The Corporate Tax Conundrum:

Why the OECD tax negotiations are crucial for Ireland

by Daire Lawler

Executive Summary

Negotiations at the OECD to agree a global framework to govern the taxation of company profits have been gathering pace in recent months. This discussion can be divided into two strands or pillars. **Pillar One** of the OECD's proposal addresses how the **tax base** should be determined and **Pillar Two** deals with the imposition of a global minimum effective **rate of corporate tax**. On Saturday, 5 June 2021, the G7 finance ministers announced that they had reached agreement on a proposal which would reallocate the profits of the top 100 most profitable multinationals for the purposes of taxation and would introduce a global minimum effective rate of corporate tax of at least 15%.

The Irish Government will hope that the OECD negotiation process, which aims to conclude a final deal by October 2021, will allow Ireland to reach an agreement on international tax reform that preserves the principle of tax competition as a lever for generating growth in smaller economies. The success of the OECD negotiations depends on the ability of its members to reach a compromise in the coming months.

US President, Joe Biden's tax reform initiative, the imposition of taxes on companies providing digital services by several influential countries in the negotiations, and diverging viewpoints amongst both larger and smaller countries and developed and developing countries are all issues that will impact the dynamics of the negotiations in the months ahead and determine their success.

The full impact of the reforms on Ireland's economy is largely dependent on the rate of tax that is agreed as part of the negotiations on Pillar Two. In this regard, the G7's agreement of a rate of at least 15% signals that the Irish Government's goal to retain its 12.5% rate of corporate tax has become an increasingly challenging task.

An agreement that forces Ireland to deviate considerably from its agreed 12.5% rate of corporate tax has the potential to hamper Ireland's ability to attract foreign direct investment (FDI) and to leave a hole in the government's finances.

16 June 2021

Introduction

Ireland's 12.5% rate of corporate tax has come under sustained pressure over almost two decades. This transparent rate, which was first agreed with the European Commission in 1998 and implemented in 2003[1] has consistently delivered substantial but not uncontested revenues for the exchequer.

Since the global financial crisis, Irish corporate tax revenues have soared, increasing from roughly €4 billion in 2014 to almost €12 billion in 2020. Revenues have also managed to circumvent the impact of the pandemic and rose by 9% from 2019 to 2020, highlighting their resilience in the face of economic headwinds.[2]

This corporate tax strategy has also been cultivated by successive governments' commitment to sustaining the 12.5% rate of corporate tax and by steadfast resistance to dogged efforts both within the EU and internationally to alter the rate. As a result, the Irish Government has provided tax certainty to multinationals seeking to do business in Ireland.

However, it now appears that the OECD's current negotiations on reforming international tax, due to conclude this year, could represent the final nail in the coffin for Ireland's 12.5% rate. Therefore, their outcome is crucial for the future of the Irish economy.

Recognising the importance of the negotiations, and reaffirming Ireland's commitment to participating in them, Minister for Finance, Paschal Donohoe said when speaking at an IIEA webinar on Thursday, 20 May 2021, that "change is coming" and "the nature of the change and the nature of the agreement is going to be very complex."

So, what exactly is being discussed and what will it mean for the corporate tax landscape in Ireland in the long-term? This paper attempts to analyse the current state of play of the OECD/G20 Inclusive Framework on base erosion and profit shifting, (BEPS), assess its possible future direction of travel, and discuss what it will mean both for Ireland and the rest of the world.

OECD BEPS Project

BEPS is a profit shifting strategy whereby multinational companies utilise differences in national tax systems to artificially shift profits to jurisdictions with low or zero tax rates. Infamous examples of such strategies in the Irish context were the since discontinued "Double Irish" and "Double Irish with a Dutch sandwich". These strategies involved the transfer of intellectual property rights of multinational companies and royalties between Ireland and Bermuda, often with the Netherlands as an intermediary.

