Ibec submission to DJEI on European Commission proposals on public tax transparency rules for multinationals

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1. Introduction

We are pleased to communicate the views of Ibec and its members on the issues surrounding European Commission proposals on public tax transparency rules for multinationals. 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.

Ibec as evidence through its interaction on the OECD's BEPS initiative is actively supportive of international tax initiatives which seek to both align profit with substance worldwide. These initiatives are in the interests of both Irish and European business. 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 in Europe.

Business thrives on simplicity and, above all, certainty. In Finance Bill 2016 provisions for information sharing between relevant tax authorities were introduced in Ireland in line with BEPS Action 13. Ibec was supportive of this move as crucial to ensuring international tax rules are coherently and properly enforced by the competent authorities. In the ensuing period the European Commission has begun a process which would see European countries should take the unilateral step of publishing a portion of this information publicly. We are concerned that public country by country reporting (CBCR) risks undermining the standard of certainty both in the European context and internationally. Primarily the concerns of our members fall into three categories:

1. The impact of releasing potentially sensitive commercial information to competitor organisations

2. The growing view that the EU is a hostile environment for multinationals, particularly US MNEs, and the possible knock on risks including undermining the hard won victories of CBCR under the BEPS process

3. The risk of reputational damage for companies which are operating in a legitimate and transparent fashion due to poor understanding or interpretation of the figures by media or other stakeholders

Whilst not a substantial administrative burden on its own the publication of company information, which up until now was confidential, would introduce series of new risks for organisations operating within the EU. In the following sections we will set out the above concerns in more detail.

2. General views on Public CBC reporting

2.1 Summary of general views

Issues surrounding multinational tax planning at an international level have received increased coverage in recent years. By their very nature, changes in international tax rules cannot be addressed at national level alone. As a result these issues are being addressed by the OECD BEPS project. The BEPS programme is focused on addressing concerns about the ability of current international tax rules to deal with changing business models and the digital economy as well as addressing concerns about current international tax rules which allow for the allocation of taxable profits to jurisdictions separate to where a company s business activity takes place.

The initiative has been singularly ambitious from the outset and has resulted in the largest reform of international tax rules in modern times. Ireland, for its own part, has been at the forefront of complying with the BEPS process in introducing provisions for information sharing between competent authorities as well as the first 'modified nexus' compliant patent box.

As part of its Anti-Tax Avoidance Package the European Commission has now suggested going further than sharing tax information between competent authorities and proposes sharing a portion of this information publicly. The benefits of this, as envisaged by the Commission, fall into three categories:

1. Public scrutiny can help to ensure that profits are effectively taxed where they are generated
2. Public scrutiny can reinforce public trust and strengthen companies' corporate social responsibility by contributing to the welfare through paying taxes in the country where they are active
3. It can also promote a better informed debate on potential shortcomings in tax laws

Feedback from members would suggest it is unlikely any of these could be achieved or even significantly progressed through publication of confidential tax information. In the first instance it is unclear how public scrutiny could ensure that profits are taxed where they are generated in a way which will not already be achieved by full implementation of BEPS.

The OECD has only in the past year agreed to the most ambitious programme of tax reform seen in modern times. Crucial to this were a series of reforms which will ensure taxation is aligned with economic substance. We are already seeing the effects of this in Ireland with firms restructuring to reflect their clear economic substance in this country. From Ibec's perspective the continued implementation of BEPS is the single most effective way to ensure this first aim. As we will show in the coming sections public CBCR is as likely to unwind significant progress in this area as it is to further it.

Secondly, it is also difficult to envisage how public trust could be engendered through this system or how debate could be better informed by publication of confidential information. This is particularly true given the weak and often misleading level of analysis produced from data from existing public company filings. For example, media outlets and indeed NGOs have more often than not set a

standard of reporting taxation as a proportion of turnover rather than of profit; thereby grossly understating effective tax rates. This is intended to drive readership or a certain perception of multinational activity rather than honestly inform the debate. Many Ibec members hold a legitimate concern that public CBCR without significant contextual information on the company and its business model will lead to a growth in this kind of skin deep reporting on tax issues. In this context, it is difficult to see how either tax policy or legitimate concerns could be furthered by public CBCR

2.2 The impact of releasing potentially sensitive commercial information to competitor organisations

The major concern of Ibec members is that implementation of public CBCR unilaterally will make Europe a less attractive place to invest relative to other jurisdictions. There is a long list of variables taken into account when multinational companies choose where to place investments. Included in this are issues such as access to skills, country cost base, market access and regulatory risk. Public CBCR will see European companies and those operating within Europe exposed to higher regulatory and reputational risks than those operating solely outside the jurisdiction. Public CBCR will see firms with European operations making potentially sensitive data available to competitors who are not subject to the same regulations. In competition with sites in non-EU markets this will form a part of companies' decision making process.

