Committee on Finance, Public Expenditure and Reform, and Taoiseach

Minister Donohoe speech

10th November 2021

I wish to thank the Chairman and the Committee for the opportunity to speak today on two important topics, Corporation Tax and the forthcoming Central Bank (Individual Accountability Framework) Bill.

International Tax Rules

From their outset in 2013, Ireland has constructively engaged with the global tax discussions and we have already significantly reformed our tax system to be in line with emerging international norms.

Last month, Ireland joined 135 other jurisdictions in reaching a global two pillar agreement on addressing the tax challenges arising from digitalisation of the global economy.

Ireland did not join the interim agreement in July, primarily because it did not provide sufficient certainty with regard to what any globally agreed rate would be. My priority in recent months was to secure the necessary changes in the October agreement, and to ensure that our strategic interests would be protected.

There are two pillars to the agreement. Pillar One will see a reallocation of a proportion of profits to the jurisdiction of the consumer. This means that a proportion of corporate tax revenue streams which now flow to the Irish Exchequer will flow to the Exchequers of other countries when implemented. Pillar Two will see the adoption of a global minimum effective tax rate of 15% applying to multinational companies with global revenues in excess of €750m.

It is important to set out why joining the agreement is in Ireland's interest.

First, Ireland is one of the most highly globalised countries in the world. We have clearly benefitted from the investment and good jobs that have accompanied the decision of many multi-nationals to make Ireland their home. It is vital that we adapt and evolve in line with new international rules so that we can continue to be a world class destination for inward investment.

Second, while the agreement introduces a global minimum effective tax rate of 15% for companies which have a turnover greater than €750 million, my intervention was instrumental in ensuring that the rate is moderate, and will continue to permit tax competition within guardrails, recognising that other countries advocated for higher rates. Additionally removing a proposal for “at least” helps deliver the predictability that is a cornerstone of Ireland’s offering.

Third, we will retain the 12.5% corporation tax rate for the 95% of companies in Ireland that are out of scope of the agreement - discussions with the European Commission confirmed that a forthcoming Directive on Pillar Two will be faithful to the agreement. Further, we can continue to allow our tax system to support innovation and growth, including through the use of R&D tax credits.

I have long signalled that there will be a cost to Ireland signing up to this agreement. My Department and Revenue have estimated that the cost in terms of tax receipts foregone could be up to €2 billion in the medium term – this costing will be kept under review as the critical technical discussions proceed.

It is important however to consider the very real risks associated with staying outside the process. As a small open economy within the EU, we have strong ties to the US and many of the other G20 countries. This makes it essential that we stay in line with key international accords. Further, if Ireland was not in the agreement we would lose influence in respect to the critical and ongoing technical discussions.

Finally, the design of the global minimum tax means that if Ireland was outside the agreement, other jurisdictions could apply a top-up tax to the subsidiary of a multi-national if it is taxed below the global minimum effective rate.

I believe that the upsides of being in such a historic international agreement far outweigh the downsides of staying out. This has been a difficult and complex decision but I believe it is the right one, and I am confident that Ireland will remain competitive into the future, and we will continue to be an attractive location when multi-nationals look to invest overseas.

Central Bank (Individual Accountability Framework) Bill

I will now speak about the General Scheme of the Central Bank (Individual Accountability Framework) Bill that was published in July and is currently being drafted.

Central Bank (Individual Accountability Framework) Bill

This Bill seeks to ensure greater levels of accountability, leading to better outcomes across the financial sector and provide financial institutions with the tools to address meaningful cultural change.

The Bill provides for four main aspects along with necessary technical changes to existing legal processes. All of these make up the Individual Accountability Framework:

SEAR:

A key element of the legislation is the Senior Executive Accountability Regime (SEAR), a commitment of the Programme for Government.

SEAR will:

- place obligations on firms and senior individuals within them to set out clearly where responsibility and decision-making lies;
- prescribe mandatory responsibilities for firms, which must be allocated to individuals carrying out senior roles to ensure accountability for all key conduct and prudential risks.
- impose a duty of responsibility on each person in a senior role to take reasonable steps to avoid their firm committing or continuing to commit a "prescribed contravention" in relation to the areas of the business for which they are individually responsible.

By requiring firms to provide to the Central Bank written accounts, through management responsibility maps and statements of responsibilities for each senior executive, SEAR will facilitate the holding to account of individuals for the way in which they discharge their responsibilities and for any failures or wrongdoing in that regard.

CONDUCT STANDARDS:

The Bill will also introduce three sets of Conduct Standards;

- common conduct standards (to apply to all staff in Controlled Function roles, junior and senior)
- additional conduct standards (to apply to those in senior roles) and
- standards for businesses (to apply to all firms).

These standards will require those to whom they apply to act with honesty, integrity, and due skill; to cooperate with the Central Bank; and, to pay due regard to the interests of customers and treat them fairly.

ENHANCEMENTS TO FITNESS & PROBITY REGIME:

The legislation will also provide enhancements to the Fitness & Probity Regime to improve the processes by which individuals are assessed for their suitability for financial services roles and investigated where there are reasons to doubt their suitability.

BREAKING THE PARTICIPATION LINK:

The breaking of the "participation link" will ensure that an individual can be held accountable for his or her actions without the need to prove a contravention by a firm, in which that individual participated.

The introduction of individual accountability does not mean that firms will no longer be held accountable for their actions, with all responsibility shifted onto individuals.

Rather, the responsibilities of firms, and of individuals, will operate side by side and complement each other. This is to avoid the danger of scapegoating individuals and to ensure that responsibility and accountability are properly and fairly apportioned.

The Conduct Standards for Business underline the expectation that firms operate honestly and ethically, in the best interests of their customers.

However, participation in wrongdoing by a firm will continue to be a prescribed contravention. For instance, where a firm engages in wrongdoing, the firm will be held accountable and the individuals who participate in that wrongdoing by the firm will also be held accountable.

The Duty of Responsibility that will apply to senior executives under SEAR is a duty to ensure that, in those areas of the business for which they are responsible, their firm complies with financial services legislation. Failure to keep their firm honest will be something for which senior executives can be held accountable, alongside any wrongdoing for which they are personally responsible.

The harm done by reckless and dishonest behaviour in the financial services industry earlier this century has been enormous. Many people suffered terribly as a result, and still live with the consequences. I am mindful, in particular, of those who lost their homes in the tracker mortgage scandal. Against that background, it is understandable that people would be angry and focused on the need to punish those responsible. This legislation will ensure that, should similar wrongdoing occur in the future, it can and will be punished appropriately.

The objective of this legislation, however, goes far beyond this. This legislation is intended to underpin a thorough transformation of the culture in the financial services industry.

With individual accountability, those working in the financial sector are likely to consider the implications of taking actions for which they can be found personally responsible with all the consequences that that involves. This should engender a shift to more trustworthy practices.

Clearly if an issue such as the tracker mortgage scandal were to occur in the future, it would be essential to ensure that those responsible were held accountable, but it would be far, far, better to ensure that such a thing does not ever happen again.

In conclusion, this legislation seeks to engender individual accountability to improve practices and culture within financial institutions while at the same time extends the sanctioning process.

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Word Count 1,472