The Consultative Committee of Accountancy Bodies-Ireland

Chartered Accountants Ireland
The Association of Chartered Certified Accountants
The Chartered Institute of Management Accountants
The Institute of Certified Public Accountants in Ireland

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Department of Finance

Tax Treaty Policy Ireland - Public Consultation

Contents

About CCAB-I 3

Introduction 3

CCAB-I recommendations 4

Responses to consultation questions 5

Economic Considerations 5

Does Ireland's tax treaty policy sufficiently cater for the evolving economic and business environment? 5

Do you have any suggestions on how could Ireland's tax treaty policy be enhanced, as a means to continue to facilitate economic opportunity into the future? 6

Does Ireland's tax treaty network sufficiently serve all business sectors in the economy? 6

How can Ireland optimise its tax treaty priorities in the context of recent international tax reforms, notably at the OECD? 7

What should the criteria be for prioritising the negotiation and renegotiation of specific tax treaties in the years ahead? Are there any significant gaps in Ireland's tax treaty network by reference to those criteria? 8

Policy on Developing Countries 9

Are there any specific areas of Ireland's treaty policy which should be modified or tailored, in relation to developing country? 9

When negotiating with developing countries, should more emphasis be placed on the UN Model Treaty? If so, please provide details. 10

Should any specific standard positions, e.g., on source taxation, be adopted for treaties with developing countries? 10

About CCAB-I

The Consultative Committee of Accountancy Bodies – Ireland (CCAB-I) is the representative committee for the main accountancy bodies in Ireland. It comprises Chartered Accountants Ireland, the Association of Chartered Certified Accountants, the Institute of Certified Public Accountants in Ireland, and the Chartered Institute of Management Accountants.

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Introduction

The CCAB-I values the opportunity to engage with the Department of Finance in contributing to the Public Consultation on Ireland's tax treaty policy. [1]

This submission draws on our members knowledge and experience in tax treaty policy and aims to ensure that Ireland's tax treaty network supports business operating on a multijurisdictional basis and promotes continued investment in Ireland. Consideration has been given to the role that Ireland's tax treaty policy plays in benefiting not only the Irish economy, but also that of developing economies.

The recommendations are drawn from the CCAB-I's Committees, in particular the Tax Committee South. Members of the CCAB-I will be available to meet with Department of Finance officials should further discussion on any particular area of this submission be required or to support additional initiatives in this area.

[1] Department of Finance, Tax Treaty Policy Ireland – Public Consultation, 7 April 2021.

CCAB-I recommendations

Economic Considerations

- Any update to Ireland's tax treaty policy needs to consider the implications of remote working abroad with particular reference to articles on employments and permanent establishment, and their appropriateness for extensive remote working abroad.
- A broadening of the Irish tax treaty network may facilitate operations currently located in the United Kingdom seeking to maintain a presence in the European Union.
- Ireland's tax treaty policy should look to better serve the aircraft leasing and financial services sector by focusing on supporting trade with Asian, African, and South American countries.
- Ireland's tax treaty priorities in the context of international tax reform should seek to ensure dispute resolution mechanisms are supported, enhanced and reformed where appropriate.
- Ireland should seek to renegotiate its double tax treaty with Japan, with a view to achieving terms similar to other European nations.

Developing countries

- The CCAB-I considers actions outside of tailored treaty policies to be a more effective means of assisting developing countries.
- Ireland can support developing countries by participating in initiatives like Tax Inspectors Without Boarders.
- The practice of negotiating with developing countries should continue to consider the provisions of both the UN and OECD model conventions.
- The adaptation of an exclusive standard position for treaties with developing countries is inappropriate. The unique circumstances attaching to each treaty partner should be considered in every negotiating process.

Responses to consultation questions

Economic Considerations

Does Ireland's tax treaty policy sufficiently cater for the evolving economic and business environment?

As working arrangements continue to evolve due to the Coronavirus pandemic and with remote working set to become a permanent feature of many organisations, a review of Ireland's tax treaty policy presents an opportunity to consider the potential tax implications arising from employees working in another jurisdiction. This does not appear to have been considered as part of the Government's Remote Working Strategy[2].

