

Tax Division,
Department of Finance,
Government Buildings,
Upper Merrion Street,
Dublin 2
D02 R583

07 May 2021

Re: Tax Treaty Policy Consultation

To whom it may concern,

I hope this letter finds you well. I am writing to communicate the views of the broad Ibec membership on the issues raised in the consultation on Ireland's approach to tax treaties. Ibec represents the interests of Irish business including indigenous and multinational enterprises, and SMEs, spanning all sectors of the Irish economy. Ibec and its 38 sector associations work with government and policymakers at a national and international level to shape business conditions and drive economic growth. Ibec is also a member of Business at OECD and BusinessEurope.

Ibec, as evidenced through its interaction on both domestic, ATAD and OECD BEPS initiatives, is actively supportive of tax initiatives that seek to align profit with substance globally. In addition, Ibec and its members are in favour of initiatives that seek to provide business with the tax environment it needs to support growth and investment.

Within this broad policy perspective, Ireland's tax treaty network plays a key role in supporting Irish business to internationalise and compete in foreign markets. A broad, consistent and comprehensive treaty network that seeks to eliminate double taxation and contains strong dispute resolution mechanisms can provide business with certainty when expanding or selling abroad. It is also the case that a broader base of tax treaties will provide a broader base for Irish investment abroad in assets markets – for example ESG-qualifying assets and green bonds – which will grow in significance over the coming years.

Priorities for enhancement

Ibec members have set out three main objectives when it comes to the development of the Irish Tax Treaty Policy:

1. Expanding the breadth of the Irish tax treaty network
2. Aligning with OECD Model Treaty Provisions
3. Focusing on Physical PE and minimisation of Withholding Tax

Figure 1: Irish trade with non-treaty countries



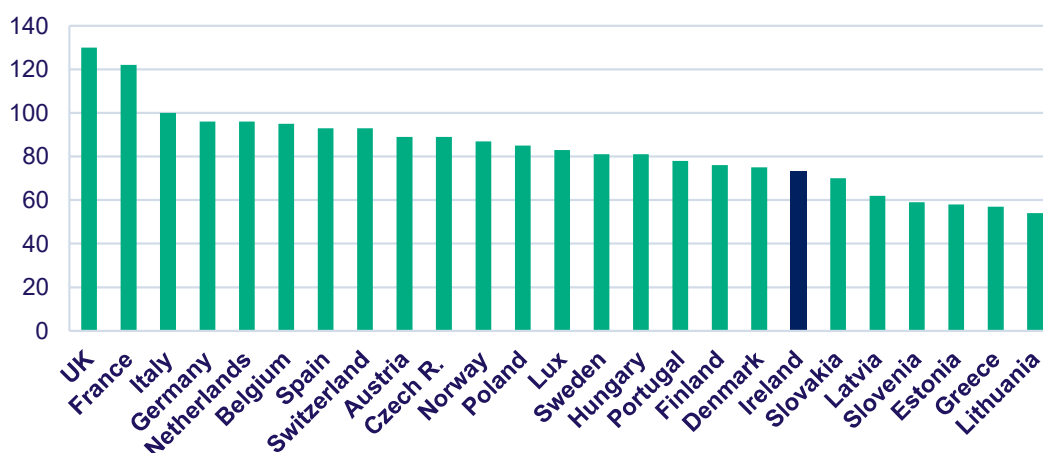
Source: Ibec calculations from CSO data

As it stands Ireland's network breadth is average amongst EU States (Figure 2) as measured by the number of countries. However, it is generally of very high quality and has strong coverage when measured by trade density. Ibec members have identified several regions and countries in which we believe the scope and breadth of our tax treaty network could be enhanced over the coming years. This is not an exhaustive list but seeks to represent the views of the broadest range of our members and is balanced by evidence on the countries trade importance amongst non-tax treaty countries.

The list includes South East Asia (Indonesia, Philippines), South America (Brazil, Colombia and Argentina) and Africa (Nigeria). Those six countries account for almost €3 billion of Irish trade in goods and services – with Indonesia and Brazil accounting for almost two-thirds of that figure. It also accounts for the major trade partners with which we do not have a tax treaty. As concerns existing treaties with other countries - Indonesia has treaties with over

70 countries, Brazil with 37, the Philippines with 43, Argentina with 25, Colombia with 14 and Nigeria with 12. As such, there is evidence that these countries may be open to negotiations under the right circumstances. We believe that these countries should form the focus, albeit not an exclusive one, when it comes to expanding the Irish tax treaty network over the coming years. Indeed, the culmination of the negotiations on Pillar 1 and Pillar 2 at the OECD may give Ireland a renewed mandate when it comes to negotiations (for example with Brazil).

Figure 2: Number of tax treaties, 2019



Source: Tax Foundation analysis based on EY “Worldwide Corporate Tax Guide, 2020”

Given the ongoing reform of global corporate taxation at the OECD it may be too early to analyse effectively how Ireland’s tax treaty network should develop to respond to the proposals which may be agreed under the OECD BEPS process. What we can say is that Ibec members are strongly supportive of aligning Ireland’s current and future treaties to the OECD Model Treaty consistently – and particularly as concerns Article 12. This is due to the OECD’s principles-based track record and history of developing model treaties through consensus between States. Where existing treaties diverge significantly from this standard (e.g., Japan and Australia) they should be primary targets for renegotiation.

On the technical content of treaties, a strong preference of our members was that the focus of future or re-negotiated treaties be on maintaining a basis of physical presence based permanent establishment and minimising the capital and liquidity costs of excessive withholding taxes. Ibec supports Ireland’s continued reservation of its position regarding the changes to the definition of “Permanent Establishment” (as regards the conclusion of contracts) contained in the MLI. We note that this is consistent with the approach taken by most other OECD Member States. We also note that Withholding tax challenges can be

minimised by focusing on reducing rates where possible and resisting pressures for expansion to include items such as digital services, technical services or software payments.

Finally, given the broad range of sectoral and company specific interests at play when considering the ongoing development of the tax treaty network, it is our view that this could best be done through considered stakeholder engagement under the new framework for domestic stakeholder engagement which formed part of the recent update to the Corporate Tax roadmap.

Conclusion

We look forward to working with the Department on these matters and both Ibec and its members remain available to work with you and your team over the coming months on this and any other areas which arise.

Kind regards,

Gerard Brady,
Chief Economist
Ibec