

# UPDATE ON IRELAND'S INTERNATIONAL TAX STRATEGY & CONSULTATION ON COFFEY REVIEW

October 2017



An Roinn Airgeadais  
Department of Finance

# UPDATE ON IRELAND'S INTERNATIONAL TAX STRATEGY

&

# CONSULTATION ON COFFEY REVIEW

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## Foreword by the Minister >



I am delighted, in my first Budget as Minister for Finance, to provide this Update on Ireland's International Tax Strategy. At a time of great change, this update serves three important purposes.

First, it provides concrete evidence of the measures already undertaken by Ireland to ensure that we continue to meet the highest international standards in corporation tax. This year alone, we received the highest international rating for tax transparency and our Knowledge Development Box has been assessed by our international peers as meeting tough new standards agreed at OECD and EU level.

Secondly, the Update allows me to set out where we go next. With this Update, I am launching a consultation process on the Coffey Report recommendations, which set out a roadmap for where Ireland is going between now and the end of 2020, and identifies concrete steps that we will take over that timeframe.

Thirdly, considering everything together, this Update shows that Ireland intends to handle future reform with the same steady hand with which we have handled reform in the past. In Ireland we have a stable tax regime. We have a competitive 12.5% tax rate, which is not going to change. We have a transparent tax system with a broad base, which is designed for businesses that want to innovate and create employment. By adopting and sticking to a corporation tax system that is sustainable and which meets the highest international standards, we are in a position to offer certainty. With the current changing environment internationally, certainty has become a valuable commodity. Ireland's reputation for stability has been earned over a long period of time, and I intend to plan for the future in that same spirit.

Ireland continues to play an important and constructive role in the international tax debate. We are working closely with some 100 countries at the OECD, including many partners from the developing world, to find evidence-based answers to the difficult questions posed by the digitalisation of the global economy.

At EU level, we have worked closely with other

Member States to agree on the consistent implementation of many of the OECD BEPS recommendations. Working together, we have shown leadership on implementation of globally agreed tax standards. Ongoing work to develop EU wide mandatory disclosure rules continues this approach. Other files such as CCCTB remain under discussion.

It is not just a question of which decisions we make at EU level, but how we make them. There are no small countries on tax issues, and decisions on tax policy require the agreement of all Member States, regardless of size. Unanimity is a core principle of tax policy at EU level and the Irish Government firmly believes that this position should not change.

As a small open economy, connected to Europe, the US, and the wider world, we are of course affected by changes in the international environment. I do believe however, that change also brings opportunities. The right choice for Ireland is to continue our commitment to a corporation tax system that is competitive, transparent and stable. This Update provides concrete evidence that this approach is delivering real reform in a way that respects our long-term policy commitments.

A handwritten signature in black ink, reading 'Paschal Donohoe'. The signature is fluid and cursive, with a horizontal line underneath it.

Paschal Donohoe, TD  
Minister for Finance and Public  
Expenditure and Reform

## Ireland and global tax reform

Countries around the world continue to focus on implementation of the OECD BEPS recommendations. The BEPS Inclusive Framework provides a forum for countries both in the OECD and beyond to work together on this important task. It includes over 100 members, both developed and developing countries from all parts of the world. The Framework's work will involve monitoring how all countries implement BEPS to ensure a level playing field worldwide.

Ireland remains committed to the BEPS process and to playing its full part in implementation. Ireland has taken a number of steps towards implementing the BEPS recommendations and the Coffey Review sets out a roadmap for Ireland to follow in bringing certainty to the implementation of the remaining recommendations, beginning with the launch of a consultation process set out in this document.

In keeping with our commitment to transparency, Ireland was among the first countries to implement Country by Country Reporting. The first reports under the Country by Country Reporting requirement will be filed with Revenue in Ireland and worldwide this year. These reports will be exchanged with all relevant countries to ensure tax authorities have a clear picture of the activities of large multinationals and can assess any risk that the correct tax has not been paid in the correct place.