In 2015, a series of 15 Actions forming a BEPS package to tackle tax avoidance was agreed by 60 countries. The Actions deal with issues such as digitalisation, harmful tax practices, transfer pricing, dispute resolution and treaty abuse.[3]

Following on from this, in 2016, the OECD/G20 Inclusive Framework on BEPS was established to ensure that interested countries and jurisdictions, including Ireland and developing countries, were able to participate on an equal footing in negotiations on BEPS and in reviewing the implementation of the Framework.

One of the key milestones of the Inclusive Framework was the establishment of the Multilateral Convention to Implement Tax Treaty Related Measures or the Multilateral Instrument (MLI) by over 100 jurisdictions. This Instrument, which was signed by Ireland on 7 June 2017, allows for changes introduced through the OECD/G20 Inclusive Framework on BEPS to take effect within bilateral tax treaties and allows for the implementation of agreements related to BEPS that are reached at OECD level.

[1] https://www.irishtimes.com/business/corporation-tax-to-be-reduced-to-12-5-by-2003-1.150440
[2] https://www.gov.ie/en/press-release/57243-deficit-of-19-billion-expected-in-2020-taxes-down-21-billion-expenditure-up-179-billion-on-2019-donohoe-mcgrath/
[3] https://www.oecd.org/tax/beps/beps-actions/

In the years following these developments, the momentum for global reform of corporate tax appeared to stall. The Trump Administration in the United States passed the Tax Cuts and Jobs Act (TCJA) of 2017 which reduced the United States' headline rate of corporate tax from 35% to 21%.

The TCJA, in its original form, exempted the foreign earnings of active subsidiaries of US multinationals from corporate tax. However, during the negotiations to pass the Act through Congress, legislators feared that this provision would encourage greater profit shifting. Therefore, a key provision of the TCJA, and one which would resurface within the current proposals of the Biden Administration, was a new treatment of overseas profits of US multinationals. Congress added a new 10.5% tax on global intangible low-taxed income (GILTI) which is intended to tax intangible assets, such as patents and trademarks, that are held abroad.

It is important to note that because of how tax credits apply to GILTI income within the legislation, the impact on the tax treatment of US multinationals operating in Ireland is minimal. However, US multinationals operating in zero tax jurisdictions are forced to pay a full 10.5% GILTI rate of tax, or half of the domestic rate of 21% in the United States.[4]

In October 2020, the OECD developed a two-pillar approach for addressing the tax challenges arising from digitalisation. Fundamentally, Pillar One argues that today's tax structures, many of which were designed in the aftermath of the first World War, are incompatible with the modern realities of a globalised and digitalised market. Furthermore, Pillar Two will ensure a global minimum rate of corporate tax that will help to address remaining issues regarding profit shifting and prevent what the OECD sees as a race to the bottom in tax competition.[5]

The OECD has stated that while it hopes to have an agreement in principle by July 2021, it will resolve the technical aspects of the plan by October 2021, as it awaits the final details of President Joe Biden's corporate tax plan which will make its way through the United States Congress. The outcome of the G7 summit in Cornwall on Saturday, 5 June 2021 suggests that an agreement that once seemed like a remote possibility has edged considerably closer towards fruition. It is worth assessing what an agreement on Pillar One and Pillar Two would mean in practice in any future deal.

Pillar One

When the existing tax policy orthodoxy was designed, it was assumed that companies which had a physical presence in a particular jurisdiction were also conducting sales in that jurisdiction, in an era where economies were largely sustained by their primary and secondary sectors. The modern digital and services-based global economy brings with it new challenges in matching the geographic location of taxable income generated by companies through sales to the jurisdiction where tax receipts are collected.

