-EU member states, creates compliance obligations for taxpayers which will be more complex than ever before. Before considering the key issues surrounding transposition of the hybrid mismatch rules themselves, there are two matters which the Department of Finance and the Revenue Commissioners should turn their attention to from an implementation perspective to ensure the practical operation of the system is achievable by the 1 January 2020 timeline:

(a) First, Ireland's interest withholding tax regime should be abolished or at the very least aligned with the hybrid mismatch rules such that Irish entities are not simultaneously being denied a deduction for interest payments made and also required to pay over a certain portion of such payments to the Revenue Commissioners as withholding on interest payments. Similarly, if a payment is included in the taxable income of a recipient in another EU Member State (or jurisdiction with equivalent hybrid mismatch rules in line with the OECD BEPS Action 2 Final Report 2015), Irish interest withholding tax cannot be levied on the payment such that an entity would be subject to double taxation as this would damage the proper operation of the hybrid mismatch regime and would be contrary to the provisions of many of our double tax agreements. To provide for these changes will require a significant simplification of the current interest withholding tax regime which may be better achieved by abolishing the regime altogether, particularly in light of the fact that interest withholding tax is not levied in many other countries which will be adopting the ATAD / ATAD 2 or OECD BEPS Action 2 recommendations and so will undermine our competitiveness.

(b) Second, given the wide span of jurisdictions adopting hybrid mismatch rules into vastly varied tax systems and that the nature of these rules will involve Ireland enquiring into and reviewing the tax systems of implementing and non-implementing jurisdictions, it is inevitable that disputes between tax authorities will arise. These disputes will leave taxpayers (and the Exchequer) in limbo until resolved. It is imperative that the Department of Finance and the Revenue Commissioners are appropriately resourced to deal with these inevitable disputes so that they can prevent aggressive tax authorities from staking claim over Irish tax revenues and can minimise periods of uncertainty for Irish taxpayers. On that basis we strongly urge the Department and the Revenue Commissioners to turn their attention to hiring experienced dispute resolution personnel with the required technical expertise to ensure the necessary people are in place by 1 January 2020.

5.3 **Key considerations in transposition**

If we then turn our attention to the key considerations in transposition of the hybrid mismatch rules, these must be consistency of interpretation and application throughout the corporation tax code. Without these central tenets, the practicalities of compliance will far outweigh both the national and international benefits of this regime.

We have set out some key areas of focus to assist in achieving this consistency below but before we consider these more general principles, one specific item should be noted. The Irish tax code already has hybrid mismatch rules which apply to our securitisation regime under Section 110 of the Taxes Consolidation Act 1997. These rules meet the minimum standards of the ATAD and ATAD 2 hybrid mismatch rules, allowing a deduction in circumstances where the payment is subject to tax in a relevant jurisdiction without reduction computed by reference to the amount of the interest or distribution, is exempt from tax in the recipient's territory of residence or is within the charge to Irish tax. On the basis that the hybrid mismatch rules applying to Section 110 companies are already in compliance with the Directives it is anticipated that amendments in this area are not required.

(a) **Hybrid entity, reverse hybrid and certain permanent establishment mismatches: Adopting local tax classifications**

To implement the Directives' requirements on hybrid entity mismatches, reverse hybrid mismatches and certain classes of permanent establishment mismatches, the implementing provisions need to adopt the approach that the tax classification, rather than the legal classification, of an entity type in its jurisdiction of residence is what is recognised by the Irish Revenue Commissioners. In this regard, the Revenue Commissioners' practice on interest withholding tax and US LLCs is an example of a current approach that brought welcome clarity to that issue for Irish taxpayers with US LLCs in their group.

The important elements in implementing these provisions are clarity and consistency. In that regard, we would recommend that the Revenue Commissioners take guidance from the approach adopted by HM Revenue & Customs and publish a list of foreign-law entity classifications which confirms the entities' tax status for the purposes of Irish taxation. The publication of such a list by the Revenue Commissioners will be an essential component of the implementation of the hybrid mismatch rules as the types of entities located in a taxpayer's group can change regularly and taxpayers need to be clear on how relevant entities in their funding structures are viewed by the Revenue Commissioners at any particular point in time.

