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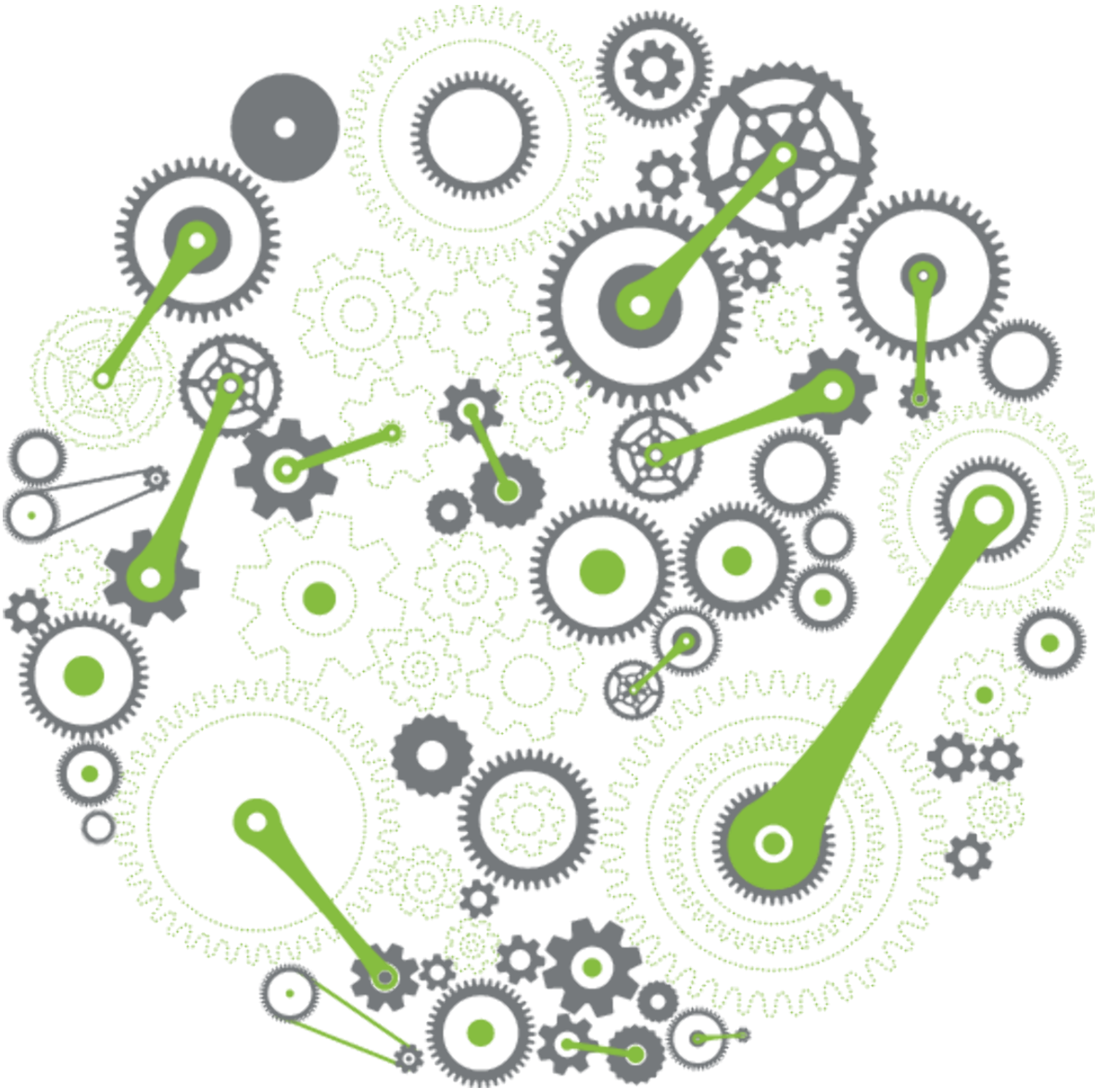

New Taxation Measures to apply to Outbound Payments

Public Consultation Response

Deloitte.