This idea is the basis which forms the Blueprint for Pillar One of the OECD/G20 Inclusive Framework on BEPS, which addresses nexus and profit allocation rules. The Blueprint for Pillar One, agreed by the 139 countries participating in the Inclusive Framework, outlines a proposal that would consider the residual profits of a multinational with a large level of business activity in a particular jurisdiction and allocate this amount to the jurisdiction for the purposes of taxable income. To implement Pillar One, due to the complexity of the changes it would involve, it is likely that a new multilateral treaty would have to be negotiated and signed by OECD members.[6] It was originally considered that this proposal

[4] https://www.taxpolicycenter.org/briefing-book/what-global-intangible-low-taxed-income-and-how-it-taxed-under-tcja

[5] https://www.oecd.org/tax/beps/international-community-renews-commitment-to-address-tax-challenges-from-digitalisation-of-the-economy.htm

[6] https://www.oecd-ilibrary.org/sites/beba0634-en/1/3/1/index.html?itemId=/content/publication/beba0634-en&_csp_=71b32056ea489ac3c26f0ea639f0fb6e&itemIGO=oecd&itemContentType=book

would apply to all companies that operate in multiple jurisdictions globally. However, In November 2019, Secretary of the Treasury in the Trump Administration, Steve Mnuchin, wrote a letter to OECD Secretary General, Angel Gurría, proposing to implement Pillar One on a "safe harbour" basis, which would allow companies to opt out of the arrangements. This idea conflicted with the vision for the Pillar One proposal held by most of the members of the OECD/G20 Inclusive Framework, who viewed it as necessary to implement the proposal statutorily.[7]

From the United States' point of view, successive Administrations have been keen to ensure that Pillar One of the Inclusive Framework is not a means to exclusively target large multinational companies offering digital services, the majority of which are US multinationals.

Many countries around the world, including six of the EU-27 as well as the UK have already implemented a unilateral digital services tax (DST). The DSTs vary in scope, with many, including in Austria and Hungary, levied solely on online advertising. Others, including France's more aggressive DST, are levied on the provision of a digital interface and data used for advertising purposes as well as online advertising itself.[8]

Secretary Mnuchin's letter stated that the US "firmly opposes" DSTs and that all countries should "suspend digital services tax initiatives, in order to allow the OECD to successfully reach a multilateral agreement."[9] Therefore, at this stage, it appeared the negotiations on Pillar One had reached somewhat of an impasse.

However, with the election of the new Biden Administration in the United States, negotiations at the OECD were provided with a new impetus. President Biden's Secretary of the Treasury, Janet Yellen, indicated at a meeting of G20 finance ministers and central bank governors on 26 February 2021 that the United States was willing to drop its demand to implement Pillar One on a safe harbour basis.[10]

This was followed by a new proposal from the Administration which would see Pillar One applied only to the top 100 most profitable firms in the world. The OECD's Director of the Centre for Tax Policy and Administration, Pascal Saint-Amans, a crucial figure at the epicentre of current negotiations, said that the new US proposal simplified the process and could help to achieve a deal.[11]

The proposal has not, however, been met with universal acceptance. Several developing countries, including India, Argentina and Nigeria, are involved in efforts at the UN to develop an international tax regime which would specifically target the profits of companies providing digital services. The proposal would be non-binding and could only be enacted if participating countries signed up to it and amended bilateral agreements.

Nigeria's Ambassador to the OECD, Mathew Gbonjubola, who spoke to the Financial Times on Monday, 10 May 2021, said that "developing countries may get next to nothing" in the Biden tax proposals on Pillar One. Concerns have been raised over the lack of economic reasoning that has been provided for the new Pillar One proposal, that it does not encompass as a wide a net as the OECD's original proposal and that it would only amount to 20% of global company profits.[12]

At the meeting of the G7 finance ministers on 4-5 June, a proposal for Pillar One applying to "the largest and most profitable multinational enterprises" was agreed whereby jurisdictions with high levels of business activity will be awarded taxing rights equivalent to 20% of profits exceeding a 10% profit margin. In exchange for reallocating a significant proportion of its multinationals' profits, the US has insisted on the suspension of all unilateral digital services taxes.[13]

[7] https://www.oecd.org/tax/beps/international-community-renews-commitment-to-multilateral-efforts-to-address-tax-challenges-from-digitalisation-of-the-economy.htm

[8] https://taxfoundation.org/digital-tax-europe-2020/

[9] https://thehill.com/policy/finance/473030-mnuchin-raises-concerns-over-global-talks-on-taxing-digital-economy