This is a particular issue for new investments. Take for example an expanding company with a large presence within their home market investing in a European site or headquarters for the first time. In the case of this company public CBCR will reveal sensitive detail not only about the company operations in general but about the specific site of operations in a country. In recent years a number of large multinationals in the software industry have located their EMEA offices in Dublin – where this is the case potentially sensitive site information will be made publically available under CBCR. Companies in sectors such as Pharma and Medical Devices where site information is highly guarded even within company groups would be put at the same disadvantage.

In addition, a number of companies raised concerns that public CBCR would particularly disadvantage those companies for whom public reporting was not already a significant part of their regulatory compliance. In particularly private companies, who have traded easier access to capital markets for confidentiality and the ability to answer to fewer longer terms investors, will have substantial regulatory and reputational risks along with added reporting costs under CBCR.

Take for example a private company considering its first expansion outside its home country. As is typical with these projects Ireland would be in competition with other EU countries such as the UK and Netherlands along with some non-EU countries such as Singapore. Where these companies choose to invest in any non-EU country the competitive benefits of being a private firm would remain intact. Investing in Europe on the other hand would mean those benefits would be lost completely. Competitors would have access to information concerning their turnover, growth margins, employment patterns, productivity, accumulated earnings and a host of other commercially sensitive information. The potential damage this would do to Ireland's ability to win projects from some of the world's largest companies should not be underestimated.

2.3 The growing view that the EU is a hostile environment for multinationals, particularly US MNEs, and the possible knock on risks including undermining the hard won victories of CBCR under the BEPS process

There were concerns among a number of US companies that US policymakers would perceive the European Commission's public CBCR initiative as undermining the previously agreed approach under BEPS in an effort to target US companies. This in addition to already, well documented, heightened tensions between the Commission and US authorities. A number of companies outlined a series of risks from these heightened tensions in an Irish context.

Primary among these concerns was the prospect that unilateral action from the EU will be met with the same from the US. This could come in a number of forms. For example the prospect of the US either pulling back from elements of the BEPS agreement or refusing to share information with jurisdictions where that information would be made public was raised by a number of companies. This would mean public CBCR was not only a retrograde step in and of itself but would undermine genuine achievements under the OECD BEPS programme in the process.

An increasing but longer term concern raised by companies was that continued broader tensions between the US and EU over state aid investigations could be heightened by unilateral public CBCR within the EU. In this case two substantial worries were prevalent among firms. The first was that the continued perception among US policymakers of the European Commission 'targeting' US companies could result in punitive changes to the US tax code aimed at European business.

This prospect has been raised by prominent members of the Senate Finance Committee in Washington under section 891 of the US tax code. This would allow the US administration to double some tax rates imposed on European firms or citizens if "the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes."

Finally, the prospect of this political backdrop increasing the likelihood of a radical reform and re-imagining of the US corporate tax code was raised by a number of companies. If the US tax code was made significantly more attractive this would have enormous attendant risks to Ireland's corporation tax base even though still a low likelihood event.

2.4 The risk of reputational damage for companies which are operating in a legitimate and transparent fashion due to poor understanding or interpretation of the figures by media or other stakeholders

A final major issue of concern for companies is that poor or incorrect interpretation of tax data will lead to increased reputational risk for companies even where their structures are legitimate, transparent and comply with the notion that profit should align with substance. The use of the court of public opinion rather than legislation to decide what practices are acceptable not only undermines certainty for companies but also undermines the role of competent tax authorities in enforcing the law.

As such we support CBCR between competent authorities in order to improve information sharing and tax enforcement internationally. Beyond this it is difficult to see how publication of CBCR information will add any value whatsoever. Companies will continue to rely on compliance with existing laws albeit with heightened risk that partial data published by tax authorities would lead to reputational or commercial damage through misinterpretation. For public companies there are significant commercial risks linked to reputational damage which could be done by poor or unqualified interpretation.

Many companies are concerned that public country by country reporting would not support informed discussion of companies' tax liabilities. A proper assessment of companies' tax positions requires full access to accounts, which is clearly not appropriate for public disclosure given commercial confidentiality concerns. Drawing conclusions from a small list of financial variables risks an incomplete and misguided interpretation.

This is a particular issue when comparing raw profit, tax and turnover ratios between sectors where business models vary and margins differ. In some low labour intensity sectors, for example in some financial services sectors, where a small number of employees may be needed to manage low volume, high value transactions this could lead to inaccurate or unfair interpretations of companies positions.

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