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20 December 2021

Consultation on Measures to apply to Outbound Payments,
Tax Division,
Department of Finance,
Government Buildings,
Upper Merrion Street,
Dublin 2
D02 R583

VIA EMAIL: intltax@finance.gov.ie

Dear Sirs/Mesdames:

We are pleased to submit comments on behalf of Deloitte in response to your Consultation document of 5 November 2021. We appreciate this opportunity to share our views and trust that you will find our comments valuable to the discussion.

We look forward to continued collaboration with the Department of Finance on this and other tax initiatives, and are available to discuss anything in this document, as needed. In the meantime, if you have any queries, please do not hesitate to contact us at 01-417-2200.

Yours sincerely,

Lorraine Griffin | Tom Maguire

Lorraine Griffin
Partner
Head of Tax and Legal

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Executive Summary

This document outlines our thoughts on proposed amendment to the tax treatment of outbound payments of interest, royalties and dividends. While further detail is included in our responses to the consultation questions, we would emphasise the following points:

- As a general comment, the intention and object of any amendment to the existing tax treatment of outbound payments should be rooted in the prevention of base erosion and aggressive tax planning structures. We note from the Country Specific Recommendations in the European Semester Process that emphasis is placed on addressing features of the tax system that "facilitate aggressive tax planning" including on outbound payments. While the requirement to assess payments to countries listed on the EU list of non-cooperative jurisdictions would appear appropriate, we would question why a similar assessment is required for payments in the context of bona fide commercial arrangements.
- The international tax landscape has experienced significant change in recent years and is expected to see further movement with the introduction of Pillars 1 and 2. Further amendments to existing law could in our view create greater complexity for taxpayers.
- A key point to note is that while payments made may not be subject to taxation in the country of the recipient, due to the nature of controlled foreign company regimes worldwide including the US GILTI regime, there is a high degree of possibility that payments made will be taken into account in the tax calculations of the ultimate parent. Therefore, to the extent that amendments are made to the existing treatment of outbound payments, (whether by WHT or denial of a deduction), such amendments should reflect the operation of a foreign company charge equivalent to CFC rules contained in Irish law. Where this is not taken under consideration, there is an increased risk that an amendment to the existing tax treatment of such payments would put Ireland at a competitive disadvantage relative to other EU Member States in terms of inward investment.
- Specific consideration should be given to the impact the OECD Pillar 2 agreement and the EU Directive on the model rules to be released by the end of 2021. The transposition of the Directive will, in our view, require legislative amendment in Finance Bill 2022 and any amendment to existing provisions on outbound payments in isolation could in our view constitute duplication. It may be preferable therefore to firstly consider the impact of the Pillar 2 Directive over time before seeking to amend the taxation of outbound payments. It would not be appropriate to have a double taxation result on a transaction for which double tax relief may not be forthcoming. Such a solution would be worse that the problem, if any, that is sought to be addressed.
- Relatively recent economic studies note that while royalty payments from Ireland are likely to continue at a high level as a percentage of GDP relative to the levels in other Member States, such payments are not necessarily indicative of aggressive tax planning at play. While the research focusses on royalty payments in isolation, we would expect that a similar conclusion could also be reached with respect to payments of interest. Accordingly, we would question whether enhanced measures, whether by a denial of deduction or WHT rules would act to address the aggressive tax planning structures which are the subject of European Commission recommendations.
- Any proposed amendment to the existing treatment of such payments should not operate to limit payments made pursuant to bona fide commercial arrangements where the main purpose or one of the main purposes is not the avoidance of tax.
- Without prejudice to our overall comments noted above, we would be of the opinion that where amendments are made to legislation it would be preferable to rely on existing withholding tax provisions in Irish law. Such provisions with respect to WHT on interest, royalties and dividends are well understood while provisions regarding the deductibility (especially of interest) would result in administrative complexity.
- Where a WHT mechanism is preferred, we would draw attention to the current rate of WHT of 20% operating on interest and royalties. This contrasts with the tax effect which would arise on the denial of a deduction which would have effect at either 12.5% or 15%. Consideration should be given to bringing the rate of WHT in line with the 12.5%/ 15% rate of tax.