The Knowledge Development Box (KDB) was assessed by our peers at the EU and the OECD and found to have met the tough new international standards for patent boxes. The KDB was the first such incentive to be recognised as being fully compliant with the rules for such incentives agreed during the BEPS process. During the year, the KDB (Certificate of Inventions) Act 2017 was passed to allow the KDB to be made available for smaller companies in respect of assets that are patentable, but not yet patented.

Ireland was among the first countries to sign the OECD BEPS multilateral instrument (MLI) in June. This MLI will provide the mechanism for extensive changes to tax treaties globally. It will ensure that tax treaties are updated to reflect a number of important OECD BEPS actions, including agreed standards on treaty shopping and dispute resolution. Ireland will now seek to ratify the MLI, with the first steps in this process being taken in the upcoming Finance Bill.

Work at the OECD continues on how tax systems should reflect the increasing digitalisation of the economy. Ireland is actively participating in this work through the Task Force on the Digital Economy. We remain convinced that global solutions are needed to address this global issue and look forward to the publication of an important OECD report in Spring 2018 as part of the ongoing work on this issue.

Ireland will continue to take the actions needed to meet the highest international standards, while offering a competitive regime that builds our economy and provides jobs for our people.



## Ireland's engagement with EU tax proposals

EU Member States have reached significant agreements in recent years acting to combat aggressive tax planning. These achievements have ensured the consistent and strong implementation of OECD BEPS recommendations across the EU. They have shown that EU Member States can find common ground which respects and strengthens international consensus on how business should be taxed.

The Second Anti-Tax Avoidance Directive was agreed by EU Member States earlier this year. This Directive significantly strengthens important anti-avoidance provisions to target hybrid mismatches and bring EU law more closely in line with the BEPS recommendations. Ireland had called for this Directive and strongly supported it being agreed quickly. Ireland will now implement these changes in line with agreed deadlines set out in the Directive.

The fifth iteration of the Directive on Administrative Cooperation (DAC5), was agreed by Member States to ensure that tax authorities are given access to relevant information prepared by financial institutions as part of their anti-money laundering requirements. Ireland strongly supported this Directive which is consistent with the general approach currently taken in our national tax legislation. Work is underway to fully transpose this Directive into Irish law.

A Directive on Dispute Resolution Mechanisms was also agreed by Member States in May. This Directive seeks to extend the availability of arbitration when two Member States disagree on how, and where, a taxpayer should be taxed. The Directive should ensure a speedier resolution of these disputes and is in line with the OECD BEPS recommendation in this area. Ireland will implement the Directive by the June 2019 deadline.

A sixth iteration of the Directive, known as DAC 6, is currently being discussed by Member States. It proposes to introduce a requirement on tax advisors and companies to disclose any tax planning arrangements that meet certain hallmarks that are indicative of aggressive tax planning. Ireland is one of only three Member States that already has mandatory disclosure rules in place and we are supportive of this proposal to the extent that it is consistent with OECD BEPS recommendations for such rules. Discussions also continue on the common tax base aspect of the CCCTB proposal.

A key priority for 2017 is the agreement of a list of third countries that do not apply international tax good governance standards. Agreement has been reached between Member States on the criteria to be used and work on assessing third countries against these criteria is at an advanced stage. The first iteration of the list is expected to be agreed by the end of this year.

Member States are also actively discussing the taxation of digital business. Ireland recognises the need for global consensus on how digital companies are taxed. We do not support moving away from the consensus at OECD level which would result in double tax and significant uncertainty.

Ireland will continue to insist that all tax measures at EU level require unanimity before they can be agreed, reflecting the fact that tax is a key Member State competence.

## Tax transparency & tax and development

Ireland has been, and remains, a leading supporter of international efforts to increase tax transparency. The Government has committed to the highest international standards in transparency in the taxation of the corporate sector. Tax transparency and access to information is key to tackling the global problems of tax avoidance and aggressive tax planning.

Ireland's strong record in this area has been recognised by the Global Forum on Transparency and Exchange of Information for Tax Purposes which awarded Ireland the highest possible rating following a second peer review which assessed Ireland's compliance with international standards for the exchange of information between tax authorities. The Global Forum is an OECD led peer review body which is globally recognised as the leading authority on tax transparency and exchange of information.

