Submission to the Consultation on the Recommendations made by the Coffey Review on Ireland’s International Tax Strategy

Contribution by Attac Ireland

January 2018

Introduction

We are grateful for this opportunity to contribute to the consultation on the recommendations made by the Coffey Review on Ireland’s International Tax Strategy. In April 2017, Attac Ireland made a submission to the review of the corporation tax code conducted by Seamus Coffey, in which we suggested that Ireland consider supporting the CCCTB process initiated by the European Commission. We were disappointed by the treatment of that suggestion in the Coffey Review.

We appreciate Minister Donohoe's emphasis on certainty, and on the need for the Irish corporate tax system to be "competitive, transparent and stable in a changing international environment." However, competition always implies winners and losers and, as we stressed in our previous submission, cooperation may ultimately be more beneficial, as competition can easily lead to a race to the bottom in which all are losers.

The Coffey review focuses on implementing BEPS recommendations and on Ireland's engagement with EU tax proposals, but although the EU's attempts at tax harmonisation through the CCCTB are described (Box 8.1), no comment or recommendations are made. And yet, as pointed out by Minister Donohoe, "change also brings opportunities". The CCCTB would introduce one major opportunity: that of eliminating profit shifting through transfer mispricing, which is so detrimental to all countries and in particular to developing countries who are more dependent on revenue from corporate taxation.

Already, in 2013, in a paper entitled "Is the International Tax System Fit for Purpose, Especially for Developing Countries", [1]Professor Sol Picciotto argued that the concepts of permanent establishment, arm's length, controlled foreign corporations and transfer pricing had become increasingly inadequate, and he put forward proposals for an evolutionary shift towards a unitary approach for taxing TNCs.

Even if all BEPS recommendations are implemented, it is expected that transfer mispricing will remain an issue.

The complexity of the project demands that tax authorities be well resourced and staffed with highly qualified transfer pricing experts, whose skills will also be much in demand from the private sector and therefore very valuable. We note recommendation 15 of the Coffey Review, that "to reduce uncertainty and ensure that Ireland protects its corporation tax base, Ireland should ensure an adequately resourced Competent Authority". Even if it is feasible for Ireland to ensure an adequately resourced Competent Authority, one wonders whether it will be affordable for developing countries and whether *they* will be able to protect their corporation tax base.

As noted in the Coffey Review in chapter 8.4.13, "While the minimum standards agreed under BEPS action 14 will improve tax certainty, there is still a risk that competent authorities will not come to agreement regarding the resolution of a MAP[2] case", which is why action 15 of the BEPS project provides for the

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[1] http://www.ictd.ac/publication/2-working-papers/82-is-the-international-tax-system-fit-for-purpose-especially-for-developing-countries

[2] Mutual Agreement Procedure

introduction of a secret arbitration tribunal to adjudicate on transfer pricing disputes, something which is likely to create much unease in civil society. Ireland has committed to such a process, but, as pointed out by the Global Alliance for Tax Justice in its 2015 evaluation of the G20 OECD BEPS project: “Entrusting decisions involving often hundreds of millions of dollars to a secret and unaccountable procedure of third party adjudication is a totally inappropriate response to deal with problems caused by vague rules at the outset. Such a procedure is especially unsuitable for developing countries, which lack the resources to combat the complex arguments put forward by specialist professional firms on behalf of multinational enterprises. Furthermore, the system is biased since the revolving door between government tax departments and those professional firms creates a community of like-minded ‘experts’ committed to orthodox OECD approach”.[3]

Conclusion

Whatever measures Ireland chooses to implement following the Coffey Review recommendations, we believe that Ireland should be prepared to join with other EU Member States to explore other avenues for taxing multinational corporations and that it remains important for Ireland to engage in discussions on the CCCTB proposal with an open mind.

[3] https://www.taxjustice.net/wp-content/uploads/2015/09/GATJ-BEPS-2015.pdf