Ambásaid na hÉireann, Embassy of Ireland
Washington D.C.

1 March 2017

State Senator Mark Hass
Chair, Senate Finance and Revenue Committee
900 Court St. NE, S-207,
Salem, Oregon 97301

Re: Consideration of "Listed jurisdictions" under Oregon law

Dear Senator Hass,

I am writing to you on behalf of the Government of Ireland in relation to the work of the Oregon Department of Revenue concerning the potential inclusion of Ireland as a "listed jurisdiction"
under Oregon Revised Statutes (ORS) 317.717).

I understand that your Committee is currently considering the *Recommendations on Listed Jurisdictions* submitted by the Oregon Department of Revenue ("the Revenue Report")(Ref.: 150-800-558 (Rev. 12-16)).

The Government of Ireland is surprised and disappointed to learn that the Oregon Department of Revenue recommend including Ireland as a "listed jurisdiction" as set out in Oregon law.

I have set out below Ireland's response to the issues raised by the Revenue Report and our strong view that Ireland should not be included as a "listed jurisdiction".

Under ORS 317.717, when considering including a country as a "listed jurisdiction", a two-stage test applies and the country must fail both tests to fall foul of the legislation. First, it must be determined whether a jurisdiction is one that for the tax year has no or nominal effective tax on the relevant income *and secondly* at least one of the other criteria must apply.

"No or nominal tax on the relevant income"

In relation to the first test, Ireland is not a nominal-tax or a no-tax jurisdiction. We have a corporate tax rate of 12.5% which is statute-based and applied transparently to domestic and international companies. A 12.5% rate is not a nominal amount. Given Ireland's transparent, statute-based corporate tax rate of 12.5%, Ireland does not meet this essential criterion to be a "listed jurisdiction" under Oregon law.

The Revenue Report, recognises at page 54 that Ireland charges corporate income to a rate of 12.5 percent and that "Clearly, a tax rate of 12.5 percent is not a nominal rate of tax".

However, the Revenue Report relies on US Bureau of Economic Analysis (BEA) data to assert that "U.S. corporations in Ireland paid an effective rate of 3.29%" in 2013. Ireland rejects this assertion. While it is not entirely clear from the referencing in the Revenue Report which BEA report is being citied, we believe that the use of BEA figures in calculating the tax rate paid in Ireland is inappropriate. The data is prepared from a general economic perspective rather than to be used for tax analysis.

The BEA statistics work by aggregating data for all foreign-owned subsidiaries of US companies. The BEA provides a breakdown by country of the figures, but the country allocation is done on the basis of place of incorporation rather than location of operations. For all countries, including Ireland, BEA data shows the worldwide profits earned and tax paid of companies incorporated in those countries. It does not consider where the profit generating activities actually take place or where the companies are properly tax-resident.

The BEA figures attributed to Ireland relate to all Irish-incorporated subsidiaries of US companies– and these figures are not adjusted so as to represent only such companies that have operations in Ireland. The figures in BEA data represent the operations of the subsidiaries everywhere, not just in Ireland (to the extent they have any Irish operations at all). It is totally unreasonable to assume that Ireland should fully tax the worldwide income of these companies regardless of whether they are resident in Ireland for tax purpose or where the profit-generating activities actually happen. The BEA data therefore does not give an appropriate measure of the effective corporate tax rate applying to the relevant income of these US multinationals. The relevant income has been overstated by incorrect attribution of profits to Ireland.

Ireland does not meet this essential *no or nominal tax* criterion to be a "listed jurisdiction" under Oregon law. The figures put forward by the Revenue Report are not an appropriate measure of the relevant income and, accordingly, they cause the effective tax rate in the Revenue Report to be greatly understated.

The jurisdiction facilitates the establishment of foreign-owned entities without the need for a local substantive presence

The Revenue Report suggests that Ireland fails the second leg of the "listed jurisdiction" test by virtue of the Irish tax residence rules. It states that Ireland facilitates Irish-established companies to pay little tax where they are managed and controlled in a third-country jurisdiction.

We believe this analysis fails to sufficiently take account the nature of Ireland's tax residence rules and, in particular, fails to appropriately consider changes which Ireland has made in recent years.

In summary, Ireland's key point is that current Irish law does not facilitate the establishment of any entity which can be stateless for tax purposes. Since 1 January 2015, there has been no possibility that Ireland "facilitates the establishment" of such entities.

Any companies incorporated in Ireland since that date cannot be stateless. Ireland's transition period for previously-established companies should not trigger ORS 317.717. In any event, such transition periods are in line with Irish, US and international best practices.

To explain this point, it is worth elaborating on the evolution of Ireland's tax residence rules. Ireland's rules for determining the tax residence of a corporation were inherited upon our gaining independence from the United Kingdom. Irish courts in the 1940's affirmed that English case law on corporate tax residence was valid law in Ireland. This long-established case law set out that a company was to be considered resident for tax purposes not where it is registered or incorporated but instead where it carries on its real business— which the courts held to be where the business is managed and controlled.

Subsequently, in 1999, Ireland introduced a specific statutory qualification to the general common law management and control residence test. This provision was introduced to deter – by making such companies liable to Irish tax – the use of Irish-incorporated companies by criminal elements that had no legitimate business connections with Ireland. It provided that, where a company is incorporated in Ireland and neither it nor any company related to it carries on a trade in Ireland, such company will be treated as resident in the State (unless it would be treated as resident in a treaty partner country for the purposes of a double taxation treaty).

Ireland's general test of residence is different to the US approach of focussing solely on the location of incorporation, but is no less valid given its longstanding origins and history.