As outlined above, Ireland has strongly supported work at EU level to ensure that all Member States meet these high standards. The Directive on Administrative Cooperation (DAC) is the cornerstone of tax transparency between Member States. Ireland has supported recent amendments to the DAC to ensure Member States continue to meet developing international tax transparency standards.

Tax transparency is necessary worldwide, and not just within the EU. Compliance with international tax transparency standards is one of the key issues being considered by work underway at both EU and OECD level to identify non-cooperative jurisdictions. Ireland is supportive of this work which should play an important role in encouraging the adoption of the international standards in transparency across the globe.

Ireland remains committed to constructive and respectful engagement with developing countries in relation to tax matters. A full day conference was held in Dublin Castle on "Corporate Tax: Fairness, Responsibility and Leadership" in February. The conference brought together the Government, senior management from the multinational sector, tax experts and civil society as a multi-stakeholder dialogue to understand the challenges and opportunities around tax and corporate responsibility. At this conference, it was announced that Ireland has signed up to the Addis Tax Initiative which commits Ireland to doubling spending on tax and development by 2020. Signing the Addis Tax Initiative also reaffirms Ireland's commitment to assisting developing countries in domestic resource mobilisation.

Ireland is also an active participant in the EU Platform for Good Tax Governance. This forum brings together representatives from governments, business and civil society to discuss approaches to targeting tax evasion and avoidance.

# Update on Ireland's International Tax Strategy

Ireland's International Tax Strategy sets out a Charter together with the principles and objectives underlying Ireland's international tax policy. We are setting out below the further progress that we have made on these commitments since last year.

<p><b><i>Ireland is committed to maintaining an open, transparent, stable, and competitive corporate tax regime.</i></b></p> <p><b><i>We will achieve this by:</i></b></p> <ul style="list-style-type: none"> <li>■ Maintaining a rate of 12.5% on active, trading income and 25% on passive, non-trading income for all domestic and international businesses</li> <li>■ Considering any proposed changes to our tax legislation in terms of its impact on sustainable jobs and economic growth</li> </ul>	
<p><b><i>Ireland is committed to full exchange of tax information with our tax treaty partners</i></b></p> <p><b><i>We achieve this by:</i></b></p> <ul style="list-style-type: none"> <li>■ Responding to requests for information in an efficient manner</li> <li>■ Providing information in as comprehensive a manner as possible taking account of the nature of the request</li> <li>■ Complying fully with our responsibilities and obligations as set down in our tax treaties</li> </ul>	<p><b><i>Developments since October 2016</i></b></p> <ul style="list-style-type: none"> <li>■ Ireland was one of the first ten jurisdictions to be assessed for the second time under new Terms of Reference by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes and was again awarded the top rating of Compliant – one of only 21 jurisdictions to have this top rating.</li> <li>■ Multilateral Instrument signed in June 2017 to update global tax treaties for BEPS recommendations.</li> <li>■ New Double Tax Agreement with Kazakhstan signed during 2017 and ratification procedures to be included in Finance Bill.</li> <li>■ Finance Bill to seek to ratify new Tax Information Exchange Agreement with Macao.</li> </ul>
<p><b><i>Ireland is committed to global automatic exchange of tax information, in line with existing and emerging EU and OECD rules</i></b></p> <p><b><i>We promote this by:</i></b></p> <ul style="list-style-type: none"> <li>■ Timely transposition of relevant EU legislation into Irish law</li> <li>■ Full participation in OECD developments, making appropriate provision in Irish law as necessary</li> <li>■ Promoting the use of automatic exchange of information with tax treaty partners</li> </ul>	<p><b><i>Developments since October 2016</i></b></p> <ul style="list-style-type: none"> <li>■ The third and fourth revision of the Directive on Administrative Cooperation were implemented during 2016.</li> <li>■ Ireland actively supported work at EU level on a fifth iteration of the Directive on Administrative Cooperation to ensure that tax authorities are given access to relevant information prepared by financial institutions as part of their anti-money laundering requirements.</li> </ul>