- Where amendments are made through a WHT mechanism, consideration should be given to procedures to obtain exemptions from operating WHT where a relevant treaty applies. In addition, consideration should be given to the reorganisation of the Collector General's function/approach to refunds, to allow for refund application forms to be made available and for officers of the Revenue Commissioners to be sufficiently resourced to facilitate timely refunds of WHT.

Consultation Questions

1. General Questions

It should be noted that what follows is our view on the matter and that the responses to the questions below are without prejudice to this view.

While payments, to which this consultation refer, may not be subject to taxation in the country of the recipient, there is a high degree of possibility that payments made will be taken into account in the tax calculations of the ultimate parent due to the nature of controlled foreign company regimes worldwide including the US GILTI regime. Therefore, to the extent that amendments are made to the existing treatment of outbound payments, (whether by withholding tax (WHT) or denial of a deduction in computing taxable income), such amendments should reflect the operation of a foreign company charge equivalent to CFC rules contained in Irish law. Where this is not taken under consideration, there is an increased risk that an amendment to the existing tax treatment of such payments would put Ireland at a competitive disadvantage relative to other EU Member States in terms of inward investment. Specific consideration should be given to the impact of the OECD Pillar 2 agreement and the EU Directive on the model rules to be released by the end of 2021. The transposition of the Directive will, in our view, require legislative amendment in Finance Bill 2022 and any amendment to existing provisions on outbound payments in isolation could in our view constitute duplication. It may be preferable therefore to firstly consider the impact of the Pillar 2 Directive over time before seeking to amend the taxation of outbound payments. It would not be appropriate to have a double taxation result on a transaction for which double tax relief may not be forthcoming. Such a solution would be worse than the problem, if any, that is sought to be addressed by the measures proposed.

a) *Are there any specific criteria that should be considered to identify payors and recipients to which these measures should be applied?*

We are not of the view that specific criteria would be required to identify payors with respect to outbound payments. We would expect that the Irish taxpayer on whom a WHT obligation falls (or would fall but for an exception provided for in law) would ultimately be viewed as the payor; equally the Irish taxpayer obtaining (or seeking to obtain) tax relief for the payment would be viewed as payor. Accordingly, no specific criteria would be warranted.

Specific criteria may however be warranted in the case of a recipient. Where amendments are in fact made to existing Irish law either through a WHT mechanism or by denying relief for certain payments made, we would suggest looking to existing anti hybrid rules in part 35C Taxes Consolidation Act 1997 ("TCA97") which provide a definition of "payee" beyond merely the person or enterprise who receives the payment. Such an expanded definition takes into account not only the recipient but also other enterprises where the income may be included (for example, a participator or an enterprise on whom a controlled foreign company charge is made). That would serve to reduce the need for WHT or denial of a deduction e.g. because the recipient's income would be subject to a CFC charge on its income in another jurisdiction

b) *In responding to this question, consideration could be given inter alia to the degree of association between the payor and recipient, fiscal transparency of entities, interaction with CFC rules, remittance basis, and worldwide versus territorial systems of taxation.*

As a general point, the intention of any amendment to the treatment of outbound payments should be rooted primarily in the prevention of base erosion and aggressive tax planning structures. Accordingly, such a policy intent is arguably not met where amendments address outbound payments with no required degree of association. At a minimum, any proposed legislative amendments (whether by WHT or denial of deduction) should also require a level of association between the payor and the recipient.