[10] https://www.ft.com/content/c2a6808e-ec6d-41d5-85e9-3a27c2b2c1bc

[11] https://www.bloomberg.com/news/articles/2021-05-05/global-minimum-tax-near-21-is-feasible-oecd-official-says

[12] https://www.ft.com/content/9f8304c5-5aad-4064-9218-54070981fb4d

[13] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/991640/FMCBGs_communique_-_5_June.pdf

At this point, it is unclear what criteria will be used to determine which companies will qualify as the "largest and most profitable", or what the calculations of the profit margins used to reallocate taxing rights will be. Regardless, the G7 agreement will act as the basis for further discussions at the OECD and the G20 where it is hoped these technical details will be agreed.

Pillar Two

Pillar Two of the Inclusive Framework addresses a proposal for a global minimum effective rate of corporate tax and is the proposal that is of greatest interest to Ireland and other low-tax jurisdictions around the world.

The OECD contends that tax competition is creating a race to the bottom and jurisdictions are competing with one another to lower taxes for the purposes of attracting foreign direct investment. It also argues that jurisdictions with low rates are exacerbating the issue of BEPS by acting as tax havens facilitating profit shifting by multinationals.

Addressing the issue surrounding a supposed "race to the bottom", Seamus Coffey, Lecturer at University College Cork and former Chair of the Irish Fiscal Advisory Council argues in the Irish Examiner on 6 May 2021 that the issue is more complex than it seems: "It is worth noting, though, that the 'race to the bottom' in corporate tax rates shows up everywhere except in corporate tax revenues. It is true that corporate tax rates have been falling in recent decades but governments have also been changing the rules so that the lower rates apply to a broader base - exemptions, deductions and allowances have been curtailed as the rates have come down."[14]

Indeed, it is clear from the data that these changes have increased both nominal corporate tax revenues in Ireland and the OECD and allowed their share as a percentage of national Gross Domestic Product (GDP) figures to increase also.

Data on the revenues collected from taxing the profits of corporates expressed as a percentage of GDP within Ireland and across the OECD in Figure 1 illustrates this picture. Such figures would therefore suggest a less sinister picture than is portrayed in the dialogue surrounding the "race to the bottom" that contextualises Pillar Two.