<p><b><i>Ireland is committed to actively contributing to the OECD and EU efforts to tackle harmful tax competition</i></b></p> <p><b><i>We achieve this by:</i></b></p> <ul style="list-style-type: none"> <li>■ Active participation in the EU's Code of Conduct and the OECD's Forum on Harmful Tax Practices</li> <li>■ Rejecting introduction of measures in national legislation which could constitute harmful tax competition</li> <li>■ Eliminating any measure in national legislation if it is found to be harmful</li> <li>■ Active participation in the OECD Base Erosion and Profit Shifting project</li> </ul>	<p><b><i>Developments since October 2016</i></b></p> <ul style="list-style-type: none"> <li>■ Ireland agreed the Second Anti-Tax Avoidance Directive with our fellow EU Member States to enhance the anti-hybrid provisions previously agreed.</li> <li>■ Ireland continues to engage constructively on other EU tax files.</li> <li>■ Ireland remains engaged in the OECD's BEPS project and work of the Task Force on the Digital Economy as it considers the need for changes to reflect the increasing digitalisation of the economy.</li> <li>■ The Knowledge Development Box was recognised by the OECD Forum on Harmful Tax Practices and the EU Code of Conduct Group as being fully in line with the international best practice agreed in BEPS Action 5.</li> </ul>
<p><b><i>Ireland is committed to engage constructively and respectfully with developing countries in relation to tax matters including by offering assistance wherever possible</i></b></p> <p><b><i>We achieve this by:</i></b></p> <ul style="list-style-type: none"> <li>■ Supporting international efforts to build developing country capacity to benefit from enhanced global tax transparency</li> <li>■ Promoting the extension of Country-by-Country Reporting to areas beyond the "extractive" sector and greater international reporting to competent authorities</li> <li>■ Offering financial support to regional initiatives to strengthen tax administrations in Africa</li> <li>■ Strengthening the Public Financial Management systems of developing countries</li> </ul>	<p><b><i>Developments since October 2016</i></b></p> <ul style="list-style-type: none"> <li>■ Ireland signed up to the Addis Tax Initiative which commits Ireland to doubling our spending on tax and development by 2020.</li> <li>■ A full day conference was held in Dublin Castle on "Corporate Tax: Fairness, Responsibility and Leadership" in February. The conference brought together the Government, senior management from the multinational sector, tax experts and civil society as a multi-stakeholder dialogue to understand the challenges and opportunities around tax and corporate responsibility.</li> </ul>



An Roinn Airgeadais  
Department of Finance

## **Public Consultation Paper**

### **Review of Ireland's Corporation Tax Code**

Department of Finance

October 2017

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

E-mail: [ctreview@finance.gov.ie](mailto:ctreview@finance.gov.ie)

Website: [www.finance.gov.ie](http://www.finance.gov.ie)

## Introduction

On 2 September 2016 the Government decided to arrange for a review of Ireland's corporation tax code by an independent expert, later appointed as Mr Seamus Coffey.

The terms of reference provided for the following matters:

- achieving the highest international standards in tax transparency, including in the automatic exchange of information on tax rulings with other relevant jurisdictions, having regard to benefits which may accrue to developing countries from enhancing global tax transparency;
- ensuring that the corporation tax code does not provide preferential treatment to any taxpayer;
- further implementing Ireland's commitments under the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) project to tackle harmful tax competition and aggressive tax planning;
- delivering tax certainty for business and maintaining the competitiveness of Ireland's corporation tax offering;
- maintaining the 12.5% rate of corporation tax; and,
- the role and sustainability of the corporation tax receipts (included after Committee Stage of Finance Bill 2016).

Mr Coffey delivered his review to the Minister for Finance and Public Expenditure & Reform on 30 June 2017.

The review makes 18 key recommendations under the terms of reference, one of which states that *“a key element of reducing uncertainty in tax matters is pro-active consultation regarding proposed measures. It is recommended that a number of proposed changes suggested in this review are carried out subject to consultation to reduce uncertainty regarding the proposed changes and to better inform policy-making. In particular, it is recommended that consultation be carried out on:*

- i. the implementation of the Anti-Tax Avoidance Directive, with a view to better understanding the effect of the proposed technical changes to the Irish corporation tax code;*
- ii. the implementation of Actions 8, 9 and 10 of the G20/OECD BEPS initiative;*
- iii. additional considerations regarding Ireland's domestic transfer pricing rules; and,*
- iv. the effects of moving to a territorial corporation tax base and of reviewing Schedule 24 of the Taxes Consolidation Act 1997 to effect a policy and revenue neutral simplification of the computation of the foreign tax credit.”*

The public and interested stakeholders are now invited to give their views on these implementation issues.