Employees currently working in Ireland seeking to work remotely abroad have the potential to fall outside the Irish tax base, where the duties of their employment are exercised abroad. Revenue approximate that 1 million people are employed in multinational companies in Ireland.[3] The combined income tax, USC and PRSI payments made by this group of highly mobile workers for 2019 amounts to €13.4 billion.[4] Foreign owned multinationals account for 32 percent of employment and 49 percent of employment taxes.[5] Careful consideration must be given to the potential impacts of remote working abroad for this cohort of taxpayer given the value of payroll tax receipts to the Irish Exchequer. Further consideration must also be given to Northern Ireland residents who, but for remote working, would carry on the duties of their employment in the Republic.

Beyond this, the corporate tax liabilities of companies may be impacted where remote working abroad gives rise to a permanent establishment in that country, and in turn will likely give rise to implications from a transfer pricing perspective.

The evolving remote working environment may have significant implications for individuals and companies, as well as the Irish Exchequer. The implications of a global minimum tax for Ireland could be further compounded where employees seeking to work remotely abroad undermine the substance of corporations in Ireland.

Any update to Ireland's tax treaty policy needs to consider the implications of remote working abroad with particular reference to articles on employments and permanent establishment, and their appropriateness for extensive remote working outside Ireland.

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[2] Government of Ireland, Making Remote Work – National Remote Working Strategy, January 2021.
[3] Office of the Revenue Commissioners, Corporation Tax 2020 Payments and 2019 Returns, April 2021. https://revenue.ie/en/corporate/documents/research/ct-analysis-2021.pdf
[4] Ibid.
[5] Ibid.

Do you have any suggestions on how could Ireland's tax treaty policy be enhanced, as a means to continue to facilitate economic opportunity into the future?

Opportunity within Ireland's tax treaty policy arises from the withdrawal of the United Kingdom from the European Union. The United Kingdom held the broadest network of tax treaties in the European Union before its departure, having treaties with 131 countries.[6]

Ireland's position as the only native English-speaking country in the EU, along with its proximity to the United Kingdom and similarities in its economic landscape, presents opportunities from a Foreign Direct Investment (FDI) perspective.

Ireland has signed double tax treaties with 74 countries (73 of which are in effect).[7] On average, European countries hold approximately 82 double tax agreements.[8]

A broadening of the Irish tax treaty network, with a view to maintaining the quality attributed to Irish treaties to date, may facilitate operations currently located in the United Kingdom seeking to maintain a presence in the European Union.

Does Ireland's tax treaty network sufficiently serve all business sectors in the economy?

China overtook America as the world's largest aviation market in 2020, four years ahead of the International Air Transport Association's (IATA) initial predictions due to the impact of the pandemic. As China re-establishes its international routes and re-focuses on open skies with many countries along the "Belt and Road" route[9] it is important for Ireland to ensure that it maximises and expands the tax treaty network to support the aircraft leasing industry.

A tax treaty agreement is required with Indonesia. There is a rapidly growing demand for air transport in Indonesia, but the lack of a treaty with Ireland means that aircraft leasing agreements have to be completed through third countries. A tax treaty with Indonesia would provide for frictionless aviation trade with a country expected to become the fourth-largest air passenger market globally by 2039.[10]

Similarly for the financial services sector, the Belt and Road Initiative provides opportunity for financing projects in southeast Europe and Africa from Ireland. There are 71 countries taking part in the Initiative[11], a number of which are unconnected to Ireland's tax treaty network.

Ireland's financial services sector is disadvantaged relative to Luxembourg, due to Ireland not having secured a double tax treaty with Brazil. In 2019, Brazil was the ninth largest economy in the world and the largest in South America, with a GDP of $1.84 trillion.[12] It accounts for a large portion of

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[6] A. Kristina Zvinys, Tax Foundation – Tax Treaty Network of European Countries, September 2020.
[7] https://www.revenue.ie/en/tax-professionals/tax-agreements/double-taxation-treaties/index.aspx
[8] A. Kristina Zvinys, Tax Foundation – Tax Treaty Network of European Countries, September 2020.
[9] https://www.beltroad-initiative.com/belt-and-road/
[10] International Air Transport Association, 2019.
[11] https://eng.yidaiyilu.gov.cn/info/iList.jsp?cat_id=10076&cur_page=1
[12] World Bank, 2019.

emerging market investment portfolios. Further to this, bilateral trade between Ireland and Brazil totalled $744 million and the Brazilian community in Ireland is estimated at 18,000 nationals.[13] CSO statistics indicate that the second largest cohort of foreign nationals employed in Ireland are Brazilian.[14]

Ireland's tax treaty policy should look to better serve the aircraft leasing and financial services sector by focusing on supporting trade with Asian, African, and South American countries.