However, it emerged that multinational businesses were exploiting the mismatch between Irish and US rules resulting in the possibility of a company being stateless for corporate tax purposes. In 2013, Ireland acted to shut down this mismatch opportunity. Ireland changed its residence laws so that where, by reason of a mismatch of residence rules with a treaty-partner country, an Irish-incorporated company would not be resident in either country, the company will be treated as resident in Ireland. This provision applies to all companies, regardless of when they were established.

It became apparent that US multinationals were still able to enter into arrangements which exploited gaps in US anti-avoidance legislation (Subpart F). Pending action from the US to fix these anti-avoidance rules, Ireland acted in 2014 to ensure that an Irish-incorporated company would automatically be tax resident in Ireland (unless it was already treated as resident in a country with which Ireland has a tax treaty). In line with standard international practice in making substantial amendments to tax law, a transition period until the end of 2020 was allowed for pre-existing companies before the amended residency rules apply.

The sole area of concern for the Oregon Department of Revenue appears to be the transition period for the 2014 changes to Ireland's tax residency rule. Transition periods are standard practice internationally, in the US, and in Oregon when significant legislative changes are being made. Some examples from the US include,

- Affordable Care Act (ACA) – Individual mandate (tax on those without insurance) – three-year transition

- Tax on health insurers – four-year transition
- Excise tax on health plans – (Cadillac Plan tax) deferred until 2018 to allow time for compliance
- Oregon Health Plan – Individual Medical deductions limitations – three-year transition

It should also be noted that the Revenue Report states at page 54 that "an Irish-incorporated company that is managed and controlled from a third country does not pay Irish tax if it was incorporated prior to January 1, 2015". This is not correct. While such pre-2015 companies will not be considered Irish tax resident until 2021, they will still pay Irish tax on any activities that happen in Ireland. From 2021, such companies will be considered tax resident in Ireland.
In any event, the rules in ORS 317.717 require an examination of the *current* position in Ireland. Irish rules clearly do not facilitate the establishment of any company today that can be stateless for tax purposes. As such, Ireland also does not meet the second leg of the test contained in ORS 317.717.

It is inappropriate and incorrect to consider Ireland to be a tax haven

Listed jurisdictions are commonly referred to as "tax havens" and we consider any suggestion that Ireland is a tax haven to be entirely groundless and inconsistent with all interactions between Ireland and the United States on tax matters.

Ireland is not a "tax haven" and, as outlined above, Ireland does not meet the criteria in ORS 317.717 to be included as a "listed jurisdiction." Ireland is in full compliance with all applicable international standards and frameworks and has a longstanding Tax Treaty/Double Taxation Agreement in place with the United States to facilitate the exchange of information and cooperation between US and Irish tax authorities. Moreover, Ireland signed up to the OECD Base Erosion and Profit Shifting (BEPS) recommendations of October 2015 and we have been an early mover in implementing those recommendations, such as country by country reporting, which has already been implemented in Irish domestic law.

Ireland has also been fully engaged in the ongoing work at the European Union level to deal with these issues. As recently as June 2016, Ireland together with our European Union partners agreed the Anti-Tax Avoidance Directive. This Directive introduces five significant corporate tax anti-avoidance measures, the first three of these measure (relating to controlled foreign company rules, interest limitation rules; and hybrid mismatch rules) directly seek to implement OECD BEPS recommendations. The other two measures relate to an exit tax and a general anti-avoidance rule.

It should be noted also that Ireland is not, in any sense, a tax secrecy jurisdiction. Ireland supports the automatic exchange of information between tax authorities as an important tool in the fight against tax fraud and evasion. For that reason we were one of the first countries in the world to conclude an international agreement with the United States on the implementation of the Foreign Account Tax Compliance Act (FATCA) in December 2012. Additionally, as of October 2015, the Global Forum on Transparency and Exchange of Information for Tax Purposes assessed Ireland as being one of only twenty two

jurisdictions globally which attained its top rating of "Compliant". The Global Forum is the leading international body carrying out peer reviews of countries' compliance with international best practice on the exchange of tax information. Furthermore, Ireland has fully implemented the OECD Common Reporting Standard for Automatic Exchange of Financial Account Information, which was inspired by the FATCA. Ireland has also signed up, and implemented, a number of EU Directives providing for comprehensive exchange of information among EU Member States.

Ireland seeks substantive operations of US and other global companies– not brass-plate investment. Many of these operations service the vast EU market of more than 500 million people, as well as international markets beyond Europe. US companies employ more than 100,000 Irish people in these high-value operations, which are critical to their global success.

In return Irish companies employ tens of thousands of Americans across all 50 States, including Oregon. In 2015, Ireland was the 15th largest international market for exports from Oregon and the fourth largest European export market for the State of Oregon.

Ireland was the 6th largest source of international investment into the United States in 2015. The bilateral trade and investment relationship which exists between the US and Ireland is deep, multifaceted and works to the strong benefit of both sides.

We believe that the inclusion of Ireland as a "listed jurisdictions", as provided for in Oregon law, could undermine the strong and mutually-beneficial business links which exist between Ireland and Oregon.

Given that Ireland does not meet the criteria under Oregon law to be treated as a "listed jurisdiction"; Ireland's compliance with all international tax standards; and the mutually-beneficial nature of the economic relationship between our two countries, I would request that the Senate Finance and Revenue Committee rejects the Oregon Department of Revenue recommendation that Ireland be included as a "listed jurisdiction".

I would be most grateful if you would ensure that the contents of this letter are shared with the membership of your Committee and are given due consideration by the Senate Finance and Revenue Committee. Irish officials are available to discuss this issue further or to provide any additional information that you may require about the operation of the Irish tax system.

Yours sincerely,

Anne Anderson
Ambassador