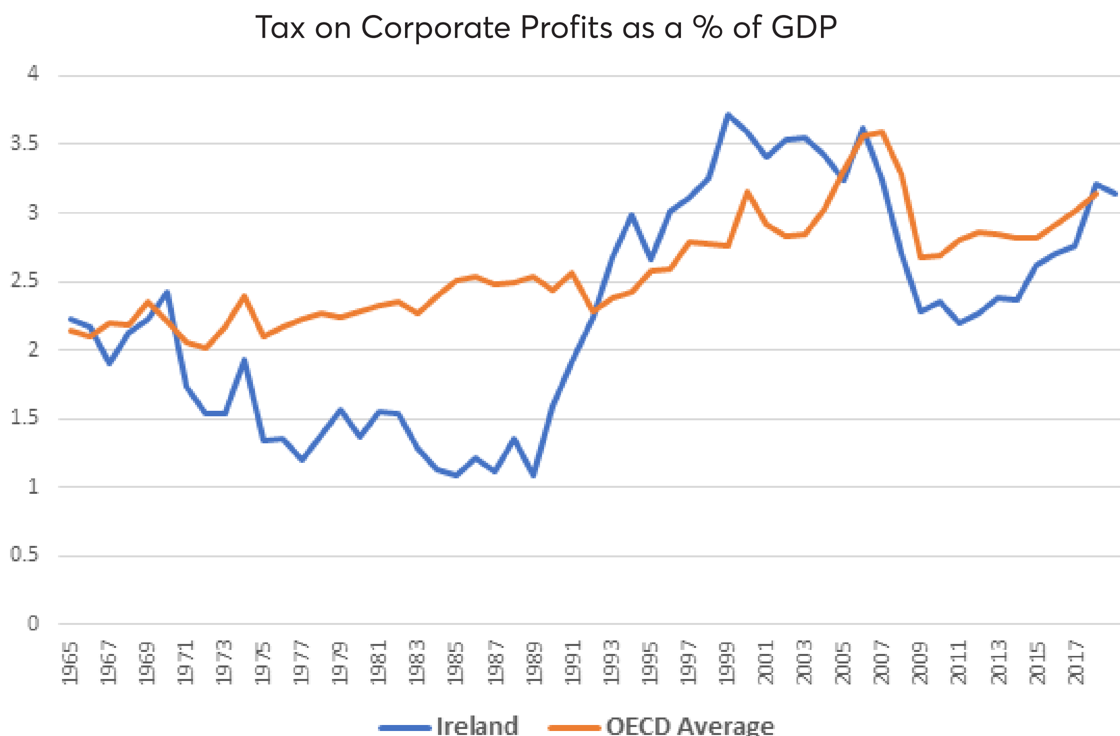

Figure 1 – Source: OECD[15]

[14] https://www.irishexaminer.com/opinion/commentanalysis/arid-40281887.html

[15] https://data.oecd.org/chart/6oY4 OECD (2021), Tax on corporate profits (indicator). doi: 10.1787/d30cc412-en (Accessed on 11 June 2021)

Nonetheless, on the issue of profit shifting, an IMF working paper from 2015 estimates that the economic impact of tax base erosion and profit shifting is a cost of 1% of GDP in long run revenue losses to OECD countries and 1.3% of GDP to developing countries.[16]

Negotiations on a global minimum effective rate of corporation tax in recent years have focussed at different stages on potentially introducing a rate of 12.5%, consistent with the Irish rate, or a rate of 15%.

The Biden Administration's new corporate tax plan changed the scope and ambition of the OECD Pillar Two negotiations considerably. Biden's plan argues for increasing the domestic rate of US corporation tax from 21% to 28%, but more importantly from an international perspective, it proposes to double the GILTI rate from 10.5% to 21% and abolish tax credits linked to the 10.5% rate that benefit countries like Ireland. If introduced, it would, in effect mean that US multinationals operating globally would pay a 21% rate of tax on their profits regardless of what jurisdiction they operate in.

To ensure a level playing field globally, the Biden Administration called for similar ambition within the OECD to negotiate a 21% rate as part of Pillar Two. The Ministers of Finance of France and Germany both indicated that they would support a rate of 21% if that were to be the outcome of the negotiations.

On Friday, 21 May 2021, officials from the US Treasury indicated that they would be willing to accept a rate of 15%, but that this was at the lower boundary of what they were willing to contemplate. Nonetheless, this was interpreted as a significant compromise which directed the negotiations towards a substantially lower Pillar Two rate than the 21% that was first envisaged by the United States.

As indicated earlier, at the meeting of the G7 finance ministers from 4-5 June 2021, the world's largest economies settled on a global minimum rate of at least 15% to be implemented on a country-by-country basis to guide further discussions within the OECD and the G20.

The implementation of the deal on a country-by-country basis would mean companies could not achieve an average rate of 15% by shifting profits between high-tax and low-tax countries, but would be forced to pay a minimum rate of 15% in each jurisdiction it operates in. The insertion of the language "at least 15%" is notable, as France's Minister for Finance, Bruno le Maire said that "I'm saying 15 per cent as a minimum – that's a starting point and in the coming months we will fight for a minimum corporation tax that is as high as possible."[17]

What stands in the way of a deal at the OECD?

Despite the historic agreement by members of the G7, several hurdles remain which mean that a deal at the OECD and the G20 is far from a foregone conclusion.

Within Pillar One, there are many details still left unresolved which could resurface at the G20 and the OECD as potential sticking points in the negotiations.

Though the agreement specifies that profits of the largest and most profitable companies will be reallocated for tax purposes, the negotiations have, thus far, addressed neither which countries will see their corporate tax base reduced, nor which countries will receive a greater slice of the corporate tax pie.

