Dublin Chamber Submission to the OECD Regarding Action 6 of the OECD's Base Erosion and Profit Shifting (BEPS) project

About Dublin Chamber of Commerce (Ireland):

Dublin Chamber welcomes the opportunity to input into this public consultation on Base Erosion and Profit Shifting. With over 1,300 member companies, Dublin Chamber is the largest chamber of commerce in Ireland and the most representative and broadly-based business group in the Greater Dublin Area. The Chamber's policy work focuses on promoting and improving the competitiveness of the Dublin region.

The Greater Dublin Area (the metropolitan area) accounts for 39% of the State's population, 47% of GDP and nearly half of overall tax revenue. Dublin is also home to 10 of the top 10 global ICT companies and 9 of the top 10 global software companies, making this consultation highly relevant to our members.

Introduction:

Dublin is the capital city of a small country on the periphery of Europe, which has structured its enterprise strategy to overcome the advantages of larger countries through embracing a pro-business open trade and investment model.

The presence of domestic and international enterprises in Dublin is due to a number of competitiveness considerations. The principal disadvantage facing small periphery countries is the lack of access to markets, and this has required a more competitive tax policy. It is sound business thinking applied to policy – price yourself accordingly to the market.

Dublin Chamber welcomed the Irish Government's commitment as stated by the Minister for Finance during the Budget 2015 Statement (14 October 2014):

> *"For over 60 years, foreign direct investment has been a cornerstone of Ireland's economic development. We have competed for and won major investment into Ireland and Europe from some of the largest and most successful companies in the world. With over one hundred and sixty six thousand people employed in over one thousand one hundred companies, the Irish foreign direct investment sector has real substance. Our competitive corporate tax system plays a key role. Ireland's corporation tax strategy has three key elements: Rate, Regime and Reputation."*

The decision by the Government to address the so called "Double Irish" demonstrates a commitment to address the concerns of OECD and EU partners in tackling the issue of aggressive tax planning by multi-nationals. Dublin benefits from having businesses that have a real presence that add to the eco-system and cluster effects necessary to create thriving international city regions.

Dublin Chamber is concerned that OECD's draft discussion paper on Action 6 will create a system that unfairly hinders the future development of small countries.

Principal Purposes Test:

The "Principal Purposes Test" by the design outlined in the "Public Discussion Draft" (21 November 2014 – 9 January 2015) is of concern to Dublin Chamber.[1]

[1] Public Discussion Draft - http://www.oecd.org/ctp/treaties/discussion-draft-action-6-follow-up-prevent-treaty-abuse.pdf

The Chamber broadly supports the conclusion of the Irish Taxation Institute's submission which states:

> *"A company carrying out arrangements and transactions in a larger economy will find it easier to demonstrate the natural business advantages that arise from that economy, than a company in a smaller economy…. Smaller country businesses face considerable uncertainty as to whether they can ever pass the* Principal Purposes Test *and actually may find it impossible to conclude with certainty that they do so. If the test is to remain part of the Action 6 proposals, then it needs to be substantially re-drafted.*
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> *In our view, the* Principal Purposes Test *and commentary on the rule should be drafted in a manner that does not impact on the certainty of access to treaty benefits for locally resident companies with the knock on adverse impact that uncertainty creates on investment location decisions for any business activity where it is intended that real substance and managerial control over the income flows related to that activity will be located in the territory."*

Following this line of reasoning, the Chamber believes that Submission from KPMG Ireland to the OECD (Appendix 1) draws an important conclusion on this point:

> *"It is clear therefore that companies will have far more certainty over passing a* Principal Purposes Test *if they locate in a larger economy than in '*Smaller economies with tax treaties' *solely due to the larger positive externalities enjoyed by a larger economy.*
>
> *…*
>
> *The inclusion of a* Limitation-on-Benefits *provision as an alternative test does not redress the unfair advantage granted to large economies by the* Principal Purposes Test*. Firstly, … the* Limitation-on-Benefits *itself is heavily biased against smaller economies. Secondly, even if the* Limitation-on-Benefits *proposal is redrafted to remove the anti smaller country bias there will, no doubt, always be some cases where taxpayers cannot pass the* Limitation-on-Benefits *test. A large country can avoid this difficulty by implementing the* Principal Purposes Test *only option confident in the knowledge that the natural commercial advantages of its economy make it relatively easy for locally resident companies to pass the* Principal Purposes Test – *this strategy is not available to smaller economies."*

Limitation of Benefits clause:

The Limitation of Benefits clause adds a second hurdle for small countries to gain companies to invest. This proposal aims to prevent tax treaty use where the company is owned or financed from abroad (including public companies traded on a foreign stock exchange). Many companies operating in Ireland, even those that are clearly domestic, seek funding abroad and this is a difficultly. Due to the market size, Dublin positions itself as an EMEA hub for many multi-national companies as a base of their operations helping them to deliver to their global footprint. The Irish Tax Institute's recommendations on this issue are broadly supported by Dublin Chamber.

Conclusion:

Dublin Chamber's concerns on Action 6, as outlined above, have been echoed by Ireland's business & professional community in the submission received as part of your consultation – including Irish Tax Institute, Ibec, and KPMG.

Dublin Chamber is acutely concerned that contrary to the intent of the OECD's work on Action 6 the "Principal Purposes Test" and Limitation-on-Benefits clause will cause increased difficulty for small countries to compete fairly for investment.