It is also essential that the classification of entities by tax status in their jurisdiction of residence is applied across the board to all elements of the Irish corporation tax system, including withholding taxes. It cannot be the case that entities are subject to hybrid mismatch rules on the basis of jurisdictional tax classifications but do not get the benefit of exemptions or reliefs which may apply based on their legal classification only. The Irish withholding tax regime needs to be reviewed closely (or abolished in the case of interest withholding tax, as discussed above) in this regard and throughout the transposition of the Directives.

(b) **Denial of deductions or incorporation into taxable income for Irish taxpayer and territorial review: Compliance simplifications**

Article 9 of ATAD and ATAD 2 will potentially impact an Irish taxpayer in four ways.

(A) First, where the paying entity is Irish and there is no corresponding inclusion of the payment in the taxable receipts of the recipient entity in its taxing jurisdiction, a deduction for the payment will be denied to the Irish taxpayer.

(B) Second, where conversely the recipient entity in an arrangement is located in Ireland, it will be incumbent on the Irish taxpayer to review the tax treatment of the payment in the paying entity jurisdiction and if a deduction is not denied in that jurisdiction then the receipt needs to be treated as within the charge to tax in Ireland by the Irish taxpayer.

(C) Third, if a mismatch would result in a double deduction and the Irish entity is the investor entity then the Irish taxpayer will be denied the deduction for its investment.

(D) Fourth, if a mismatch would result in a double deduction and the Irish entity is not the investor entity, the Irish taxpayer will need to know that the deduction will be denied in the investor entity jurisdiction to take a deduction and, if this is not the case, the deduction will be denied to the Irish entity.

It is obvious from both the taxpayers' and Revenue Commissioners' perspectives that an Irish taxpayer cannot be expected to understand the underlying tax treatment in a different jurisdiction on each individual payment made or receipt acquired. Adopting that approach could result in a dramatic slowdown in business operations worldwide and cannot be the intention of the Directives' provisions. The approach which must be adopted instead is to permit taxpayers to review the potential for hybrid mismatches on a jurisdiction by jurisdiction basis. This crux of this approach is that taxpayers would be permitted to rely on the fact that the relevant jurisdiction to which they make a payment or from which they receive a payment is an EU member state or a jurisdiction that has adopted measures in accordance with the OECD BEPS report on Action 2. A taxpayer should not be required to further investigate the local tax code of that jurisdiction or to look behind any payment arrangements to how the relevant entity is funded because it is inherent in the adoption of the Directives and the OECD BEPS Action 2 that any funding mismatches are to become a matter for that jurisdiction to deal with and are not a matter for Ireland to resolve. Where a jurisdiction purports to adopt the requisite rules under the Directives or the BEPS report on Action 2, it cannot be an individual Irish taxpayer's job to police whether or not the minimum standards have been adequately adopted. Allowing for review on a jurisdiction by jurisdiction basis and only extending this review to the jurisdiction directly affected by the individual payment are essential to provide some clarity for taxpayers and to significant lower the cost of complying with the mismatch rules.

We note that this process of review cannot necessarily follow in relation to imported mismatches but a modified version should be adopted whereby if either entity involved in the hybrid mismatch is resident or subject to tax in an EU member state or OECD BEPS Action 2 adopting jurisdiction, an Irish taxpayer is entitled to rely on the fact that that entity will deal with the mismatch and so it will not be imported into Ireland. In situations where neither entity involved in the actual mismatch which is considered to be imported into Ireland is resident or subject to tax in such a jurisdiction, some review of the local tax code of those jurisdictions by the Irish taxpayer will likely be required. Revenue guidance as to the extent of the review required in these cases will need to be the top priority once legislation is drafted and industry practitioners must be consulted on the production of any guidance in this area, for which practicality must be the clear guiding criteria. Legislation cannot become effective in this area until agreed guidance is in place and published.

6. <u>Questions 5, 6, 7, 8 and 9</u>: The Implementation of Actions 8, 9 and 10 of the OECD BEPS Package and Additional Considerations Regarding Ireland's Domestic Transfer Pricing Rules

This response covers questions 5, 6, 7, 8 and 9. It does not purport to be a full examination of the issues but rather observations on individual points.