The US, which would stand to lose considerable revenues within the new nexus and profit allocation rules, will be reluctant to cede

[16] https://www.imf.org/en/Publications/WP/Issues/2016/12/31/Base-Erosion-Profit-Shifting-and-Developing-Countries-42973
[17] https://www.irishtimes.com/news/world/europe/europe-hails-tax-revolution-after-g7-seals-deal-on-15-rate-1.4585708

negotiating ground to European countries, including France and Germany, unless EU Member States commit to a full suspension of unilateral digital services taxes. In turn, members of the EU would be reluctant to agree to a proposal that did not sufficiently target large US multinationals offering digital services. The determination of the European members of the G7 in this regard is palpable, given that Amazon, a company which may not meet the 10% profit margin requirement for profit reallocation, looks set to still be included in any final deal on Pillar One.[18]

The fragility of the agreement reached on Pillar One is perhaps best illustrated by the demand from Rishi Sunak, the Chancellor of the UK Exchequer, and the chair of the G7 negotiations, for financial services in the City of London to be exempt from Pillar One in any G20 agreement in July.[19] Similar bespoke demands from individual countries for favourable treatment of strategic industries within the Pillar One framework can be expected in the coming months.

Obstacles also exist to the introduction of a global minimum effective rate of tax within Pillar Two, the implementation of which will be dependent on President Biden's ability to reach a legislative compromise on his own domestic tax plan.

Any changes to US tax law must be passed through both the House of Representatives and the Senate in the US Congress. With the Democratic and Republican parties deadlocked at 50 votes each in the Senate and little Republican support for President Biden's tax plan, the President will be dependent on the support of all 50 Democratic Senators with the casting vote of Vice President Kamala Harris to pass the legislation to amend the tax code.

Several centrist Democrats in the House and Senate have already raised concerns with the proposed increases in the domestic rate of corporate tax, with Senator Joe Manchin, a critical swing voter for Democrats in the Senate, saying that the domestic rate should only rise to 25%.[20] If President Biden fails to pass his tax bill through both Houses of Congress, it has the potential to put the brakes on efforts to reform global corporate tax at an international level. If the bill were to be defeated, the United States' GILTI rate would remain at 10.5%, a lower rate than that being considered within the OECD's negotiations on Pillar Two.

What does this mean for Ireland?

When Ireland's Minister for Finance and President of the Eurogroup, Paschal Donohoe addressed a seminar organised by the Department of Finance on international tax, he described the current negotiations as a "critical juncture for the international corporate tax system." Fundamentally, it is an even more critical juncture for the future of Ireland's economic model. As an economy that generates much of its wealth and employment through inward investment by multinational companies, the OECD's international tax reform has the potential, in the extreme case, to force Ireland to contemplate a reorientation of its economic model into the future.

The Department of Finance's estimates, on the other hand, suggest little economic damage arising from the negotiations. Accounted for within its Stability Programme Update for 2021, published in April 2021, is a €500 million annual decrease in corporation tax revenues from 2022 to 2025. Nonetheless, the Department of Finance expects that, on aggregate, corporation tax revenues will increase from €11.6 billion this year to €12.5 billion in 2025, albeit at a much smaller rate than in previous years.[21] However, on Saturday, 5 June 2021, Minister for Finance, Paschal Donohoe said in reaction to the agreement reached at the G7, that Ireland could

[18] https://www.reuters.com/business/g7-countries-devise-way-catch-amazon-tax-net-sources-2021-06-08/
[19] https://www.ft.com/content/4ed18830-f561-4291-8db5-c3c1fa86c1b8
[20] https://www.washingtonpost.com/us-policy/2021/04/05/joe-manchin-white-house-tax/
[21] https://www.gov.ie/en/press-release/07c73-minister-donohoe-publishes-stability-programme-update-2021/

lose as much as €2.2 billion per annum if the G7 agreement were to be implemented.[22]