A list of questions is provided for guidance.

## The Consultation Process

### *Consultation Period*

The consultation period will run from 10 October 2017 to 30 January 2018, a period of 16 weeks. Any submissions received after this date may not be considered.

### *How to Respond*

The preferred means of response is by email to: [ctreview@finance.gov.ie](mailto:ctreview@finance.gov.ie)

Alternatively, you may respond by post to:

Review of the Corporation Tax Code – Public Consultation,  
Tax Division,  
Department of Finance,  
Government Buildings,  
Upper Merrion Street,  
Dublin 2.

Please include contact details if you are responding by post.

When responding, please indicate whether you are contributing to the consultation process as a professional adviser, representative body or member of the public.

### *Freedom of Information*

Responses to this consultation are subject to the provisions of the Freedom of Information Acts. Parties should also note that responses to the consultation may be published on the website of the Department of Finance.

### *Meetings with key stakeholders*

The Department of Finance may also invite key stakeholders to meet with them, including representative bodies, tax professionals and other interested groups or individuals.

### *After the Consultation*

Tax policy issues from this public consultation will form part of the Minister for Finance's considerations in the context of the key recommendations provided in the Review of Ireland's Corporation Tax Code.

## The Consultation Questions

In responding to this consultation you are invited to:

- Give your views on the specific questions set out below. You don't have to answer every question – you can choose to answer any or all of the questions.
- Provide details of any alternative approaches or options you feel might be beneficial in dealing with the issues being addressed.
- Provide details of relevant issues not covered in this paper.
- Where appropriate, provide some analysis of the Exchequer cost/yield of your preferred option.
- Comment generally on the direction you would like to see tax policy in this area develop.

Your views are important as they may help influence the taxation treatment and policy to be applied in the future.

### The Implementation of the Anti-Tax Avoidance Directive (ATAD)

Article 4 of ATAD sets out interest limitation rules and provides for, inter alia, rules which will restrict the amount of interest that companies can claim as a tax deductible expense. Ireland has informed the European Commission that, as our existing interest limitation rules are at least equally effective to the rules contained in the Directive, we will be availing of the derogation provided in Article 11(6) of the Directive and are therefore not required to implement these rules until 1 January 2024.

Question 1:

Article 6 of ATAD requires the transposition of a General Anti-Abuse Rule (GAAR) by 1 January 2019. As Ireland already has a robust GAAR, what changes, if any, are needed to ensure this meets the minimum standard required by the Directive?

Question 2:

Article 7 of ATAD requires Member States to implement Controlled Foreign Company (CFC) rules by 1 January 2019. What are the key considerations regarding the implementation of CFC rules? In terms of the options for CFC legislation set out in Article 7, what are the key factors in determining the preferred approach for Ireland?

Question 3:

Article 5 of ATAD requires Ireland to have an exit tax in four particular circumstances by 1 January 2020. Ireland currently has an exit tax which will be replaced by the ATAD exit tax. What are the key considerations in transposing Article 5?

Question 4:

Article 9 of ATAD originally set out concise anti-hybrid rules applicable to intra-EU payments. In February 2017, the ECOFIN Council agreed an amendment to ATAD, ATAD 2, which extended the hybrid mismatch rules to third countries. ATAD 2 delays the implementation date for the introduction of any anti-hybrid rules to 1 January 2020 and allows a longer period, until 1 January 2022, to implement the elements of the rules which target so-called 'reverse hybrids', a type of hybrid entity that is treated as

transparent for tax purposes in the payor jurisdiction and a taxable entity in the payee jurisdiction. What are the key considerations regarding the implementation of the hybrid mismatch rules?