6.1 The introduction of transfer pricing generally will provide particular challenges to a business operating in Ireland that may not exist in other jurisdictions. Due to the small size and international focus of the Irish economy, a disproportionate number of small businesses transact cross border. In fact, the growth path of any small Irish business will often include a cross-border element at an earlier stage than in other jurisdictions. Accordingly, we believe that the transfer pricing rules should not be extended to SMEs, as it would impose an administrative burden that is disproportionate to the tax objectives to be obtained, bearing in mind the low level of Irish tax at stake, particularly as the countries with which they predominately trade (UK, other EU and the US) have higher tax rates than the 12.5% rate. Most SMEs remove the bulk of their revenue to the founders by way of salary payments (which are taxed at the founder/director level at very high marginal rates for individuals, i.e. in excess of 50% and also are subject to the close company rules). These rules effectively mandate the distribution of profits to avoid a 20% surcharge with the effect that profits are distributed and taxed at the very high marginal tax rates applicable to individuals. Accordingly, there would seem to be little scope for tax avoidance due to transfer pricing among SMEs. In addition, there are a large number of existing market value/fair value rules applicable in the absence of the expansion of the transfer pricing rules to SMEs. A list of these rules are contained in **Appendix 1** and it is submitted that these rules address the need for full transfer pricing rules to apply to SMEs. It is important that a grandfathering period is introduced in relation to any changes made to Ireland's transfer pricing rules.

6.2 Transfer pricing rules could be extended to non-trading income but, it is submitted, this may no longer be a relevant or effective way of dealing with what was termed "*aggressive tax planning*". Changes to the OECD permanent establishment definition means that it is no longer possible to allocate income away from Ireland to tax havens. Income will be attributed to Ireland under these new permanent establishment rules reflecting the true substance in Ireland, i.e. there was a trade in Ireland. Accordingly, the concern around aggressive tax planning is no longer a valid concern due to changes in other aspects of the BEPS implementation package. In addition, there appears to be no need to extend transfer pricing rules to capital transactions as they are subject to extensive arm's length rules already.

6.3 The crucial administrative problem with introducing a full set of transfer pricing rules to non-trading and capital transactions is the high administrative burden that the OECD has adopted in relation to document creation and retention. Even where a transaction occurs at arm's length between connected parties and in some cases where a higher tax burden arises because the pricing is greater than arm's length, a taxpayer can still be in default in the absence of appropriate documentation. This is clearly a poor administrative outcome. Whilst a large multinational business is able to bear the cost of those documentary requirements (in addition to the substantive point of ensuring that the price is the appropriate price) those rules would seem to add an unnecessary additional burden to transactions within Ireland. As mentioned above, the prospect of businesses that properly price transactions having to pay penalties as a result of not complying with this onerous documentary requirement would seem to be an excessive use of government power.

6.4 The fundamental issue which arises in Ireland as opposed to other jurisdictions is, as identified, the differential tax rates. Most jurisdictions apply one rate of corporation tax on income (rather than potentially three: 12.5%, 25% and 45% (if the close company surcharge applies)). Different rates apply to capital gains: 33% or 0% if Section 626B TCA applies. This means that domestic transfer pricing rules could be potentially applicable between the different rates of corporation tax, i.e. the different Cases of the various Schedules which apply to such income and between different capital gains tax rates. The structure of the Schedular system under which income tax is charged enables Revenue to elect between Cases within a Schedule where income is taxable under more than one Case, i.e. to effectively choose which tax rate is applicable to any income. It seems unnecessary to impose an administrative burden of transfer pricing rules where the avoidance is already addressed by existing rules. In addition, the close company rules referred to above, encourage distributions of income of a passive nature and the capital gains attribution rules in section 590 TCA would seem to obviate the ability to avoid tax by connected party transactions with non-residents.

6.5 One way of avoiding this issue without imposing an administrative burden on businesses is to align the rates of corporation tax on income and gains. In any event, as a first step, the imposition of a 25% tax rate under Schedule D Case III of a non-Irish trade (which in an EU context breaches the right of establishment) ought to be removed. Bearing in mind the application of the close company rules, it may be the case that very little tax revenue would be lost by reducing the 25% rate to 12.5%. This is because, in our experience, very little tax is paid at the 25% rate. It is also noteworthy that our two largest trading partners (the UK and the US) will now have rates of corporation tax at our substantially less than the 25% rate. This means that Ireland's tax policy of having a rate of tax that is lower than its competitor jurisdictions is not being complied with for so long as the 25% rate of corporation tax is retained. By aligning the corporation tax rates at 12.5% for all types of income, the need for internal transfer pricing rules disappears. It would also significantly reduce the administrative burden imposed upon Irish businesses that operate within Ireland.