Within the IMF's Concluding Statement of its 2021 Mission to Ireland, the assessment is even more jarring. In a worst-case scenario, corporate tax receipts could fall by as much as 50%, or almost €6 billion per annum, if the top 10 largest contributors to Ireland's corporate tax rate were to leave Ireland on foot of the new global minimum rate. Khaled Sakr, the head of the IMF Mission to Ireland, qualified this by saying "this is a tail-risk scenario and we do not anticipate that it will happen."[23]

However, the question remains of how Ireland would pay for losses of corporate tax revenues exceeding the Department of Finance estimates to the order of several billions of euro if they were to materialise. Any further increases in taxes or decreases in spending required would also have the potential to impact the strength of the economic rebound in Ireland and its ability to tackle high levels of COVID-adjusted unemployment that have remained persistent as the pandemic has progressed.[24]

This question also raises the issue of the sustainability of Ireland's current corporate tax strategy. Within the Government's Economic Recovery Plan 2021, published on Tuesday, 1 June 2021, it is acknowledged that "while corporation tax revenue has helped to plug the gap in many areas of public policy in recent years, this is unlikely to continue beyond the short-term and, indeed, international reform in this area has the potential to undermine this revenue stream in the not too distant future."[25]

However, a scenario that has received very little recognition in public attention to date is that of a possible significant fall in Irish GDP over the coming years, manifested by a possible withdrawal of intellectual property held within Ireland or by a fall in exports of multinationals who sell into foreign markets from Ireland. In 2015, Irish GDP growth of 34.4%, a growth figure which drew considerable attention internationally, was largely caused by the onshoring of intellectual property to Ireland from offshore tax havens due to the closure of the so-called "Double Irish" tax loophole.[26] The relocation of intellectual property back to the United States, or to other tax jurisdictions, has the potential to lead to a reversal of this large GDP growth.

An enlargement and strengthening of Ireland's indigenous small and medium enterprise (SME) sector, a goal that is particularly pertinent as a result of the COVID-19 pandemic, and a shift away from Ireland's near exclusive dependence on the multinational sector to deliver corporate tax revenues must surely now be prioritised. As highlighted by the IMF within their analysis, 50% of Ireland's corporate tax revenues are generated by just 10 companies operating in Ireland. The OECD/G20 Inclusive Framework may force Ireland to experience a harsh moment of reckoning that requires it to adapt with agility to the new world of corporate taxation.

Another issue that must be considered is the prospect that reform of international taxation through the OECD does not come to fruition. In this scenario, the EU has committed to act unilaterally to address the tax challenges of digitalisation.

A minimum rate limited to the EU would have the potential to exacerbate any capital flight from Ireland occurring as a result of increases in the 12.5% rate, due to a greater presence of other low-tax countries outside of the EU.

Separately, the Commission is also due to bring forward a legislative proposal on a digital levy in July 2021 with a view to implementing it by 2023. The proposed levy, which Benjamin Angel from the European Commission Directorate-General for Taxation and Customs Union described as "a soft touch", is intended to be a new EU own resource that would apply specifically

[22] https://www.rte.ie/news/ireland/2021/0605/1226215-corporate-tax/
[23] https://www.irishtimes.com/business/economy/half-of-state-s-corporate-tax-receipts-could-be-wiped-out-warns-imf-1.4563390
[24] https://www.cso.ie/en/statistics/labourmarket/monthlyunemployment/
[25] https://www.gov.ie/en/publication/49b23-overview-of-economic-recovery-plan-2021/

to companies offering digital services. Addressing the potential for trade disputes arising out of the US' opposition to digital services taxes, Mr Angel said that the tax would be designed in a "non-discriminatory way" to avoid this from happening.[27]

The digital levy could have the potential to place further strain on negotiations at the OECD involving the US, and if implemented, would force multinationals in the digital services sector to operate with higher business costs in the EU, and specifically in Ireland.

In addition to the digital levy, on Tuesday, 18 May 2021, the European Commission unveiled a long-awaited Communication on *Business Taxation for the 21st Century*, which outlines the EU's separate but complementary proposals on corporate taxation.