A key point to note with respect to any proposed amendment is the interaction between such provisions and controlled foreign company ("CFC") regimes – this would include CFC regimes operating not only in EU Member States but also equivalent regimes such as e.g. US GILTI or Japanese CFC rules. Irrespective of whether a WHT or a denial of deduction mechanism is ultimately opted for, where the intention of any amendments is to prevent "double non taxation", regard must be had to the fact that payments made by an Irish resident taxpayer may in fact be taken into account and taxed appropriately not in the hands of the recipient but through the application of a controlled foreign company charge, US GILTI or an equivalent foreign company charge regime.

Accordingly, there is a risk that a denial of deduction or imposition of WHT on outbound payments could, in certain instances, result in double taxation where such an outcome would not have otherwise arisen and where double taxation relief may not be forthcoming.

c) *Are there any other legislative, policy or administrative considerations that should be taken into account?*

Consideration should be given to the effect of any legislative amendment on the competitiveness of Ireland's tax regime with respect to inward investment compared to competitor jurisdictions. E.g., Malta and Luxembourg with certain exceptions do not impose withholding tax on interest and royalty payments. Taking into account the significant role played by the financial services industry in Ireland, measures to impose restrictions on outbound payments of interest would appear disadvantageous compared to competitor jurisdictions. Furthermore, in light of the role which Ireland plays as a key hub for inward investment from both the US and other foreign headquarters groups, ensuring the flow of dividends out of Ireland free of any WHT should be a key area of focus. Measures to restrict exemptions from the application of WHT in the case of bona fide commercial arrangements would therefore warrant careful attention to ensure that inward investment and the competitiveness of the Irish tax regime is not unduly affected.

In addition to issues of competitiveness, we would suggest that further consideration be given to the effectiveness of any proposed legislative amendments in light of recent analysis carried on with respect to payment flows from Ireland in recent years. We would note from the Consultation Document of 5 November 2021 that recent research on royalty flows from Ireland demonstrates that outbound payments are "increasingly going directly to the US where they are taxed". In particular, research published by Seamus Coffey in May 2021 would suggest that "The changed pattern of royalty flows from Ireland is now more in line with the economic substance of these companies and the reporting of their profits is better aligned with the function, assets and risks that generate those profits"[1].

Notably, analysis in the above research paper of May 2021 notes that while royalty payments from Ireland are likely to continue at a high level as a percentage of GDP relative to the levels in other Member States, "it is not clear that this is a signal of aggressive tax planning as a greater and greater share of these payments, particularly from the ICT sector, flow directly and in full to the United States." Accordingly, we would question whether enhanced measures, whether by a denial of deduction or WHT rules would act to address aggressive tax planning structures sought by the European Commission recommendations. While the research focusses on royalty

[1] "The changing nature of outbound royalties from Ireland and their impact on the taxation of profits of US multinationals" – May 2021, Seamus Coffey, University College Cork

payments in isolation, we would expect that a similar conclusion could also be reached with respect to payments of interest.

d) *Are there any considerations around how interest, royalties or dividends could be defined for these purposes?*

As the preferred mechanism for any amendments (where enacted) would rely on existing WHT provisions, we are not of the view that specific additional definitions would be required for either interest, royalties or dividends.

e) *Are there any other considerations that should be included as part of this process?*

We are aware that the model rules for Pillar 2 are to be outlined in an EU Directive prior to the end of 2021. The Irish tax provisions have, in recent years, undergone significant change with respect in particular to the international tax landscape. In our opinion therefore, any further legislative changes should endeavour to be as clear as possible and should avoid unnecessary additional complexity. It is preferable therefore to consider the impact of the OECD Pillar 2 model rules first and whether such provisions, once transposed into Irish law would achieve the stated policy aims while respecting bona fide commercial arrangements without a need for further amendment. It would also be preferable to see a simplification of the existing Irish tax rules, rather than layering additional and more complex provisions on top of an already detailed regime.