7. **Question 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?

7.1 **Withholding Taxes**

The problems caused by the complexity of the existing withholding tax regime provided for in Schedule 24 have been raised with Revenue on numerous occasions and a resolution to these is long overdue. We welcome that this matter will be given the attention of the Department and emphasise that this must now be urgently addressed.

The impending introduction of CFC rules[9] will throw into sharp relief the taxation of dividends received into Ireland from non-Irish companies. The question remains: should we still tax foreign income?

7.2 **Simplification of Schedule 24**

Under Section 129 of the TCA, dividends paid from an Irish subsidiary to its Irish parent are exempt from Irish corporation tax. Dividends which are paid from an EU subsidiary to an Irish parent are subject to tax under Schedule D Case III at 25% pursuant to Section 21A(3)(a) TCA or, where the relevant profits are trading or deemed trading, under Schedule D Case I at 12.5% pursuant to Section 21B TCA. While Schedule 24 TCA provides for foreign tax credit rules, it is deficient in many respects.

The taxation of dividends in Ireland is, we understand, different from the treatment applied in all other EU Member States, all of which operate a form of participation exemption. Uniquely in Ireland, dividends from non-Irish companies are treated as taxable income and credit is given for withholding taxes, underlying tax and deemed credits (which effectively operates as an exemption for certain EU to Irish dividends). The effect is that while dividends paid from an Irish subsidiary to its Irish parent are exempt from Irish corporation tax in all circumstances, dividends paid from a non-Irish company to its Irish parent are subject to tax, with certain credits available pursuant to Schedule 24 of the TCA and certain exemptions i.e. 5% portfolio dividend exemption and the deemed credit in paragraph 9(I) of Schedule 24. The operation of an exemption system for dividends paid from one Irish company to another and a credit system for dividends paid from an EU company to an Irish company is not, in principle, contrary to EU law so long as there is no greater tax levied on Irish to Irish dividends and EU to Irish dividends. Under freedom of capital provisions, non-EU to Irish dividends should be treated similarly. Further, the current system is inconsistent and in breach of EU law:

- Irish to Irish dividends benefit from a full exemption irrespective of the tax rate applicable to the profits from which they arise.

- In particular, profits from a disposal of shares within our participation exemption suffer no tax and the dividend of those profits from one Irish company to another is tax exempt. This is not the case where the profits arise

[9] Please see our response to Question 2.

from a similar disposal by a non-Irish but EU subsidiary. Similar issues arise with patent boxes, dividend participation exemptions, R&D credit and differential tax rates. We believe that it is not possible to simplify Schedule 24 to address all EU law cases of non-compliance unless a vaguely worded provision like Section 637 TCA is introduced.

- Also the complexity of any credit system causes confusion and adds an unnecessary layer of complication for Irish companies for little tax benefit. It is not possible to simplify the credit system while retaining fairness. This is a normal conflict in any taxing system.

7.3 **Our suggested approach:**

(a) **Participation Exemption System**

A full exemption for non-Irish and Irish dividends on an equal basis is the only workable option and is something that other EU Member States and most countries in the OECD have introduced. We have moved partially towards this with the 5% portfolio exemption. As set out above, the CFC rules taken with updated transfer pricing rules, the GAAR, permanent establishment rules, transfer of income abroad rules, mean there is no policy need to tax dividends at all as all Irish profits are already taxed.

Thank you for taking the time to consider our views.

