Irish SME Association

17 Kildare St.,
Dublin 2.
23rd July 2021

Mr Paschal Donohoe TD,
Minister for Finance,
Department of Finance,
Government Buildings,
Upper Merrion Street,
Dublin 2.

Dear Mr Donohoe,

I am writing on behalf of our National Council to express our views on international developments concerning a minimum corporation tax (CT) rate. As you know, ISME has staunchly defended the 12.5% CT rate since its inception. We also objected strongly to the efforts by the EU Commission to challenge Ireland's CT rate on competition grounds as an explicit departure from Art 223.2 of the TFEU.[1]

Beyond the strictly legal and treaty issues involved, we also consider the nominal rates of CT applied by countries to be of lesser absolute importance than the substance of the underlying tax code and the availability of reliefs. We view it as particularly hypocritical of certain countries (which apply a nominally high rate of CT while simultaneously facilitating much lower, or zero, effective rates via deductibles) to criticise countries such as Ireland which maintain a lower nominal rate which is consistently and rigorously applied. Some of those countries most to the fore in disparaging Ireland's CT rate are those with Byzantine and opaque tax codes which facilitate the existence of stateless corporations and single digit effective rates of CT.

The notion that Ireland is behaving as a tax haven in its treatment of FMCs in the jurisdiction is entirely bogus, and is completely undermined by the depth of actual services, manufacturing and employment activity in the state. These are real companies, conducting real business, with real employees, from bricks-and-mortar premises on this island.

The establishment of a minimum 15% rate of CT is a Pillar Two[2] commitment under Action 1 of BEPS, albeit one that has arrived on the scene very late in the day. The OECD's own policy note on Addressing the Tax Challenges of the Digitalisation of the Economy[3] in January 2019 stated: "*The proposal under this pillar does not change the fact that countries or jurisdictions remain free to set their own tax rates or not to have a corporate income tax system at all*." It is explicitly clear from an

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN
[2] https://www.oecd.org/tax/beps/beps-actions/action1/
[3] https://www.oecd.org/tax/beps/policy-note-beps-inclusive-framework-addressing-tax-challenges-digitalisation.pdf

OECD perspective, as well as from that of the TFEU, that taxation is a national competence, notwithstanding that there is an emerging consensus upon it from an international point of view.

There is also little point in the OECD attempting to set a global minimum CT rate if there is not some level of agreement on acceptable deductibles. The OECD itself acknowledges the fact that Ireland's nominal rate and effective rate are broadly similar. Our IP regime is also stricter than some of our near neighbours who tout far higher nominal rates of CT.[4]

While your position[5] regarding the evolution of Pillar 2 has been very clear, we must acknowledge that Ireland's official stance for many years has been to fall into line with the OECD BEPS process. Departure from that framework relatively late in the day, even though justifiable in principle, is problematic in practice.

ISME therefore believes this is an opportune time, ahead of Budget 2022, to consider afresh some aspects of our commercial tax code. In particular, we believe that the inevitable increase in CT to 15% should be accompanied by a revision of our CGT rate. At 33%, this is the fourth highest rate of capital tax in the OECD, and we believe it materially impacts yield. We do not accept the Revenue Ready Reckoner[6] calculations that an increase in CGT rate would generate a marginal return for the Exchequer: quite the opposite. To be fair to the Revenue, they acknowledge their calculations "*assume no behavioural change*;" and tax increases have long been used as a means of *decreasing consumption* for alcohol and tobacco.

While we are not advocating a return to the 20% rate, we believe a reduction in the current rate to 25% would increase the rate of capital churn in the domestic economy and would generate a permanent uplift in yield. This has been our position for some time and remains our position in our Pre-Budget Submission 2022.[7]

We understand there are reservations about applying a lower rate of CGT to "passive assets" such as land that might result in lower yield from disposal windfalls. We would therefore be agreeable to a lower rate of CGT applied to investments in productive businesses while the 33% rate could be maintained for property.

However, we also believe that a "standard" rate of CGT should be dynamic and encourage the investment in and retention of productive companies. For example, for a headline CGT rate of 25%, retention for longer than five years could be rewarded with a reduced rate of 15%, which could further decline to 10% for retention longer than 10 years. This would incentivise the long-term development of strong Irish companies instead of the current trend where successful start-ups sell out at a relatively early state of maturity. In the interest of equity, fairness and long-term business retention, indexation should also be introduced for the purpose of CGT calculation.

[4] https://www.oecd.org/tax/tax-policy/corporate-tax-statistics-second-edition.pdf
[5] https://www.gov.ie/en/speech/3dc0d-speech-by-minister-for-finance-paschal-donohoe-td-to-virtual-seminar-on-international-taxation-with-the-department-of-finance/
[6] https://www.revenue.ie/en/corporate/documents/statistics/ready-reckoner.pdf
[7] https://isme.ie/pre-budget-2022-submission-to-government/

While we do not foresee a return to the €3bn (plus) raised by CGT in 2006 and 2007, we believe the "sweet spot" for CGT exists at a somewhat lower rate, and would permanently increase yield beyond the €1.1bn in 2019 and €0.9bn in 2020 by at least 30%. Previously, the CGT yield increased by 1,200% in the five years after the reduction from 40% to 20%. Ireland continues to suffer a sub-optimal yield from CGT because of an ideological opposition to reduction of the current rate. We ask you to review this in Budget 2022.

Yours sincerely,

Neil McDonnell
Chief Executive

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Michael McGrath TD DPER
John Hogan, Secretary General, Department of Finance
Emma Cunningham, Assistant Secretary General, Department of Finance
Declan Hughes, Assistant Secretary General, DETE
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