Scrutiny of EU proposals - Common Consolidated Corporate Tax Base (CCCTB)

Presentation to the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

I would like to thank the committee for the opportunity to appear before you today with my colleague Aidan Lucey, to talk about the CCCTB.

I appreciate that the Committee had detailed discussions last week with the Department of Finance, the Revenue Commissioners and the European Commission on the Commission's latest corporate tax reform package. This comprises proposals on CCTB and CCCTB as well as measures dealing with hybrid mismatches and dispute resolution.

I am going to focus my comments today on issues arising from the CCCTB package.

The global context

Huge efforts are currently being made by all countries to update the global corporation tax rules. The OECD and the G20 have been working tirelessly on this agenda for the past three years with over one hundred countries globally. International consensus has been reached after thousands of hours of discussion and debate and countries and companies are now in the process of implementing this vast set of changes.

All of the fifteen BEPS Actions agreed are already being implemented by the EU as a whole, through a range of measures – the Anti-Tax Avoidance Directive, the Joint Transfer Pricing Forum, the EU Code of Conduct Group and separate EU measures on exchange of information, mandatory disclosure of tax avoidance schemes and dispute resolution. Changing the tax regime for multinational companies requires global and consistent action – countries must act collectively and the tools are now there to deal with these issues.

CCCTB would create an entirely new framework for corporate taxation with a whole new tax base and an arbitrary formula to allocate profit rather than the arms' length basis agreed globally only last year. If this were to happen, the EU would effectively be moving in a different direction on tax in a global economy at a time when it is also struggling to activate investment and promote innovation within the Member States. It would put Europe out of sync with other OECD countries who do not form part of the European Union.

Key elements of the proposal that could impact Ireland and those doing business in Ireland

Without doubt the CCCTB proposal is very complex and wide reaching. Analysing the full potential impact that it might have for Ireland and those doing business in Ireland could take some time. And as negotiations proceed some of the key elements are likely to change. However, at a first analysis, there are four really troubling aspects to these proposals:

For Ireland

Loss of sovereignty

Ireland would retain the right to set a single corporation tax rate but only one rate. The rest of the corporation tax system for CCCTB companies would be determined entirely by the EU as a whole, with Ireland being one voice at the table. Technical points would be determined directly by the Commission through the power of delegated acts and Irish courts would have no role in determining legal disputes, which would be heard by the Court of Justice of the European Union in Luxembourg.

Loss of control over tax policy matters

A country's tax policy should be matched to the individual social and economic needs of its citizens. For each country, these needs will be different and for Ireland we have a unique set of circumstances in Europe as a very small open economy on the periphery of the continent. What is good tax policy for Ireland will not be good tax policy for France (for example) and vice versa; we are not all the same in the EU.

Countries need the flexibility to adapt their tax policy if problems arise or individual circumstances change. One of Ireland's unique strengths is that we can adapt quickly to change when the need arises; this has served us well and is not something to surrender lightly.

Impact on the Irish Exchequer

- The allocation formula has three equally weighted factors of sales, assets and labour. This has been described as "a formula based on Victorian manufacturing" by the President of the UK Chartered Institute of Taxation. As a contributor from one of Europe's largest economies, he goes on to observe that "The allocation factors…won't work for smaller economies which might manufacture goods or provide services to other countries". Ireland clearly falls into this category.
- The allocation formula also ignores the existence of intangible assets, which are a major part of modern global business. Ignoring the existence of intangible assets is simply not a realistic way of allocating profits to locations where economic value is created. It runs contrary to the EU growth agenda based on digital advancement, at a time when the Commission itself has told us that there are one million unfilled roles in the EU for people with IT skills.
- According to the allocation formula proposed, one third of a CCCTB company's profits would be allocated across the EU based purely on the location of its customers. EU Member States already collect huge amounts of tax as a direct result of their consumer market size, in the form of VAT.
- Furthermore, a sales element in an allocation formula will always reduce the profits attributable to small economies like Ireland which are export focused and have less domestic consumers. The Irish population of consumers is 4.7 million compared to a population of 66 million in France and 81 million in Germany. In any exercise where

one third of a company's profits are spread across the EU on the basis on sales, Ireland will get only a tiny allocation.

- Profits from trade outside the EU which are currently taxed in Ireland would also be reallocated to other Member States based on an EU wide assets and labour formula. In order to stimulate growth and diversify risk (particularly in light of Brexit developments), businesses are trying to develop more non-EU markets. Profits from this non-EU business would also be impacted by a CCCTB formula and re-allocated to other Member States.
- We heard the Commission confirm to this Committee last week that all income will be treated the same way in a CCCTB regime, so that Ireland would no longer be able to apply higher 25% and 33% rates to passive income and capital gains. Our Exchequer yield would almost certainly be impacted by the loss of two key higher tax rates.
- As well as the Exchequer impact from the loss of our two higher rates, it is also likely that Ireland's corporate tax base which is wide by international standards , would be narrowed; how much it would be narrowed and the extent of the impact on the Exchequer will not be clear until an analysis is carried out by the Department of Finance. However, any corporate taxes forgone would have to be replaced. Does this mean higher taxes elsewhere or cuts in spending? In its latest Fiscal Assessment Report, The Fiscal Advisory Council said that the total available fiscal space for 2017 has already been allocated to spending increases and tax cuts in the budget, leaving no room for additional spending without offsetting tax rises or spending cuts.
- Research carried out by the ESRI in 2014 found that an increase in Ireland's corporation tax rate would negatively impact foreign direct investment. Thus there is little scope to increase the 12.5% rate to compensate for the narrower tax base that would arise under a CCCTB.

Impact on business

- The way the allocation formula has been designed means that companies operating in Ireland are very likely to see profits currently earned here and taxed at 12.5% being re-allocated to countries with higher tax rates. In our view this will have a direct impact on competitiveness not only for Ireland but also for the EU as a whole.
- Lack of certainty about the new rules - we have almost two hundred years' experience in Ireland of dealing with company tax. Much of the legislation and case law that has evolved over that time could become redundant with a new regime, new rules and new definitions, creating huge uncertainty for business and Revenue.
- And although there could be some administrative benefits for business from having a common set of rules, independent research commissioned by the Irish Tax Institute on the 2011 CCCTB proposal concluded that it would result in net higher administrative costs for companies. Time saved in preparing local tax returns would be outweighed by the additional work required to manage the consolidation process and deal with queries and disputes with tax authorities EU wide.

In summary, we believe that the common base and consolidation proposals from the EU would represent a major challenge for Ireland and businesses operating here.

As we have outlined, these proposals do not make sense from an economic, job creation or competitive perspective. We cannot see the logic of their design for a small open economy like Ireland, or indeed other small countries.