

DÁIL ÉIREANN

ROGHCHOISTE BHUAN-ORDÚ 112

STANDING ORDER 112 SELECT COMMITTEE

Dé Céadaoin, 8 Meitheamh 2016

Wednesday, 8 June 2016

The Select Committee met at 2.30 p.m.

MEMBERS PRESENT:

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|---------------------------|--------------------------|
| Deputy Maria Bailey, | Deputy Michael Harty, |
| Deputy Seán Crowe, | Deputy Fiona O'Loughlin, |
| Deputy Timmy Dooley, | Deputy Anne Rabbitte, |
| Deputy Peter Fitzpatrick, | Deputy Brendan Ryan. |
| Deputy Sean Fleming, | |

DEPUTY COLM BROPHY IN THE CHAIR.

Scrutiny of EU Legislative Proposals

Chairman: For the purposes of the broadcasting services, I draw members' attention to the necessity to switch off mobile phones or put them in safe, airplane or flight mode. It is not sufficient simply to put them in silent mode.

Today the committee will consider two new EU draft legislative proposals as outlined on the agenda, one of which is listed for further consideration, COM (2016) 198. We are joined by officials from the Department of Jobs, Enterprise and Innovation to assist us in our consideration of this proposal. The directive concerns the disclosure of income tax information by certain undertakings and branches. The committee has examined it twice before and at the last meeting it was decided to seek additional information. On behalf of the committee, I welcome Ms Sabha Greene and Mr. John Moynihan from the Department of Jobs, Enterprise and Innovation.

By virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person or an entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I invite Ms Greene to make her opening statement.

Ms Sabha Greene: In April the European Commission adopted the proposal for a directive amending the accounting directive - 2013/34/EC - on the disclosure of income tax information by certain undertakings and branches. The European Council's working party on company law has since met twice to discuss it. The emphasis so far at the meetings has been on seeking clarifications and gaining an understanding of the detail. Issues aired include whether this is more appropriately a matter for tax law than company law; the consequences for clarity, consistency and compliance of placing this requirement in the accounting directive, given that accounting and tax provisions can use different terms and concepts; and the application of the proposal to undertakings based outside the European Union.

The Dutch Presidency plans to hold a third meeting next month. We do not yet know of the Slovakian Presidency's ambitions but as of this morning, it seems it intends to hold a meeting once a month from now on during the term of its Presidency, for the next five months, excluding August. At the same time as we in the Council are considering the matter, the European Parliament has assigned lead responsibility to the legal affairs committee but, again, as of this morning, I understand this may change to the economic affairs committee. This negotiation is really at a very early stage and we in the Department have not yet taken a position on the proposal. We are still assessing its extent and impact and examining the results of the public consultation which closed just a little over two weeks ago.

As the proposal very clearly covers tax matters, we are also in consultation with the Department of Finance. Nevertheless, we have already identified some technical concerns, mainly

relating to the approach that has been taken of inserting tax provisions into an accounting law measure and also with the obligations it purports to place on subsidiaries and branches of non-EU enterprises. I will give members an idea of where the Commission is coming from - after all it is its proposal. It views this proposal as part of its work to tackle corporate tax avoidance in Europe. It supplements the recently adopted directive on administrative co-operation. Members may know that is a tax directive which obliges large multinationals to report corporation taxes paid on a country by country basis. The report is made to the relevant tax authorities. The directive also provides for those authorities to share that information with each other. That is the EU implementation of the OECD's new rules on tax avoidance.

The information under the directive on administrative co-operation will remain confidential to the tax authorities so the Commission now considers that information prepared by companies under that directive should also be made public. The main objective in today's proposal is to increase corporate tax transparency. Related to that objective, the Commission hopes that public scrutiny of corporate tax arrangements will make those companies more accountable and encourage them to pay taxes where they make their profits. It also views this proposal as addressing tax competition; it argues that multinational corporations can pay up to a third less tax than companies operating in just one country. Finally, it expects the proposal to foster corporate responsibility to contribute to welfare through taxes.

I will turn now to the main features and content of the proposal. The Commission's proposal will apply to multinational companies, regardless of whether they are European, that are based in or have a subsidiary or branch in the European Union. They must also have a consolidated net turnover exceeding €750 million. That threshold has been taken from the directive on administrative co-operation so it is to match its scope. The companies that must make reports to the tax authorities under that directive will have to produce public reports under this proposal.

