Minister Paschal Donohoe T.D.
Minister for Finance,
Government Buildings,
Dublin 2

3 September 2021

Re: OECD International Tax Proposals

Dear Minister,

Thank you for your efforts in meeting the challenges you are faced with arising from the OECD and the G20 discussions. You are faced with the difficult challenge of preserving Ireland's interests while also managing the impact that these ongoing discussions are having on our national reputation. It is an unfortunate geopolitical fact that it is easier for the bigger states to blame the deficiencies that they have fostered in their domestic tax codes on smaller states, such as Ireland, than it is to thoroughly examine the policy decisions and politics which led to the creation of those same deficiencies.

As you know Chambers Ireland has always supported Ireland's 12.5% corporation tax rate. This measure has provided certainty for businesses investing in Ireland. Furthermore, the political capital invested in our corporate tax rate by repeated governments, regardless of the parties involved, has demonstrated the reliability of Irish commitments and has also mitigated against political risk in assessments of our country as a location for foreign direct investment.

This national commitment has been of huge reputational benefit to our country. Chambers Ireland also recognises the economic opportunities that have been afforded to us by the rules based international taxation and trade order which we participate in. It is these rules that have allowed us to benefit from trade and investment while exercising our absolute right to set our taxation rates at the level that is most suited to our country's interests.

The Chambers Ireland network also believes that, regardless of the outcome of the OECD/G20 BEPS Inclusive Framework, Ireland's interests will be best met by our legal and regulatory framework remaining consistent with international law and best practice.

Many elements feature in our international reputation. As an English-speaking member of the EU, with large Software, Medtech, Financial Services, Pharma industry clusters, a common law system, a high-quality educational system and research sector, with a flexible and highly skilled workforce that is complemented by over 500 million potential workers with visa-less migration rights. This access to talent is complemented by the abundant renewable energy potential off our coasts with its associated carbon-free green Hydrogen and ammonia fuel opportunities. Our geographical location also affords us the potential to act as a logistics hub for extra-EU firms that seek to trade with both the EU and GB post-Brexit. There are many strengths to Ireland such as our exceptional ease of doing business, which make Ireland an attractive location for Foreign Direct Investments beyond our corporation tax rate. Regardless of the outcomes of GloBE negotiations, the more emphasis that can be placed on our non-tax related competitive advantages the better.

While the simplicity of our corporate tax messaging has been very useful at attracting the interest of potential investors, it has also been to the benefit of countries that are less transparent in their taxation regimes for businesses.

One of the unfortunate consequences of the clarity of our commitment to a low headline corporation tax rate is the discrepancy that exists between the headline rates and the effective rates of taxation. As we know[1] business decisions that relate to tax are not made on headline rates, but rather on effective rates.

Taxes on business profits demonstrate a far wider range than headline taxes[2] with PWC finding that Irish corporate taxes are at the average of the EU & EFTA rate. Similarly, research conducted by the Greens-EFA party at the European Parliament[3] also demonstrates that Ireland is distinctly mid-table when it comes to effective rates of corporation tax.

An advantage of the reform of international taxation rules will be that Ireland will be able to demonstrate its commitment to the international order. A simplification of the rules which pertain to multi-national companies is also likely to correct the impression that the Irish headline rate of corporation tax affected the tax take in other nations that have facilitated complex corporate tax structures that have allowed multi-national firms to defer tax payments. In principle taxation rules should be as simple as possible, the more complicated the set of rules, the more opportunities there are for rules of different jurisdictions to be combined in novel ways which create the potential for tax arbitrage. Had other states not facilitated such complex structures, Ireland would not be receiving the criticism that it is currently experiencing.

Chambers Ireland agrees with the minister's support of the Pillar One proposals which "re-allocate a proportion of taxing rights to market countries" in recognition of the "changes in how business operates in today's digitalised economy". As you will recall from our previous correspondence, the displacement of consumer spending from bricks-and-mortar stores to online vendors is as much an issue for businesses here in

[1] Lammersen, Lothar, The Measurement of Effective Tax Rates: Common Themes in Business Management and Economics (June 2002). ZEW Discussion Paper No. 02-46, Available at SSRN: https://ssrn.com/abstract=395260
[2] PwC/World Bank Group Paying Taxes 2018 report https://www.pwc.ie/media-centre/press-release/2017/paying-taxes-2018-report.html
[3] Effective Tax Rates of Multinational Enterprises in the EU https://www.greens-efa.eu/files/doc/docs/356b0cd66f625b24e7407b50432bf54d.pdf

11 St Stephens Green, Dublin 2, D02 FY84 T. +353 (0) 400 4300 E. info@chambers.ie @chambersireland

Ireland as anywhere else in the OECD. The pace of this process has accelerated over the course of the coronavirus pandemic. Businesses are particularly concerned about how their operations can be undercut by retailers in other jurisdictions that do not have the same tax burdens as Irish businesses and are not paying rates to Irish local authorities. Given how such online businesses have undermined the tax base of our Local Authority Areas, the department should direct the receipts from Pillar One measures towards the local authority that the Irish customer is based in to assist in filling the widening gap in local authority budgets which local businesses with physical premises are compelled to fill. That said it is likely that the Pillar One proposals will result in lower than profiled Corporation Tax receipts which highlights the need to transfer any excess revenue to the 'Rainy day fund'.

Regarding the Pillar Two proposals, Chambers Ireland is aware of the potential risks to our reputation should we retreat from our long-held position. This would have to be balanced against the reputational risks of falling outside the international norms, and businesses operating here would likely experience considerable difficulties should their operations here no longer conform to the demands of the international tax architecture. Given that the estimates of our effective rate of profit tax are not dissimilar to the proposed effective rate, we do not think that these proposals will significantly change the receipts gathered. Given the double taxation rules which underpin the tax treaties which Ireland participates in, should any business that has been active here, but is headquartered elsewhere, not reach the levels of taxation which their home country demands of them, then that home country has always had the right to claim the right to tax the profits of such a firm above the 12.5% that is paid here. The Pillar Two proposals are not likely to have a significant impact on the tax receipts that are currently received here.

The risk regarding our attractiveness to further FDI is apparent too, but there are many factors that result in investment in Ireland, and Ireland is no longer a low-cost location for FDI. Our strengths are found further up the value chain, in terms of our

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skilled and educated workforce, our membership of the EU, our proximity to the British market, our renewable energy resources, and the pace with which we can adapt to changes in the global economy. Indeed, problematic building costs, our ineffective planning system, our slow commercial court system, our staffing problems that relate to housing shortages, our quality-of-life rankings relative to other European locations, and concerns about healthcare services here are likely to be a greater disincentive to FDI than the OECD/G20 Pillar Two proposals.

Notwithstanding Ireland's present stance, there is still uncertainty regarding the capacity of certain OECD member states to deliver the legislation that would be required if they are to meet their obligations under what appears to be the consensus that is forming within the G20. Such uncertainty is a risk to the ultimate success of this project given the ineffectual track record of some states when it comes to reflecting their external diplomatic positioning back into national legislation through the prism of domestic politics and parliament. Therefore, it will be necessary to balance the reputational costs associated with being seen to be a hold out in this process and giving commitments which EU parties hold us to, even as other major OECD members fail to deliver what is required of them.

Again, thank you for your considerable efforts at this time.

Yours sincerely,

Ian Talbot
Chief Executive

www.chambers.ie

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