The Commission has proposed a new system called *Business in Europe: Framework for Income Taxation (BEFIT)* to replace its previous proposal to create a common consolidated corporate tax base (CCCTB). If implemented, BEFIT would create a single rulebook and a new allocation of taxing rights for corporation tax across the EU, with a separate formula to the OECD's Pillar One formula designed for the purposes of profit allocation.[28] The EU's proposal is intended to further develop upon the outcome of the OECD/G20 negotiations, whereby the EU formula for profit allocation would replace current rules which govern the allocation of the taxable base.

Separately, the Commission's Communication: *Business Taxation for the 21st Century* proposes to implement the conclusions of the OECD/G20 Inclusive Framework across the EU through a series of EU Directives, including through what it defines as "necessary adjustments" to the global minimum rate within Pillar Two.

Speaking at an IIEA webinar on Monday, 14 June 2021, European Commissioner for the Economy, Paolo Gentiloni stated: "For Pillar One, a future OECD agreement would be binding for OECD Inclusive Framework members. Such an agreement would be implemented through a multilateral convention, and the Commission is considering proposing a Directive to ensure its uniform implementation in all EU Member States." Regarding Pillar Two, the Commissioner said that as this Pillar may not take the form of a multinational convention, "it is therefore important that all EU Member States transpose Pillar Two within the EU in a uniform way." As such, the Commission "would therefore propose legislation to implement a consensus-based global agreement on Pillar Two."[29]

While it is unlikely that the Irish Government will accept the BEFIT proposal at the European Council, the Commission's new communication illustrates the growing pressure that Ireland will face on corporate tax reform in the coming years, particularly in the event that an agreement is not reached at the OECD.

Conclusion

The future of global corporate taxation is still uncertain. The Irish Government will hope that the OECD/G20 Inclusive Framework on BEPS will allow it to reach an agreement that would preserve the principles of fair taxation and fair tax competition in the Irish economy.

An agreed rate of 12.5% would be of greater benefit to low tax jurisdictions, including Ireland and other EU countries such as Hungary, Luxembourg and Cyprus, who could stand to suffer a substantial loss of foreign direct investment in the event of a high global minimum rate within Pillar Two. A compromise that results in a minimum rate of corporate tax of 12.5% would therefore allow Ireland, and similar economies, to remain competitive internationally.

[26] https://www.rte.ie/news/business/2016/0723/804214-blog-story-behind-leprechaun-economics-fiasco/
[27] https://www.gov.ie/en/news/58e16-virtual-seminar-on-international-taxation-wednesday-21-april-2021/?referrer=http://www.gov.ie/taxseminar/
[28] https://ec.europa.eu/taxation_customs/sites/taxation/files/communication_on_business_taxation_for_the_21st_century.pdf
[29] https://www.youtube.com/watch?v=8kgf2cSxvFM

The deal agreed at the G7 which calls for a rate of at least 15%, i.e. 15% as the lowest rate the G7 countries will consider, would suggest Ireland and similarly like-minded countries will face a considerable challenge to negotiate a global minimum rate of 12.5% at the OECD. Nonetheless, the consequences for Ireland of an alternative international tax agreement negotiated through the EU should the OECD process fail would spell even greater danger for the sustainability of the country's corporate tax revenues.

It should also be stated that the Inclusive Framework, and particularly Pillar One, would represent a sea-change in the orthodoxy that underpins the universal system of taxation that has the potential to make taxation fairer and more equitable. Developing countries disadvantaged by the current antiquated system of taxation which rewards countries with a large presence of registered companies over countries with greater commercial activity, would see higher national tax revenues and new fiscal capacity to invest in generating economic growth.

The success or failure of the OECD's Inclusive Framework will depend on its members' ability to broker a compromise and achieve a solution that will be palatable across the political spectrum internationally, and resistant to the constant flux of changing governments and political ideologies. This reality would suggest that there is still quite a journey to travel before the full consequences of international tax reform for Ireland and the rest of the world are known and understood.

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The IIEA acknowledges the support of the Europe for Citizens Programme of the European Union.