Looking only at companies located in Ireland, the Revenue Commissioners have assessed that approximately 47 companies would come within scope here. They have not broken down that figure into indigenous and other enterprises, as the committee had hoped to hear. The committee has also asked me to address the likelihood of the threshold of €750 million being amended in future. Clearly we are just at the start of the negotiations so it is difficult to tell the direction things may take but we know from recent events that the European Parliament put forward a similar proposal last year in the negotiations on a directive on shareholder rights. The scope at that stage suggested by the Parliament was to cover undertakings with more than 500 employees and either a balance sheet total of more than €86 million or a net turnover of more than €100 million. Some stakeholders have already said the Commission's threshold of €750 million is too high. The content of the proposal moves on to put an obligation on these companies to disclose tax information. The key obligation is to prepare a report that sets out the corporation tax that the multinational pays in each member state where it has operations, known as country-by-country reporting. The same information must be provided for each non-co-operative tax jurisdiction or tax haven the multinational is active in. For the rest of the world, the multinational need only give an aggregated figure for all corporation tax paid. It has a breakdown for each of the 28 member states in which it operates and then there is a single figure for the rest of the world.

The exception of the single figure is if any of the countries outside the EU is a tax haven, that has to be broken down as well. The report then has to be posted on the company's website and filed with a state register of companies. In Ireland, that is the Companies Registration Office.

The committee in its advance questions raised the question of currency conversion. The

proposal permits the companies to produce the report in the same currency as they produce their financial statements. There is no obligation to convert to euro if their financial statements are prepared in, say, dollars or yen.

I refer to the impact on subsidiaries and branches. The Commission's intention is that multinationals headquartered outside the EU but conducting business in the EU will disclose the same corporation tax information as EU undertakings. The idea is to level the playing field between EU and non-EU undertakings. The proposal gives effect to that objective by placing obligations on the subsidiaries and branches of those companies that are located in the EU where the parent company is located outside the EU. The proposal provides that any subsidiary that meets the size requirements for a medium or large undertaking and has a parent outside the EU with a net consolidated turnover of €750 million will have to make public corporation tax reports. These will be consolidated at the level of the ultimate parent. Where a non-EU company does not have a medium or large subsidiary in the EU but has one or more medium or large branches, the obligation falls on the branch. It remains the obligation of the parent to put the report together. The Department is concerned that a subsidiary or branch could be legally obliged to publish information that it does not have access to, as the information is within the ken only of the parent. We have raised this issue and will see whether it can be accommodated in any final text.

There is also a proposal concerning non-co-operative tax jurisdictions. The general rule is that any tax paid outside the EU is just disclosed on a single aggregated basis. However, there is an exception if the multinational pays taxes in a country referred to in the proposal as a non-co-operative tax jurisdiction. In the case of taxes paid in those places, the multinational must break down those taxes on a country-by-country basis, in the same way as it does for each member state. To identify those non-co-operative tax jurisdictions, the proposals provide that the Commission will prepare a list of those countries. This will be done by delegated act. It will, therefore, be done by the Commission but in consultation with parliament and member states. This element of the proposal was developed by the Commission at a late stage and, therefore, it does not feature in the impact assessment. It has drawn criticism for a number of reasons. Those who call for more comprehensive country-by-country reporting see no reason for a list because they just want a breakdown for every country a company has an operation in. If the list remains, there is a concern is that the list would be subject to change. This year, a company has to report its tax paid in country X where next year it will not. It makes it difficult to compare from one year to another. How a company gets on and off the list is also seen as arbitrary. Our view is that any assessment of the tax status of countries is one for tax authorities and Finance Ministers based on tax principles. At last month's ECOFIN meeting, Ministers agreed to prepare a similar list for tax purposes and, therefore, we have questioned whether there is any need for a second separate list at all.

The committee then asked about the public consultation we ran in the Department, which closed in late May. We received seven submissions, although we understand that there may be one or two more on the way. It is our intention to post all of them on the Department's website in the coming week or so and we will let the committee know when that happens. The results can be summarised as follows. Five of the respondents welcomed the proposal. They considered the objective of enhanced transparency of profits and taxes, broken down on a country-by-country basis to be an important one. For some, the information would be important for developing countries as well as just for public interest, as those countries may not have access to this information through the OECD's exchange of tax information.

However, most of those in favour considered that the proposal fell short in some respects. In particular, they called for full country-by-country reporting not just for the EU. In other words they want tax payments broken down for every country where a multinational has operations. Related to this was a lack of support for the list of the non-co-operative tax jurisdictions, as it could be said this would be arbitrary, subject to change and would be likely to exclude large and important jurisdictions. Another criticism was that the threshold was too high.

The other two submissions could be broadly said to be not supportive. They argued that it could lead to a release of commercially sensitive information and that the data could be misinterpreted, which in turn could give rise to reputational damage for companies. There was also the view that the proposal is a hasty response to developments such as the Panama papers; that it would be better to wait for an assessment of the OECD exchange of tax information first; and that a more effective approach might be to revise international accounting standards which, of course, would cover all companies not just those with operations in the EU.