### The Implementation of Actions 8, 9 and 10 of the OECD BEPS Package

Question 5:

Following their adoption by the OECD Council in June 2016, the 2017 OECD Transfer Pricing Guidelines are now the appropriate reference point for transfer pricing rules. Recommendation 6 of the Review of Ireland's Corporation Tax Code states that *"Ireland should provide for the application of the OECD 2017 Transfer Pricing Guidelines incorporating BEPS Actions 8, 9 and 10 in Irish legislation."*

When incorporating the OECD 2017 Transfer Pricing Guidelines, what are the key considerations?

### Additional Considerations Regarding Ireland's Domestic Transfer Pricing Rules

Question 6:

The Coffey Review recommends that *"domestic transfer pricing legislation should be applied to arrangements the terms of which were agreed before 1 July 2010."*

What are the key considerations regarding the implementation of this recommendation?

Question 7:

The Coffey Review recommends that *"consideration should be given to extending transfer pricing rules to SMEs, having regard to whether the concomitant imposition of the administrative burden associated with keeping transfer pricing documentation on SMEs would be proportional to the risks of transfer mispricing occurring."*

If Ireland is to introduce transfer pricing rules for small and medium sized enterprises<sup>1</sup> (SMEs) what are the key considerations? Should all enterprises be subject to transfer pricing rules or should the scope of the rules exclude entities below a certain threshold? If Ireland introduces transfer pricing rules for SMEs what would be the appropriate documentation requirements?

Question 8:

The Coffey Review recommends that *"consideration should be given to extending domestic transfer pricing rules to non-trading income. There is a strong rationale to extend domestic transfer pricing rules to non-trading income where it would reduce the risk of aggressive tax planning. Consideration should also be given to extending transfer pricing rules to capital transactions, having regard to whether such an extension would improve the existing provisions which already apply arm's length values to companies' transactions relevant to chargeable gains and capital allowances."*

In relation to the extension of transfer pricing rules to non-trading income, what are the key considerations of this proposal?

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<sup>1</sup> Section 835E TCA 1997 excludes from Irish transfer pricing rules small and medium sized enterprises which, on a global group basis, have employees of 250 or less and *either* a turnover of less than €50m or assets of less than €43m.



In relation to the extension of transfer pricing rules to capital transactions, what are the key considerations of this proposal, bearing in mind existing market value rules?

Question 9:

The Coffey Review recommends that *“there should be a specific obligation on Irish taxpayers who are subject to domestic transfer pricing legislation to have available the transfer pricing documentation outlined in Annex I and II of Chapter V of the OECD 2017 Transfer Pricing Guidelines to ensure implementation of BEPS Action 13.”*

Since May 2016, Annex I and II of Chapter V of the OECD Transfer Pricing Guidelines contain a list of the information which should be included on the master file and local file respectively. When providing for Annex I and II what will be the effects for business?

**The effects of moving to a territorial corporation tax base and of reviewing Schedule 24 of the Taxes Consolidation Act 1997 to effect a policy and revenue neutral simplification of the computation of the foreign tax credit**

Question 10:

With the introduction of CFC rules under Article 7 of ATAD, the Coffey Review recommends that *“consideration should be given to whether it is appropriate to move to a territorial corporation tax base in respect of the income of the foreign branches of Irish-resident companies and, in respect of connected companies, the payment of foreign-source dividends.”*

Would moving to a territorial corporation tax base be a positive development for Ireland? What would be the effects for Ireland of such a move?

To what extent does Ireland's ultimate choice of how CFC rules are implemented under Article 7 of ATAD impact on the question of moving to a territorial corporation tax base?

The Coffey review recommends that should Ireland not move to a territorial corporation tax base, Schedule 24 should be simplified on a policy and tax neutral basis. Could such a simplification be an appropriate alternative to a territorial corporation tax base, particularly in the context of specific CFC implementation choices? How might such simplification be achieved?



Tithe an Rialtais  
Sráid Mhuirfean Uacht  
Baile Átha Cliath 2  
D02 R583  
Éire

Government Buildings  
Upper Merrion Street  
Dublin 2  
D02 R583  
Ireland

T: +353 1 676 7571  
[www.finance.gov.ie](http://www.finance.gov.ie)  
@IRLDeptFinance