Ibec submission to the Review of the Corporation Tax Code

January 2018

By e-mail: ctreview@finance.gov.ie
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Ref: Review of the Corporation Tax Code – Public consultation

Dear Sir/Madam,

I am pleased to communicate the views of Ibec and its members on the issues surrounding the Review of the Corporation Tax Code following on from our previous submission to the Coffey review. Ibec represents the interests of Irish business including indigenous and multinational enterprises and SMEs, spanning all sectors of the Irish economy. Ibec and its sector associations work with government and policy makers at national and international level to shape business conditions and drive economic growth.

General comments

Ibec as evidenced through its interaction on the OECD BEPS initiative – both directly, through BusinessEurope and the Business at the OECD (BIAC) - is actively supportive of international tax initiatives which seek to align profit with substance worldwide. In addition, Ibec and its members are in favour of initiatives which seek to provide business with the tax environment it needs to support growth and investment.

We were generally welcoming of the Coffey report, it represents a substantial piece of work and an important analysis of how our international taxation regime has developed and could evolve into the future. The report also contained several sensible recommendations. It is true, however, that some of these recommendations will require careful thought to avoid any unnecessary negative impacts on the certainty of the tax regime. We welcome the opportunity to discuss further with the Department any of the issues raised in this submission.

This submission takes places in a context of much uncertainty. Recent years have seen the advent of BEPS which has represented the biggest change in the global corporate tax system in decades. This work continues in discussions around BEPS Action 1 and digital taxation which should see some progress in the early part of this year. At a European level we have also seen the re-emergence of CCCTB and Public Country-By-Country Reporting (CBCR) proposals along with various other tax reforms. The US has also undergone major corporate tax reform in recent times with the net result for Ireland still unclear.

It is worth restating that despite these recent challenges, Ireland's model of a small, business-friendly open economy within Europe has continued to demonstrate serious substance, with accelerating investment and employment in highly globalised industries. Ireland's corporation tax strategy, while not the sole reason for this success, is a major part of our offering and must be safeguarded. We must be fully conscious of the opportunities and competitive threats to our FDI driven growth model, which exist in Europe, the UK and US, and be prepared to act accordingly.

In this context the current consultation on a number of those policy considerations is welcome.

Specific Views

In this section we will outline the views of our members, where broad agreement existed, on a number of issues which were raised during the current consultation.

1. **Territorial tax base and CFC rules**

In general, feedback from Ibec members suggested that a move to a territorial tax regime with an opt-in (branch-by-branch) to full branch exemption would be the best option available to the state given that the implementation of a CFC regime is necessary under Article 7 of the ATAD in any case. The overwhelming view was that in the absence of a move toward a territorial tax regime then Section 24 would need to be radically overhauled to simplify the current credit-based regime for companies. Companies were of the view that given the operational outcome of the current regime, moving to a territorial regime would expose the State to little if any cost implications relative to the status quo.

When it comes to the new CFC rules there was no agreed view among industry on the appropriate approach under Article 7. The optimal approach will be heavily reliant on the type of company and their structure. Given the alternative optimal approaches the issue will require further consideration and consultation in advance of transposition. Considering the economic importance of the various sectors involved it is worth giving further thought to possible solutions within the confines of the ATAD. Finally, there was broad support of the need to avail of turnover and profit-based exclusions within the ATAD for smaller companies.

2. **Transfer pricing**

Ibec is supportive of the recommendation to "provide for the application of the OECD 2017 Transfer Pricing Guidelines incorporating BEPS Actions 8, 9 and 10 in Irish legislation." In general, this is in keeping with the spirit of the BEPS process and is likely to represent a new international standard.

The further recommendations on extending transfer pricing to SMEs and non-trading income received a more mixed response. There was general agreement that extending the scope of legislation to SMEs would impose a burden on those companies which was disproportionate when compared to the possible gains in terms of eliminating aggressive tax planning among SMEs. Several issues must be borne in mind here - firms of lesser scale are both unable to justify in-house specialist skills in these areas and have limited resources to hire external assistance. A such, it is Ibec's view that the bar of evidence of aggressive tax planning in SMEs would need to be quite substantial to justify the burden of the transfer pricing legislation to companies of that size. Even were this bar to be met the issues outlined above would mean that a radically simplified regime would be required where little expertise is available.

We would also support an exclusion from transfer pricing for non-trading transactions between Irish tax resident parties. Interest free loans are widely used in the domestic SME sector, as well as other sectors for legitimate commercial reasons. There is a strong case for this given the significant costs and no exchequer gains (as both adjustments would cancel each other out) or gains in terms of combatting BEPS issues. This would be in line with the approach take in other EU countries such as the Netherlands and Germany.

3. Exit taxation

Many companies had views on the replacement of our current exit tax with a new exit tax under Article 5 of ATAD from January 2020. Companies were keen to impress that our current regime in this space (which is charged at a capital gain tax rate) renders us relatively uncompetitive and is a disincentive to investing in IP development in Ireland.

It is our view that the transposition of Article 5 affords Ireland an opportunity to reset that to a more competitive rate. This would preferably be set at 12.5%, in line with our headline corporate tax regime.

Concluding remarks

Ibec sincerely thanks the Department for the opportunity provided to outline the views of its members on this consultation and would be pleased to elaborate on the issues raised in this submission if required. Ibec looks forward to further future engagement with the Department on this and other issues.

Yours sincerely,

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Gerard Brady
Head of Tax and Fiscal Policy

Ibec Head Office
84/86 Lower Baggot Street
Dublin 2
T: + 353 1 605 1500
E: membership@ibec.ie
W: www.ibec.ie/membership

Galway
Ross House
Victoria Place
Galway
T: + 353 91 561109
E: west@ibec.ie
W: www.ibec.ie/west

Cork
Knockrea House
Douglas Road
Cork
T: + 353 21 4295511
E: cork@ibec.ie
W: www.ibec.ie/cork

Ibec Europe
Avenue de Cortenbergh
89, Box 2
B-1000 Brussels
BELGIUM
T: + 32 (0)2 512.33.33
F: + 32 (0)2 512.13.53
E: europe@ibec.ie
W: www.ibec.ie/europe

Limerick
Gardner House Bank Place
Charlotte Quay Limerick
T: + 353 61 410411
E: midwest@ibec.ie
W: www.ibec.ie/midwest

Donegal
3rd Floor, Pier One Quay Street
Donegal Town Donegal
T: + 353 74 9722474
E: northwest@ibec.ie
W: www.ibec.ie/northwest

Waterford
Business Park Cork Road
Waterford
T: + 353 51 331260
E: southeast@ibec.ie
W: www.ibec.ie/southeast