f) *In your opinion, as regards the potential application of any of the above measures to Ireland's treaty partners, are there any specific issues or obstacles relating to tax treaty commitments that would have to be considered? If so, how might these be best acknowledged or addressed?*

In our opinion, the adoption of the Multilateral Instrument is sufficient to address instances where payments made to Ireland's tax treaty partners look to avail of treaty benefits in an aggressive or abusive manner. Ireland, along with 67 other countries signed the Multilateral Instrument (MLI) on 7 June 2017, the effect of which is to incorporate new provisions agreed under the BEPS project into many of Ireland's existing double tax treaties. In particular, a key change has been the adoption of a principal purpose test (PPT). The operation of the PPT allows tax authorities to disallow the application of treaty benefits including a reduced rate of WHT where the application of such benefits was one of the principal purposes of the arrangement. For treaty partners who have opted to apply the PPT in the same manner as Ireland, such a provision would act to prevent treaty benefits in the case of aggressive tax structures. Equally, the operation of Irish domestic general anti avoidance rules (GAAR) would act to prevent a tax advantage (including a deduction for expenses or reduction in WHT) where the primary purpose of a transaction is to seek a tax advantage

2. Measures in relation to outbound interest payments

As previously outlined, our general view is that where the intention of any amendments is to prevent "double non taxation", regard must be had to the fact that payments made by an Irish resident taxpayer may in fact be taken into account and taxed appropriately not in the hands of the recipient but through the application of a controlled foreign company charge, US GILTI or an equivalent foreign company charge regime (addressed in more detail in our responses to Questions 1 and 3).

a) *Where measures are taken regarding outbound payments of interest to no-tax or zero-tax jurisdictions, or jurisdictions included on the EU list of non-cooperative jurisdictions for tax purposes, in your opinion* *would a denial of deduction or the imposition of a withholding tax be the more effective approach? Please identify the advantages of, and potential issues with, each approach in your response.*

c) *Where it is your view that a withholding tax would be the better approach, how could this measure be designed to interact with other legislation, and/or tax treaties and would this require any amendments to relevant legislation?*

Questions 2a and 2c may be taken together.

Existing WHT provisions addressing the payment of interest are well established and understood in Irish law. In contrast, the tax treatment of interest expenses incurred is an area of increasing complexity in Irish law, further complicated by the imminent introduction of the ATAD's Interest Limitation Rules brought about by Finance Bill 2021. From a taxpayer certainty perspective, any proposed amendments (where a policy decision is taken to do so) would benefit from a WHT mechanism rather than imposing specific denials for relief on interest expenses.

Existing provisions in Irish law currently provide for the operation of WHT on interest payments. In addition, domestic law allows for certain exceptions from this obligation to operate WHT on payments to recipient's resident outside of Ireland, including:

i. Interest paid to a company resident in a relevant territory (i.e. an EU Member State or territory with which Ireland has a double tax treaty), where that relevant territory imposes a tax that generally applies to interest receivable in that territory by companies from sources outside that territory[2];
ii. Interest treated as a distribution;
iii. Interest paid to a related EU tax resident under the EU Interest and Royalties Directive[3]; and
iv. Interest paid on a Quoted Eurobond[4] or commercial paper[5].

We would be of the view that any concerns regarding payments to territories on the EU list of non-cooperative jurisdictions would in most cases be addressed by the conditions currently imposed in domestic law to avail of an exemption from the obligation to operate interest WHT on payments.

As of the date of this submission, Ireland is not party to a tax treaty with any member of the EU list of non-cooperative jurisdictions[6]. If such a jurisdiction was to be removed from the EU list and were to enter into a tax treaty with Ireland, we would expect that existing WHT provisions contained in domestic Irish law should be sufficient to cater for a WHT obligation levied on a payment of interest. Further, the Quoted Eurobond exemption is relied on extensively in the Financial services industry and should not be amended.

b) *Where it is your view that a denial of deduction would be the better approach, how should this measure be designed to interact appropriately with other domestic legislation, including the new interest limitation rule which will be implemented from the beginning of 2022? Are there specific amendments to relevant legislation that should be considered?*

The comments below are without prejudice to our overall view as stated at the start of this paper and our comments in response to Questions 2a and 2c.