How can Ireland optimise its tax treaty priorities in the context of recent international tax reforms, notably at the OECD?

In addressing the tax challenges arising from the digitalisation of the economy, current OECD proposals require both the Subject to Tax Rule (STTR) and the Switch-Over Rule (SOR) to be implemented through changes to existing tax treaties. The OECD suggestions for implementation include bilateral negotiations and amendments to individual treaties, as part of a multilateral convention, or alternatively as part of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI), emerging from BEPS Action 15.[15] The MLI offered a coordinated and efficient approach to introducing these changes, which included a flexible approach and protected the tax sovereignty of nations.

In determining the appropriateness of a multilateral convention approach to implementing the STTR and the SOR it is important that these rules facilitate flexibility for tax policy changes to ensure that tax sovereignty is not eroded.

Proposals within the OECD Blueprints seek to improve the tax certainty process through innovative dispute prevention and dispute resolution mechanisms (tax certainty component), relying on the existing transfer pricing system. The latest statistics show that there are over 6,000 open transfer pricing cases in Mutual Agreement Procedure (MAP) awaiting resolution globally.[16] On average, MAP transfer pricing cases closed in 2019 took 32 months to close. [17]While it is recognised that the increasing number of transfer pricing disputes may be attributed to tax authorities seeking to tax additional profits of multinational groups, something that the OECD proposals seek to resolve, the time to resolve MAP cases unrelated to transfer pricing disputes was 22 months.[18] The scope of new taxing rights and the profit allocation methods within the OECD's proposals are potential areas for further disputes to arise.

Ireland's tax treaty priorities in the context of international tax reform should seek to ensure dispute resolution mechanisms are supported, enhanced and reformed where appropriate. Further priorities

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[13] https://www.gov.br/mre/en/subjects/bilateral-relations/all-countries/ireland
[14] CSO Statistics, Census of Population 2016 – Profile 11 Employment, Occupation and Industry – Labour Force, Nationality, Migration, Foreign Languages.
[15] OECD/G20 Base Erosion and Profit Shifting Project – Addressing the Tax Challenges Arising from the Digitalisation of the Economy Highlights, October 2020.
[16] OECD – Mutual Agreement Procedure Statistics for 2019, October 2020.
[17] Ibid.
[18] Ibid.

should include the promotion of flexibility within a multilateral convention approach to implementing the STTR and the SOR.

What should the criteria be for prioritising the negotiation and renegotiation of specific tax treaties in the years ahead? Are there any significant gaps in Ireland's tax treaty network by reference to those criteria?

Ireland's tax treaty policy should prioritise the modernisation of existing treaty relationships. The modernisation of tax treaties under digital tax reform and the safeguarding of Ireland's interests if a global minimum tax rate becomes a reality should drive the modernisation initiative.

Additional criteria for prioritising the negotiation and renegotiation of specific tax treaties include:

- the business needs of specific industries
- the opportunities available to Irish businesses within emerging markets
- the date a tax treaty was signed may provide indication of a need for modernising
- reviewing the terms of Irish tax treaties relative to other European countries and countries competing for specific industries.

The Irish double taxation treaty with Japan was signed at Tokyo on 18 January 1974. The treaty provides less favourable terms relative to other European countries. Ireland seems particularly disadvantaged in Article 13 which provides for withholding tax on the gross amount of royalties not exceeding 10 percent.[19] Many European countries have achieved a zero withholding tax rate on royalties, as well as more beneficial rates for interest and dividend withholding tax.[20]

Ireland should seek to renegotiate its double tax treaty with Japan, with a view to achieving terms similar to other European nations.

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[19] Double Taxation treaty between Ireland and Japan - https://www.revenue.ie/en/tax-professionals/documents/double-taxation-treaties/j/japan.pdf

[20] https://www.dits.deloitte.com/#Jurisdiction/33

Policy on Developing Countries

Are there any specific areas of Ireland's treaty policy which should be modified or tailored, in relation to developing country?

