

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

22 July 2022

Re: Consultation on Pillar Two Proposals

To whom it may concern,

I am pleased to communicate the views of Ibec and its members on the issues surrounding the Consultation on Pillar Two Proposals.

Ibec is Ireland's largest business representative. It represents the interests of all Irish businesses including indigenous and inbound multinational enterprises, Irish PLCs and SMEs, spanning all sectors of the Irish economy. Our positions and policies are shaped by our diverse membership, which employs 70% of the private sector workforce in Ireland.

The structure of our membership is reflective of the Irish economy with just over 10% of member firms employing over 250, 30% employing between 50-250 and 60% are firms employing under 50 employees.

Ibec itself is a substantial business team of 250 professionals, 39 trade associations covering a range of industry sectors including retail, financial, food, drink, telecommunications, MedTech, BioPharma, property, utilities, forestry, audio-visual, manufacturing, travel, hospitality and many more. We have 6 offices around Ireland as well as an international office in Brussels.

General comments

It is first important to say that Ibec has been supportive of an OECD agreement. This is because a multilateral agreement is an improvement on any conceivable alternative – for example, unilateral measures. Over recent years, the growth in unilateral and

uncoordinated changes in the way in which countries tax corporates has introduced growing uncertainty to trade and investment globally.

The 2015 BEPS agreement was a significant success in global tax policy. Ibec fully supports its intent and substance when it comes to targeting BEPS activities which undermined fair competition. Irish business continues to support the multilateral basis of the BEPS programme of work. Tax reform must not be a temporary patchwork of contradictory unilateral changes but an overarching international agreement on how to fundamentally define where value is created, and substance is held in the value chains of companies.

The GloBE rules, though imperfect, also provide an opportunity to roll back unilateral measures, avoid damaging uncertainty and reduce the risk of tax policy spilling over into other areas of global trade and investment. For this reason, Ireland should continue to actively engage with other members of the Inclusive Framework when it comes to global implementation.

We believe consistency with the GloBE Model Rules and across jurisdictions is key to efficient and effective implementation. Consistency of the Irish legislation with the GloBE Model Rules and the European Directive is key to ensure tax certainty for tax authorities and taxpayers alike. These rules will prove extremely complex to implement, test and understand at a global level – for this reason a commitment to consistency and simplification is a common concern across our membership.

At the same time, it is vital that this agreement retains its global nature. We have maintained a concern over recent years that some countries, particularly the US, may struggle to meet the commitments they have made at OECD level. Ibec members have ongoing concerns about the equivalence of an unreformed US Global Intangible Low-Taxed Income (GILTI) and its status as a qualified regime in the OECD framework. A GILTI which is not recognised as equivalent may lead to double taxation for Irish companies with top-up taxes potentially due in both the US and Ireland, on the same income. If that transpires then GILTI should at least be considered a CFC regime. Similar concerns exist with US BEAT as concerns Irish headquartered companies. There are also significant concerns around the operation of US Foreign Tax Credits as regard the Qualified Domestic Top-up Tax (QDTUT). It is yet unclear in the US if the QDTUT would be accepted for the purposes of either Foreign Tax Credit regime or GILTI, with knock on risks of double taxation.

Implementation issues

There is still major uncertainty in the US. This makes definitive comments on some of the questions raised in the consultation difficult. However, members have identified several key priorities to help ensure implementation of the GloBE rules in Ireland goes smoothly and avoids any major impacts on our competitiveness.

Companies are strongly supportive of the Irish legislation being drafted to closely align with the proposed European Directive. In turn, this should keep close alignment with the GloBE Model Rules. When it comes to ambiguity in these rules – for example, definitions of groups, constituent entities or excluded entities – this will need to be made clear in domestic legislation and guidance. As it stands domestic legislation has several different definitions of ‘group’ which are not aligned with Article 1.2.2 of the GloBE Model Rules. The definition in domestic legislation of ‘control’ will also need to be expanded to align with the GloBE Model Rules.

The definition of a PE in Article 10.1 of the GloBE Model Rules will also need to be expanded upon in domestic guidance given it is silent on other scenarios where a PE may arise. Clarification will be needed on intra group financing arrangements under Article 3.2.7 and when computing adjusted covered taxes clarification will be required on Article 4.1.3(d) (whether this related to both amounts owed and due) and Article 4.4.1 on recasting of deferred tax expenses. In this case, a smoothing mechanism to allow for refund of top up taxes in year one should be implemented through the implementation framework and introduced via domestic legislation.

