Irish Tax Institute

Leaders in Tax

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Ms. Bríd Dunne
Clerk to the Committee
Standing Order 112
Select Committee
Leinster House
Dublin 2

8 June 2016

Re; COM(2016)198 - Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches.

Dear Ms Dunne

The Institute would like to thank the Standing Order 112 Select Committee for this opportunity to provide our thoughts on the European Commission proposal for a Directive on "disclosure of income tax information by certain undertakings and branches" - COM(2016)198. The proposal has been made by the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA).

As the Committee is aware, the global tax framework for multinational companies is in the midst of fundamental reform, the principles of which have been agreed by over 60 OECD, G20 and developing countries. The aim of the OECD Base Erosion and Profit shifting (BEPS) project is to ensure that the taxation of profits is more closely aligned with substance and that the global activities of companies are more transparent to Revenue authorities worldwide. Most of the key BEPS policy decisions have now been agreed and published by the OECD and the intense focus now by companies and countries is on consistent implementation of the principles globally.

The EU plays a key role in ensuring consistent implementation of BEPS across the 28 EU Member States. Its "Action Plan for a Fair and Efficient Corporate Tax System in the EU" contains an Anti-Tax Avoidance Package which the Dutch Presidency hopes to finalise by the end of this month (June 2016). Part of this Package is a Directive on Country by Country Reporting (CbCR) to tax authorities which was proposed by DG TAXUD in the Commission and which has been agreed by all Member States.

Mary Honohan – *President*, Mark Barrett, Marie Bradley, Dermot Byrne, Colm Browne, Sandra Clarke, Ciaran Desmond, David Fennell, Karen Frawley, Ronan Furlong, Johnny Hanna, Jim Kelly, Aoife Lavan, Jackie Masterson, Frank Mitchell, Martin Lambe *(Chief Executive)*, Tom Reynolds, Kieran Twomey, Shane Wallace. *Immediate Past President – Andrew Gallagher*.

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Ireland has been a leader in this global reform agenda and even before the EU reached agreement on CbCR to tax authorities, we had adopted domestic legislation in Finance Act 2015 to implement the OECD recommendations with effect from 1 January 2016.

The Role of Tax Authorities globally

The rules that underpin the tax liability of a multinational company globally are extremely complex. The Irish corporate tax return alone contains approximately 350 boxes for completion in the assessment of a company's Irish tax liability. Revenue authorities globally are trained to understand and interpret tax law so they can properly form a view on the right amount of tax due in their jurisdiction and assess it. If the tax authorities need additional information to make an assessment of tax due, they have extensive powers to obtain that information and there are sophisticated international frameworks within the EU and OECD under which cross border Revenue audits can be carried out by them.

It is our view that only tax authorities globally have all the necessary knowledge and information to assess and collect tax from any taxpayer and it is very important for citizens to have confidence in their tax authority to carry out this function. This position was highlighted by Business Europe on the day the European Commission's proposal was launched (12 April 2016).

> *"Today's proposals for public reporting of financial information by companies operating in the EU risk undermining the proper role of tax authorities in enforcing tax legislation, as well as creating uncertainty for business."*

It is difficult for others in the public domain to try and adopt the role of deciding how much tax a taxpayer ought properly to be paying because they will not have the full facts available to the tax authorities. Experience suggests that public scrutiny of tax paid by multinationals can often focus on companies with low effective tax rates. However, there can be a range of factors which validly contribute to a company having a low effective tax rate such as;

- Losses forward from prior years
- Losses surrendered by group companies
- R&D tax credits; and
- Capital allowances (tax depreciation) on significant asset purchases

It is only Revenue authorities who see the full picture of a taxpayer's affairs and it is for them to satisfy themselves about the validity of the company's position.

When the OECD was developing a framework for the BEPS CbCR rules, some stakeholders sought that the information be made publicly available. However the OECD made a clear decision that the key objective of CbCR was to provide tax authorities globally with the information they need to better assess the adequacy of tax paid in their jurisdiction. The OECD recognised the cornerstone principle of taxpayer confidentiality as one of the most important tools that tax administrations have globally, particularly those operating self-assessment regimes such as our own. At the G20 Leaders Summit in Brisbane on 14 November 2015, Pascal Saint Amans[1] stated:

[1] Director: OECD Centre for Tax Policy and Administration.

> *"For the potential benefit of NGOs to know this you may deprive tax administrations of all this information. We want country-by-country reporting but this [information collected] will remain with tax administrations."*

EU Competitiveness

The European Commission carried out a public consultation on further transparency measures in 2015. In the published findings '*Factual Summary of the responses to the public consultation on assessing the potential for further transparency on corporate income taxes'* the Commission addressed the potential benefits/costs of a public disclosure of information as compared with a disclosure to tax authorities only. It found:

> "*unanimous agreement among firms that a public disclosure would endanger, rather than bring benefits to the EU".*

81% of firms and industry associations said that the publication of country-by-country reports could have unintended costs/implications for companies.

> *"Unintended consequences listed by companies and those who share this concern include: public misinterpretation of figures (owing to the complexity of accounting technicalities or simply a lack of understanding), interpretation by competitors, and subsequent reputational damage to firms. This could have profound implications for a firm's sales, revenue and therefore profit"*

The risks highlighted by business in the pubic consultation include:

1. Exposure of business strategy of EU firms,
2. Distorted competition undermining the success of European multinationals, especially vis-à-vis US firms;
3. Loss of tax revenue for Member States;
4. A deterioration of reactions between Europe and the tax administrations of third countries;
5. Reputational damage to European companies as the publication of raw data can lead to erroneous interpretations.