For the purpose of the interest limitation rule contained in Finance Bill 2021, the definition of "deductible interest equivalent" in S835AY(1)[7] refers to the amount of interest equivalent that is deducted in calculating the relevant profit or loss of the relevant entity. With respect to "relevant profit", S835AZ (1) defines this as meaning (inter alia) the amount of profit on which corporation tax falls finally to be borne. Accordingly, the starting point in the application of the interest limitation rules contained in Part 35D would take into account any amount of interest

[2] Section 246(3)(h) TCA97
[3] Chapter 6 of Part 8 TCA97
[4] S64 TCA97
[5] S246A TCA97
[6] American Samoa, Fiji, Guam, Palau, Panama, Samoa, Trinidad and Tobago, US Virgin Islands and Vanuatu
[7] Per Finance Bill 2021

equivalent deducted (or would be deducted) prior to the application of any restriction by reference to the tax EBITDA of the relevant entity. Therefore, the amount to be treated as "deductible interest equivalent" to be subject to the restriction under the ILR should not include any amounts for which an Irish taxpayer is denied a deduction either due to the operation of existing rules on interest relief or where the payment is made to specified jurisdiction (e.g., EU list of noncooperative jurisdiction). Accordingly, where a policy decision is made to deny a deduction for interest payments made to specified jurisdictions, we would not expect modifications to be required to the interest limitation provisions as currently contained within Finance Bill 2021.

Notwithstanding the above, to introduce the denial of a tax deduction for such interest expenses incurred would require amendment to existing law. Existing provisions in Irish tax law allow relief for interest expenses paid or payable by a company either as a trading expense in the calculation of profits subject to Case I[8], as a rental expense[9] in computing profits subject to Case V and as a charge on income[10]. Where a denial of deduction is opted for, we would expect that adjustment to the relevant provisions would be required. In light of the existing complexity associated with the tax relief available to an Irish taxpayer on their borrowing costs, we would not be in favour of further amendment to this area of law. In our view such legislation should be simplified as a result of the introduction and application of the Interest Limitation Rule discussed earlier.

Irrespective of the operation of the Interest limitation rules and existing provisions on deductibility, the extent to which an interest payment may be taken into account in computing profits, gains or losses for tax purposes is further subject to Transfer Pricing provisions contained in Part 35A. Where consideration payable under any arrangement exceeds an arm's length amount, then the profits or gains or losses of the payor (in this instance the Irish taxpayer) are to be computed as if an arm's length amount were payable instead of the actual consideration[11]. The revisions to Transfer Pricing rules contained in Part 35A on foot of Finance Act 2019 brought domestic rules in line with the updated 2017 OECD Transfer Pricing guidelines, including the requirement to assess the debt capacity for the parties to the arrangement in determining an appropriate interest rate. This law can restrict a deduction in computing taxable income in the first instance.

Accordingly, we would find it difficult to identify instances where interest payments made from an Irish taxpayer could be regarded as unduly engaging in base erosion, as the quantum of any potential tax deduction for the payment would be inherently limited by Transfer Pricing rules. We would further reiterate our view that any amendment made either to existing WHT provisions or provisions concerning the deductibility of specified expenses should have regard to and not interfere with bona fide commercial arrangements.