We are currently assessing all the submissions and we are likely to go back to some of the organisations for further information or clarity. All the views will be considered in refining our position and in discussing it with the Minister in the coming weeks.

I hope that I have addressed the questions the committee raised in its letter. If not or if committee members have any other questions, Mr. John Moynihan and I are available now or if anything arises as the negotiations progress in the coming months.

Chairman: I thank Ms Greene for her opening remarks.

Deputy Sean Fleming: We are at the early stages and will not conclude anything here in the near future because we are still awaiting the outcome of the submissions. I have one important question. How many of the enterprises are indigenous Irish enterprises? We have asked that question. It affects entities with a turnover in excess of €750 million. Many of them are headquartered here, but many of them are indigenous Irish companies. How will it affect what we would call Irish indigenous business? We will get that information back from the Department in due course.

Ms Sabha Greene: I cannot say that I can give it to the committee because I have asked the Revenue Commissioners for that and they were not in a position to break it down for us. I will, of course, ask again and see if it is possible.

Deputy Sean Fleming: Could the Department contact anybody else? Surely, it is not only a Revenue issue.

Ms Sabha Greene: Not that I know of, but we can check.

Deputy Sean Fleming: I would not like the committee at any stage to sign off on something without knowing the impact on Irish indigenous companies. It would not be right for us to conclude without knowing what we are concluding. That is my main point. We have to receive that information in some format. It could be estimates from the Department of Jobs, Enterprise and Innovation, the CSO or Revenue; I do not mind where it might come from. I am sure there is some way of giving us some kind of indication of the types of Irish companies affected.

Deputy Seán Crowe: Everyone would agree that more transparency in this area is welcome. However, when one digs down, everyone has different views on what we mean by transparency. This is the difficulty with this proposal.

The €750 million threshold is far too high. Ms Greene mentioned the recommendation to change this to 500 employees.

On country-by-country reporting for MNC operations in EU states, we know that some EU states use their former colonies and tax-avoidance schemes. Again, no one seems to be looking at that. It seems to be just within the EU itself. The significant avoidance measures in which they are engaging are starving developing countries of much-needed legitimate tax revenues through processes such as tax pricing, paying tax in an EU state at a reduced rate and other loopholes. This has been highlighted by Christian Aid and some other organisations. Do the delegates believe the reputational damage mentioned in the document will have an effect on Ireland's reputation, particularly as some say it is an enabler of massive tax avoidance schemes? The last Government talked about doing away with the double Irish tax structure, despite having denied for years that it actually was in place. Huge profitable companies have used it such as Google, Microsoft and so on. We know this as there have been investigations. However, they still have until 2021 to restructure their tax avoidance measures. Will these new measures pick up on this or is it a separate issue? Is implementation of the so-called knowledge box measures another tax avoidance measure?

As I said, everyone is in favour of tax transparency - I am sure the multinationals which use these schemes are publicly in favour of it - but the problem is that it is not being implemented. We are looking at the issue within the European Union but, as many others and I argue, we should be looking at it across all countries where multinationals are involved. While I accept that there are problems with the sensitivities, if we are serious about making the measures work, that is only way it will happen. Some companies take their own measures, while some countries, even within the European Union, operate legitimate tax loopholes. Unless we agree to commonality across the board, something on which there is no agreement, we are faced with this problem. Nonetheless, there is broad consensus, particularly among those dealing with developing countries, that this needs to happen across the board in all countries, not just within the European Union. That may all sound like a statement rather than a question, but there are questions within it.

Ms Sabha Greene: The main objective from the Commission's point of view is to improve transparency. Clearly, if this measure is brought in, Irish companies will have to meet their obligations. The Commission is also trying to bring in companies that do not have their headquarters in the European Union by placing obligations on subsidiaries and branches and trying to get them to release the information in order that this measure will have, for want of a better word, an extraterritorial effect.

Tax measures in Ireland, the knowledge box and any other arrangement really are matters for the Department of Finance on which to comment. I believe the reason the Commission has included these proposals in the accounting directive is that it sees it as more of a regular financial reporting obligation. It is, therefore, trying to match it with companies' other obligations to produce and file their annual accounts in order that third parties, including creditors, will be able to assess the financial health or otherwise of those with whom they are dealing. If it comes in, this will be the same as every other EU country and it is meant to improve transparency. The Commission hopes it will stimulate public debate and that the debate will move to talking about tax rules and what people in member states want as their tax rules.

Chairman: If no one else wishes to contribute, I wish to raise a couple of points.