We recognise the importance of supporting developing countries to advance their administrative and legal infrastructures to raise tax revenue to resource their economies. However, the CCAB-I considers that tax treaties may not be an efficient and effective means of promoting investment in developing countries in a manner which adequately protects the interest of the Irish investor, in tandem with that of the developing country.

Effective and fair tax systems provide a fundamental basis for long-term sustainable development finance.[21]

The challenges of attracting FDI to developing economies rests with the host countries in ensuring transparent, broad, and effective policies exist to facilitate an environment for investment and to build the human and institutional capacities to implement them. [22]

Developing countries are challenged by a lack of modern infrastructures such as IT systems and registers and weak tax authorities' capacity due to skills shortages, including treaty negotiation skills.[23]

The CCAB-I considers actions outside of tailored treaty policies for developing countries to be a more effective means of assisting developing countries with long-term sustainable development finance. Ireland can support developing countries in upskilling staff and investment in modern infrastructure can facilitate increased tax collection in developing countries.

The core focus of Irish tax policy should be ensuring the protection of Irish investors. Tax treaty policy with developing countries is less influential to an Irish investment decision than stable governments, reliable legal and tax administration systems.

Are there international best which Ireland can draw on to further enhance our approach to the specific circumstances of developing countries?

Ireland's commitment to delivering and supporting the delivery of the 17 Sustainable Development Goals included in the 2030 Agenda for Sustainable development is fundamentally linked to increasing sustainable development finance. The focus of Irish efforts should be grounded in continued involvement in organisations such as the Addis Tax Initiative and Tax Inspectors without Borders (TIWB). These organisations provide a mechanism for Ireland to share skills and knowledge with developing countries in how to conduct tax treaty negotiations.

[21] Post 2015 Domestic Resource Mobilisation, OECD and Post-2015 reflections, Element 11, Paper 2
[22] Foreign Direct Investment for Development – Maximising benefits, minimising costs – OECD, 2002.
[23] Linnea Mills, Barriers to increasing tax revenues in developing countries, March 2017.

Ireland should be committed to supporting developing countries in establishing or enhancing clear and beneficial tax treaty policy guidelines.

Ireland has demonstrated its commitment to tackling harmful tax practices by its proactive stance on putting anti-BEPS measures in place through engagement in the OECD/G20 Inclusive Framework on BEPS. [24] Ireland remains committed to continued tax reforms[25], which should ensure appropriate and effective taxation of returns from Irish investment in developing countries.

When negotiating with developing countries, should more emphasis be placed on the UN Model Treaty? If so, please provide details.

It is widely recognised that the UN model provisions include greater source taxation rights than the OECD model. Many features of the OECD model treaty are appropriate where the flows of trade are relatively equal, and the residence country taxes income exempt by the source country. However, the UN model convention relies on the pattern set by the OECD model. Many of the provisions with the two models are identical, or nearly so. Accordingly, the UN model treaty should not be viewed as entirely separate from the OECD model treaty.

Ireland's tax treaties with developing countries typically include provisions from both treaty models. The practice of negotiating with developing countries should continue to consider the provisions of both treaty models and have regard to the interest of the Irish investor primarily. It may be appropriate to consider certain provisions of the UN model treaty on a country-by-country basis with reference to the typical Irish investor scenario.

Should any specific standard positions, e.g., on source taxation, be adopted for treaties with developing countries?

While recognising the potential benefits of sourced based taxation for developing countries, as with residence taxation, difficulties arise in the exclusive application of source-based principles where countries are not economically balanced.[26]

The adaptation of an exclusive standard position for treaties with developing countries is inappropriate. The unique circumstances attaching to each treaty partner should be considered in every negotiating process.

[24] Government of Ireland, Ireland's Corporation Tax Roadmap – Incorporating implementation of the Anti-Tax Avoidance Directives and recommendations of the Coffey Review, September 2018.
[25] Department of Finance, Ireland's Corporation Tax Roadmap, January 2021 update.
[26] Professor Dale Pinto, Bulletin for International Taxation July 2007, Exclusive Source or Residence-Based Taxation – Is a new and simpler world tax order possible?