3. Measures in relation to outbound payment of royalties

Questions (a) and (c) may be taken together.

a) *Where measures are taken regarding outbound payments of royalties to no-tax or zero-tax jurisdictions, or jurisdictions included on the EU list of non-cooperative jurisdictions for tax purposes, in your opinion would a denial of deduction or the imposition of a withholding tax approach be more effective? Please identify the advantages of, and potential issues with, each approach in your response.*
c) *Where it is your view that a withholding tax would be the better approach, how do you feel this measure could be designed to interact with other legislation? In your opinion would this require any amendments to relevant legislation?*

[8] S81 TCA97
[9] S97 TCA97
[10] S247 TCA97
[11] S835C(2)(a) TCA97

As an overall comment, where the purpose of any proposed amendment to the tax treatment of outbound payments is the prevention of aggressive tax planning and base eroding activities, such an amendment should not act to limit the making of payments for bona fide commercial reasons.

Existing provisions in Irish law[12] currently allow for the imposition of WHT on outbound payments of royalties. Domestic provisions restrict the applicability of WHT in certain instances (e.g. in the case of payments made to a recipient resident in another EU Member State[13] or residents of "relevant territories[14]").

Furthermore, Statement of Practice SP-CT 01/10[15] (contained in Revenue Tax and Duty Manual Part 08-01-04) provides for the removal of WHT in cases where a royalty payment is made subject to the following conditions:

- The payee is neither resident in the State or carrying on a trade in the State through a branch or agency;
- The payee is the beneficial owner of the royalty payment;
- The royalty is payable –
    - i. In respect of a foreign patent; and
    - ii. Under a license agreement executed in a foreign territory and subject to the law and jurisdiction of a foreign territory
- The payment is being made in the course of the paying company's trade; and
- The payment is not part of a back-to-back or conduit arrangement.

Aside from the above conditions, the exemption from WHT contained in the Statement of Practice may only be relied upon to the extent that the royalty payments concerned are made in good faith and for purposes that do not include tax avoidance. Existing WHT provisions addressing the payment of royalties to recipients not resident in the State are well established and understood in Irish law.

With respect to administration and compliance considerations, as any WHT obligation (whenever arising) is triggered at the point of payment, the use of a withholding mechanism as opposed to a denial of deduction mechanism would be preferable as it is easier for the payor to assess the status of the payee on a real time basis. In the case of a company making multiple payments throughout an accounting year, it may be burdensome to assess such payments after the accounting year end. The denial of a deduction for tax purposes and its impact on the overall tax computation is most likely to be assessed post year end as part of the tax return preparation process. It may be the case that at a point at which a payment is made, the recipient is on the EU List of non-cooperative jurisdictions but at the point at which a deduction is sought for the purposes of the tax return, the recipient has exited the list.

In light of the above factors, where an amendment is sought to existing Irish tax provisions for specified payments, we would be of the view that this should take the form of a WHT mechanism as opposed to denying a deduction.

b) *Where it is your view that a denial of deduction would be the better approach, how could this measure be designed to interact with other legislation? In your opinion would this necessitate any amendments to relevant legislation?*

Our comments below are without prejudice to our overall view stated at the start of this paper and our previous responses regarding a WHT based mechanism noted previously.

In assessing the deductibility of payments made (whether to a non-cooperative jurisdiction or a no/zero tax jurisdiction), existing Transfer Pricing provisions in Irish law specify that where consideration payable under any

[12] S238 TCA97
[13] Chapter 6 of Part 8 TCA97
[14] Per S242A TCA97, refers to an EU Member State other than Ireland or a country whose tax treaty with Ireland has the force of law or which has been signed and will have the force of law on completion of the necessary procedures.
[15] Treatment of Certain Patent Royalties Paid to Companies Resident Outside the State – updated per eBrief No 88/16 of 21 October 2016

arrangement exceeds an arm's length amount, then the profits or gains or losses of the payor (in this instance the Irish taxpayer) are to be computed as if an arm's length amount were payable instead of the actual consideration[16]. The revisions to Transfer Pricing rules contained in Part 35A on foot of Finance Act 2019 brought domestic rules in line with the updated 2017 OECD Transfer Pricing guidelines, including revised rules on the pricing of hard to value intangibles[17]. We would further reiterate our view that any amendment made either to existing WHT provisions or provisions concerning the deductibility of specified expenses should have regard to bona fide commercial arrangements.