Ibec members are also supportive of widely applicable Safe Harbour mechanisms such as white lists and use of existing CbCR data. A CbCR safe harbor would reduce the compliance burden on businesses. We recommend establishing a simplified safe harbor that would exempt certain groups from performing GloBE calculations if it is clear the ETR will be above the global minimum rate of 15 percent.

Ibec members are strongly supportive generally of the implementation of a Qualified Domestic Top-up Tax (QDTUT). A QDTUT could ensure collection of taxes in Ireland and could potentially enhance our competitiveness relative to the alternative. Some members have suggested the simplest method of implementation of a QDTUT would be for it to

replace the existing corporate income tax, with existing attributes of the corporate tax system carried over. Members also have suggested that a top-up tax should not apply where there is no net GloBE income for a jurisdiction or where covered taxes are negative and less than GloBE income or where adjusted covered taxes are negative and are less than the GloBE Income or Loss for that jurisdiction multiplied by the minimum rate.

It is worth noting, however, that no firm decision on the QDTUT should be made in the absence of clarity on how it would interact with both the US GILTI and US Foreign Tax Credit Regime. It is yet unclear in the US if the QDTUT would be accepted for the purposes of either Foreign Tax Credit regime or GILTI, with knock on risks of double taxation.

When it comes to the R&D tax credit it is crucial that the regime qualifies as a “qualified refundable tax credit” under the GloBE rules. This will mean that it must be treated as income in the calculations of the effective minimum tax rate, rather than as reducing covered taxes. In addition, any changes to the US GILTI or SHIELD or US foreign tax credit rules will have to be studied carefully to ensure the R&D tax credits benefits remain attractive under any new regime. To ensure that the Irish R&D tax credit qualifies as a “qualified refundable tax credit” there will need to be changes to the ability of the credit to be fully paid in cash or cash equivalents. There will also need to be consideration given to an alternative R&D credit regime which operates against payroll taxes or is a cash refundable without any link to corporate tax, in the context of US Foreign Tax Credits. In line with the recent UK consultation, there should be some effort made to provide clarity for companies on the changes necessary and the timing of those changes to ensure that the R&D tax credit would qualify as GloBE income rather than a reduction in covered taxes. There will also need to be reviews of existing regimes such as s.291A TCA to ensure adverse impacts do not arise.

As outlined in a consultation earlier this year Ibec also supports a move to a territorial system of taxation for Ireland on the basis that there are many wide-reaching policy benefits of such a move. These include reduced complexity, lower administrative costs and greater certainty for taxpayers. Within the implementation of Pillar 2 there are additional reasons to transition given the GloBE system aligns with common definitions of excluded dividends used in participation exemptions in most OECD countries. There are strong precedents elsewhere in the world in transitions to this type of regime. Indeed, Ireland is unusual as the only EU country left operating a global regime and one of only four OECD countries doing so. In the context of BEPS, ATAD and both Pillar 1 and Pillar 2 – where

global tax systems are becoming more standardised – this should apply, at least, to all members of the Inclusive Framework on BEPS. In addition, there are several examples (not least the UK) operating elective regimes – which should form the basis for the new Irish regime.

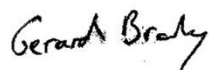
In the same sense, the increased complexity of Ireland's interest deductibility rules combined with new ATAD rules, proposals for new rules under the EU DEBRA and a new layering of GloBE Model Rules will require simplification of the overall system to avoid it becoming vastly complex compared to our competitors. Utilising the existing provisions of the Irish corporate tax regime with regard to calculations of taxable profits in non-Euro currency will also help ease the administrative burden on taxpayers.

Finally, transition should take a proportionate approach to penalties and develop a non-adversarial model for dispute resolution, interpretive issues and cases of double taxation. There are concerns within Ireland about the transition to US GAAP rules relative to other standards such as IFRS. There will also need to be clarity in transition on issues surrounding deferred tax assets and intragroup asset transfers.

Conclusion

Ibec welcomes the opportunity to raise these issues with the Department in the context of a move toward implementation of the Pillar 2 regime at both a domestic, EU and international level. With an implementation date proposed for January 2024, it is crucial that this be the first in an ongoing process of consultation. It is our view that the transition to implementation will require at least 12 months lead in for companies and tax administrations from a process perspective. Early understanding will be key. As such, an intensified engagement on draft 'straw man' legislation should take place with stakeholders in the coming months. We welcome the continued proactive nature of engagement from the Department and look forward to further engagement as the year progresses.

Yours sincerely



Gerard Brady
Head of National Policy and Chief Economist