The Factual Summary published by the Commission goes on to reflect the views of business "that disclosing sensitive information to competitors would pose inherent risks to the long-term growth and investment in the EU".

These views were reinforced by Business Europe when they stated in April:

> *"Whilst we recognise that the European Commission has noted the need for a balanced approach in making companies' financial information public, we believe that these proposals, by making the EU a lone frontrunner in terms of public disclosure, risk undermining our attractiveness as a location for investment, particularly from overseas".*

The American Chamber of Commerce in the EU also expressed its serious reservations about the proposal, as it impacts EU competitiveness and attractiveness:

> *"AmCham EU has encouraged the European Commission to adhere to internationally-agreed standards set out by the OECD and the G20 – but not to go beyond them, to avoid negatively impacting the EU's attractiveness for investment from both EU and non-EU companies.*
>
> *……we remain concerned that the proposal could have a potentially negative impact on EU competitiveness and attractiveness as an investment destination. This could harm growth and investment at a time when Europe needs it the most."*

One of the most important elements to the success of the OECD BEPS framework is that countries globally adopt a consistent approach. The Board of Taxation in Australia is proposing the adoption of a Tax Transparency Code which is less prescriptive and would be voluntary in nature rather than the EU proposal which would be mandatory if passed.

> *"Although this is an important initiative to provide the ATO with enhanced information in relation to transfer pricing, it should be noted that Country-by-Country reporting is designed as a risk management tool for revenue authorities rather than a public disclosure regime. The Board recommends against any component of the OECD Country-by-Country reporting being made the subject of mandatory public disclosure under the TTC"*

Other than this initiative which is limited in scope, there is no indication that other countries or regions globally are considering public CbCR and this could seriously impact the competitiveness and growth of the EU (and Ireland).

The publication of commercially sensitive information

The Commission proposal is that the following information be disclosed on a country-by-country basis within the EU:

- the nature of the activities,
- the number of employees,
- the total net turnover made, which includes the turnover made with third parties as well as between companies within a group,
- the profit made before tax,
- the amount of income tax due in the country as a reason of the profits made in the current year in that country,
- the amount of tax actually paid during that year, and
- the accumulated earnings.

The detail on a company's operations would be reported separately for each EU Member State but aggregated for non EU Member States (other than tax havens). This clearly means that more commercially sensitive information on EU activities will be available than on non-EU activities which could influence the behavior of multinationals in terms of locating existing and future projects. These

risks are set out in the Commission Staff Working Document Impact Assessment assessing the potential for further transparency on income tax information:

> *"Information on geographical location of 'revenue' and 'profit before tax' are considered by some companies as commercially sensitive information. According to companies, the publication of such information on a country-by-country basis would provide information on companies' business models, the value chain, operating strategy, contracts and geographical profit margins"*
>
> *...Increased transparency about the geographical complexity of MNEs could expose managerial decisions to increased market scrutiny*"

Others have concerns about public CbCR

As outlined above, there has been global support for the OECD model of CbCR i.e. exchanging information about large multinational companies between Revenue authorities. However, views on the merits of making this information publicly available are very mixed.

Senior business leaders of the G7 countries (referred to as the B7) expressed their concern at the Tokyo Summit on 21 April 2016:

> *"it is essential for countries to renew the recognition that confidentiality including non-disclosure, consistency and appropriate use are prerequisite for acquisition and use of the Country by Country Report...........Any uncoordinated actions (such as the European Commission's proposal to make Country by Country Reporting public) will inevitably enhance uncertainty for tax payers, thereby hindering cross-border trade and investment"*

And views are mixed amongst Member States of the EU itself. Germany's Federal Minister of Finance Wolfgang Schäuble has expressed concerns on several occasions about the publication of taxpayer information. Most recently at ECOFIN on 25 May 2016, he stated:

> "*If we agree on this Directive, we should agree also that we will not, in the future, publish the information, that was the precondition in our agreement for Country by Country Reporting; that is will not be published and will only be used for taxation purposes and not for public campaigns, therefore we should make it clear that this should be respected into the future"*

And prior to that, he is reported in the media as saying:

> *"Sometimes there is a contradiction between transparency and efficiency……………….We have to be cautious about lining someone up to be pilloried publicly."*

Conclusion

The Institute supports the tax reform that has taken place in the past 2-3 years and continues to be implemented in accordance with the BEPS framework. We have worked throughout this period, contributing to the tax reform agenda; we have made 16 submissions to the OECD on the BEPS Action

Plan, submissions to the EU Commission on CCCTB and dispute resolution, contributed to OECD public meetings in Paris on various BEPS Action discussions, travelled to Paris and Brussels for face to face meetings with leading OECD and EU Commission officials and MEPS and organised 2 Global Tax Policy conferences attended by the leading global tax policymakers and businesses.

We fully support tax transparency but to achieve consistent standards of tax behaviour globally without risking EU competitiveness, we believe that the EU should operate within the OECD BEPS framework rather than going beyond it.

Yours truly

Mary Honohan
President
Irish Tax Institute