d) *Are there any specific considerations necessary in relation to the interaction of a measure applying to the outbound payment of royalties and the existing treatment currently in place?*

We would reiterate our general view that where the intention of any amendments is to prevent "double non taxation", regard must be had to the fact that payments made by an Irish resident taxpayer may in fact be taken into account and taxed appropriately not in the hands of the recipient but through the application of a controlled foreign company charge, US GILTI or an equivalent foreign company charge regime. Accordingly, there is a risk that a flat denial of deduction or imposition of WHT on outbound royalty payments could, in certain instances, result in double taxation where such an outcome would not have otherwise arisen where double tax relief may not be available.

Without prejudice to our earlier comments, where a policy decision results in a denial of a deduction being adopted in legislation, such a provision should consider that the payment may be subject to an inclusion elsewhere in a corporate group, akin to the position adopted by the Hybrid rules in Part 35C TCA97. Equally, any WHT levied on royalty payments should recognise that where it has become apparent that the payments made have been subject to an income inclusion above a zero rate of tax due to a foreign company charge or equivalent that the WHT may be either refunded to the Irish company or allowed in the tax computation for the Irish payer as a credit against the corporation tax liability ultimately payable.

4. Measures in relation to outbound dividend payments

Are there any amendments necessary to relevant legislation regarding the operation of dividend withholding tax, in respect of dividends to no-tax or zero-tax jurisdictions, or jurisdictions included on the EU list of non-cooperative jurisdictions for tax purposes, in order to ensure no double non-taxation? In your response, you may wish to consider all amounts treated as distributions under relevant legislation

Existing provisions on dividend withholding tax (DWT) contained in Irish law[18] provide for the application of DWT on the payment of "relevant distributions", subject to several specific exemptions:

i. Payments to "excluded persons[19]";
ii. Payments to certain non-resident persons resident for tax in a relevant territory (EU Member State or treaty country)[20]; and
iii. Payments to an EU parent company[21].

[16] S835C(2)(a) TCA97
[17] Guidance for tax administrations on the Application of the Approach to Hard to Value Intangibles – BEPS Actions 8 – 10 – approved on 4 June 2018 by the Inclusive Framework on BEPS.
[18] Part 6, Chapter 8A TCA97
[19] S172C TCA97
[20] S172D TCA97
[21] Parent Subsidiary Directive – Council Directive No 90/435/EEC; S831 TCA97

In the case of payments made to EU blacklisted countries, such payments would not fall within the scope of the above existing exemptions. Accordingly, the existing provisions on DWT are sufficient to address concerns with respect to such payments.

In addition, we note from the Country Specific Recommendations in the European Semester Process that emphasis is placed on addressing features of the tax system that "facilitate aggressive tax planning, including on outbound payments". In the context of dividend payments (for which no tax relief is available to the payer) to jurisdictions with a no or zero corporate tax regime (not present on the EU blacklist), it is difficult to identify instances where such payments would facilitate base erosion and/or aggressive tax planning structures Accordingly, any amendment to the existing DWT provisions contained in Irish law would arguably not achieve the aims outlined by the EU Country Specific Recommendations or the commitments contained in the Corporate Tax Roadmap.

5. Consequential amendments

In your view are there any existing anti-avoidance rules that may be simplified or eliminated where new denial of deductibility or withholding tax measures are put in place on outbound payments to no-tax or zero-tax jurisdictions, or jurisdictions on the EU list of non-cooperative jurisdictions?

We have no comments to make at this time.

6. Non-cooperative jurisdictions

Are there any further issues that should be taken into account in relation to payments to jurisdictions included on the EU list of non-cooperative jurisdictions for tax purposes?

We have no comments to make at this time.

Deloitte.

Important notice