Yours faithfully

Arthur Cox

ARTHUR COX

Appendix 1

Transfer Pricing Rules

Arm's Length
89. Valuation of trading stock at discontinuance of trade.
98A. Taxation of reverse premiums.
110. Securitisation.
234. Certain income derived from patent royalties.
249. Rules relating to recovery of capital and replacement loans.
275. Restriction of balancing allowances on sale of industrial building or structure.
95. Supplementary provisions as to tax under section 91 or 94.
323. Capital allowances in relation to construction of certain commercial premises.
324. Double rent allowance in respect of rent paid for certain business premises.
332. Capital allowances in relation to construction or refurbishment of certain commercial premises.
333. Double rent allowance in respect of rent paid for certain business premises.
342. Capital allowances in relation to construction or refurbishment of certain commercial premises.
345. Double rent allowance in respect of rent paid for certain business premises.
354. Double rent allowance in respect of rent paid for certain business premises.
372N.Capital allowances in relation to construction or refurbishment of certain commercial buildings or structures.
372W. Capital allowances in relation to construction or refurbishment of certain commercial premises.
372D. Capital allowances in relation to construction or refurbishment of certain commercial premises.
372AAC. Capital allowances in relation to conversion or refurbishment of certain commercial premises.
372AAD. Residential accommodation: capital allowances to lessors in respect of eligible expenditure incurred on the conversion and refurbishment of relevant houses
486B. Relief for investment in renewable energy generation.
512. Disposals of scheme shares.
547. Disposals and acquisitions treated as made at market value.
549. Transactions between connected persons.
589. Shares in close company transferring assets at undervalue.
611. Disposals to State, public bodies and charities.
690. Interest and charges on income.
696. Valuation of petroleum in certain circumstances.
697LA. Transactions between associated persons and between tonnage tax trade and other activities of same company.
766. Tax credit for research and development expenditure.
Schedule 14 Capital Gains Tax: Leases
Market Value
29A. Temporary non-residents.
55. Taxation of strips of securities.
81A. Restriction of deductions for employee benefit contributions.
110. Securitisation.
122A. Notional loans relating to shares, etc.

130. Matters to be treated as distributions.
137. Disallowance of reliefs in respect of bonus issues.
249. Rules relating to recovery of capital and replacement loans.
324. Double rent allowance in respect of rent paid for certain business premises.
333. Double rent allowance in respect of rent paid for certain business premises.
345. Double rent allowance in respect of rent paid for certain business premises.
354. Double rent allowance in respect of rent paid for certain business premises.
372AAC. Capital allowances in relation to conversion or refurbishment of certain commercial premises.
496. Disposals of shares.
512. Disposals of scheme shares.
541A. Treatment of debts on a change in currency.
543. Transfers of value derived from assets.
547. Disposals and acquisitions treated as made at market value.
549. Transactions between connected persons.
559. Assets derived from other assets.
589. Shares in close company transferring assets at undervalue.
596. Appropriations to and from stock in trade.
604A. Relief for certain disposals of land or buildings.
607. Government and certain other securities.
613A. Supplementary provisions.
615. Company reconstruction or amalgamation: transfer of assets.
620A. Deemed disposal in certain circumstances.
621. Depreciatory transactions in group.
625. Shares in subsidiary member of group.
627. Deemed disposal of assets.
641. Computation under Case I of Schedule D of profits or gains from dealing in or developing land.
642. Transfers of interests in land between certain associated persons.
649B. Windfall gains from rezonings: rate of charge.
651. Restriction of indexation relief in relation to relevant disposals.
696. Valuation of petroleum in certain circumstances.
705P. Effect of cessation.
724. Transfer of assets into or out of special investment fund.
737. Special investment schemes.
738. Undertaking for collective investments.
739. Taxation of unit holders in undertakings for collective investment.
741. Disposals of material interests in non-qualifying offshore funds.
747E. Disposal of an interest in offshore funds.
848J. Gain on maturity.
848K. Gain on cessation.
848L. Gain on withdrawal.
Schedule 12C Approved Share Option Schemes
Schedule 16 Building Societies: Change of Status
Schedule 18A Restriction on set-off of pre-entry losses
Schedule 18B, Part 3 Capital Allowances, Balancing Charges and Related Matters (paras. 10-20)
Schedule 25A Exemption from Tax in the Case of Gains on Certain Disposals of Shares
Open Market
89. Valuation of trading stock at discontinuance of trade.

275. Restriction of balancing allowances on sale of industrial building or structure.
286A. Wear and tear allowances for licences for public hire vehicles.
289. Calculation of balancing allowances and balancing charges in certain cases.
312. Special provisions as to certain sales.
324. Double rent allowance in respect of rent paid for certain business premises.
333. Double rent allowance in respect of rent paid for certain business premises.
400. Company reconstructions without change of ownership.
669I. Provisions as to deductions.
Schedule 18B, Part 3 Capital Allowances, Balancing Charges and Related Matters (paras. 10-20)