I thank Ms Greene for an excellent contribution. The point I took from it very clearly was

there effectively seemed to be a back-door mechanism which was being employed by the Commission to integrate with the tax rather than the accounting-reporting area. Effectively, what we are really looking at is a mechanism within this proposal which very much brings in areas of taxation. While I accept and acknowledge the contributions made by Deputy Seán Crowe on transparency and the work done by the last Government and the views of the Government and most other people on the need for transparency, I have a particular worry in this regard. I am particularly concerned that in any subsidiarity proposal examined by the committee tax policy is an issue for the member state and not for the Commission. Ms Greene made reference on a number of occasions to accounting terminology, which is effectively tax terminology, and the differences between them. The more we look at this and see what it attempts to do, I am concerned it is going fairly directly into the tax area and bringing the Commission into the tax area. Is there a feeling, particularly in the Department, that the more the threshold of €750 million decreases, the more Irish companies will get involved in this? I raised this point at the previous meeting. Some of the requirements are effectively tax reporting requirements and not accounting requirements. Is this a fair assumption?

Ms Sabha Greene: We are still at a very early stage in trying to work out the impact of all of this and how it will work in practice if it is adopted. It is very complicated. It takes some tax ideas and it has many hallmarks of a tax instrument. It speaks about a list of non-co-operative tax jurisdictions. It uses the word “turnover”, which means different things in accounting and tax. It mixes in concepts of residency. Many people have argued it is a tax instrument and should be dealt with as such. It has come to us as a company law issue, so we must engage with it on this basis. We are dealing very closely with the Department of Finance. It is possible that the Council could decide to move it into the realm of tax, but this has not happened. I do not know how likely it is. It is very hard to say. I cannot emphasise enough how early it is for all 28 member states, which are still grappling with it.

The Commission would argue this is an important issue for small and medium-sized enterprises because they are not in a position to take advantage of paying tax in different jurisdictions in the way multinationals are. I do not advocate one way or another, I am just stating the background. It states these companies already have to produce this information for tax authorities so there is no additional burden in making it public. One could see it both ways. I am sorry not to come down on one side or the other, but there is so much in it that looks like a tax instrument while at the same time it does look like a financial reporting instrument.

Chairman: To go back to the second point I made, the €750 million threshold is critical. Deputy Fleming raised the point that a number of Irish companies are affected and Ms Greene gave us a global figure of 47.

Ms Sabha Greene: That is in Ireland.

Chairman: There is no breakdown on whether they are indigenous companies or multinationals operating here.

Ms Sabha Greene: No.

Chairman: There does not seem to be any prohibition on this. If the threshold figure were to be substantially reduced during the negotiation process there would be an equivalent increase in the number of companies based here which would be affected by the regulation. By definition, although we do not know because we do not have the breakdown, it would probably bring in an awful lot more Irish companies because the big multinationals that get named all the time

are probably captured already in the 47. Therefore, it would really start to kick in and affect Irish companies.

Does anybody have additional questions?

Chairman: Are there any additional questions?

Deputy Seán Crowe: In terms of the multinationals currently availing of tax avoidance measures, some of which will not come to an end until 2021, if this is introduced, will those measures remain in force for those companies? Will those special deals remain or will the measures come to an end overnight?

Ms Sabha Greene: This does not affect rates of tax or any rules on tax. All it does is oblige companies to disclose publicly what corporation tax they pay and to break that down for each member state. It does not actually get at changing tax.

Chairman: Does Ms Greene have any information on how many Irish jobs there are in those 47 companies? I would imagine they are very major employers of Irish people, particularly as some of them are among our biggest companies. Does she have any idea how many thousands of Irish peoples' jobs could be affected?

Ms Sabha Greene: I do not have that information with me but I can look into the matter for the committee.

Chairman: As there are no further questions, I thank Mr. Moynihan and Ms Greene for attending and for fielding questions from members. We will now go into private session.

The select committee went into private session at 3.05 p.m. and resumed in public session at 3.30 p.m.

Chairman: There were two proposals before the committee for decision, ranging from the Schengen measure to the proposal on tax disclosure. On COM (2016) 290 - Schengen visas for third country nationals, on the basis that there are no apparent subsidiarity concerns, it is proposed that this proposal does not warrant further scrutiny. However, it is suggested it be scrutinised further by the relevant sectoral committee once it is established. Is that agreed? Agreed.

On COM (2016) 198 - disclosure of income tax information in certain undertakings and branches, the committee is of the opinion that there has been a breach of subsidiarity. Therefore, it is proposed to send a reasoned opinion to the EU institution. A reasoned opinion must be proposed and agreed to by way of a motion of the House. Members should be aware that the deadline is 15 June. Is that agreed? Agreed.

It is proposed that the committee adjourn until 10 a.m. tomorrow when we will consider the report on the reasoned opinion.

Deputy Seán Crowe: Will we be considering the motion tomorrow?

Chairman: Yes. Is that agreed? Agreed. I thank everyone for attending.

The select committee adjourned at 3.35 p.m. until 10 a.m. on Thursday, 9 June 2016.

