Priorities of Ireland's Presidency of the Council of the European Union 2013 in the Area of Taxation Policy

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Introduction

On 1 January 2013 Ireland assumed its seventh Presidency of the Council of the European Union. This Presidency is of particular importance to Ireland, and from a taxation perspective it is expected to be very busy. In holding the Presidency, Ireland will have the responsibility of chairing the Council formations and technical working parties. As chair, the Presidency not only sets the agenda for the six-month Presidency but also has responsibility for drafting and preparing compromise legislative proposals. The taxation agenda of the Irish Presidency will be a challenge and an opportunity for Ireland. Key legislative dossiers in the areas of VAT, energy tax, the Common Consolidated Corporate Tax Base and the financial transaction tax will all feature during the course of our Presidency.

Objectives of Ireland's Presidency

The overriding priority for the Irish Presidency is to foster a sustainable and job-rich economic recovery. During its Presidency, Ireland will be aiming to manage the work of the Council in the best interests of the Union in general and not to adopt a narrow national perspective. The year 2013 will be a particularly challenging one for Ireland. As well as holding the rotating Presidency, the Government's objective is to exit the EU/ECB/IMF Programme of Assistance. Running in parallel to the Presidency in the first quarter of 2013 will be the ever-important legislation for the annual Finance Bill.

Financial Transaction Tax

In September 2011 the Commission published a proposal for a Directive on a common system of financial transaction tax (FTT). The aim of the Commission proposal is a fair contribution of the financial sector to the costs of the current crisis, avoiding fragmentation of the single market, and creating appropriate disincentives for transactions that do not enhance the efficiency of financial markets.

From the beginning, it was clear that this proposal would struggle to get unanimous agreement from the 27 Member States, as required under the Treaties for taxation proposals. Nevertheless, for a number of Member States, it was essential that agreement on an FTT would be reached, if not at the level of 27, then with a smaller group of Member States. During the course of the Danish Presidency (January–June 2012), technical work was undertaken on the proposal, culminating in a debate at the June 2012 ECOFIN Council. This Council concluded that the FTT proposal could not be adopted within a reasonable time, and a number of Member States indicated that they were prepared to consider a proposal for enhanced cooperation.

In order to trigger the provisions of the Treaties on enhanced cooperation, a minimum of nine Member States have to indicate in writing to the Commission that they would like a proposal for enhanced cooperation to be put forward. Eleven Member States – Germany, France, Austria, Belgium, Spain, Italy, Slovenia, Slovakia, Estonia, Portugal and Greece – wrote to the Commission asking for a decision to authorise enhanced cooperation on the FTT.

On 23 October 2012 the Commission adopted a decision confirming that a proposal for an FTT complies with the obligations set out under the Treaty and forwarded this authorising decision to the ECOFIN Council for consideration. Since that authorising decision was published, the Netherlands indicated that it would be prepared to join enhanced cooperation on three conditions:

- that pension funds were exempt,
- that the revenues were not used to fund the EU Budget and
- that the overall burden on the financial sector, taking into account other taxes and levies, was not too large.

In order to permit enhanced cooperation to proceed, the Treaty sets out clear conditions including the assent of the European Parliament, which was granted on 12 December 2012. Enhanced cooperation has previously been used on only two occasions, one related to divorce provisions and the other related to a common European patent. The decision to authorise enhanced cooperation in the area of taxation is considered to be a very significant step and could set a precedent for other taxation dossiers. At the January 2013 ECOFIN, the Council voted under the qualified majority procedure to authorise enhanced cooperation. The Commission subsequently adopted and published a revised proposal on 14 February 2013.

The Irish position on the FTT, as set out by the Minister for Finance, is that we support the overall aims of an FTT and that it should be introduced globally. If this is not possible, it should be introduced at EU 27 level. Ireland does not propose to participate in the FTT under enhanced cooperation. The main concerns relate to the possible impact on the Irish financial services sector given that the United Kingdom has indicated that it will not participate in the FTT.

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In holding the Presidency, Ireland has an obligation to chair the technical working groups dealing with the FTT even though Ireland has not opted to participate in the enhanced cooperation procedure. The Treaties set out clearly that all Member States may participate in the discussions but only those Member States who

1 Article 330, Treaty on the Functioning of the European Union.

have opted in may vote.[1] The work on this dossier will be difficult both technically and politically for all Member States to ensure that the final proposal is designed not to impact negatively on the functioning of the internal market.

Common Consolidated Corporate Tax Base

The Commission published its proposal for a Common Consolidated Corporate Tax Base (CCCTB) on 16 March 2011. The Commission considers that the proposal would help to establish a common EU-wide system for the calculation of corporate tax bases, which would be an optional system operating in parallel to existing national tax systems, and to allow for consolidation of profits and losses of the groups of companies that have opted in to the system.

In a previous edition of *Irish Tax Review*[2] we set out an update on the current state of play on the CCCTB proposal. Since that article was published, the Cyprus Presidency finished a first read-through of the proposal. In the December 2012 report to the European Council on progress on tax dossiers, Member States indicated that they see the need for orientations in order to carry forward work at the technical level.

The Irish Presidency will hold the necessary discussions to seek to help Member States agree a way forward on this proposal.

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Value-Added Tax

In the area of VAT, the Commission has come forward with two important Directives. The two main proposals are on the treatment of vouchers and the quick reaction mechanism. In addition, the Commission has recently published the Implementing Regulation on the place of supply of business-to-consumer transactions.

VAT treatment of vouchers

The Commission published the proposal on 10 May 2012. The aim of the proposal is to adopt common rules on the treatment of vouchers for the purposes of VAT by clarifying and harmonising the rules on the treatment of vouchers in European legislation. Further detail on this proposal can be found in *Irish Tax Review*, issue 3 of 2012, in an article by Richard Cowley.[3]

This dossier is technically challenging but not considered politically difficult. The Irish Presidency intends to clarify the technical application of this proposal and ensure that all Member States have a common understanding of the key issues. It is not considered that this proposal will be adopted under the Irish Presidency.

VAT quick reaction mechanism

On 31 July 2012 the Commission published a proposal for a quick reaction mechanism to deal with urgent cases of sudden and massive VAT fraud. The proposal would speed up the period for authorisation to derogate from the provisions of the VAT Directive in very specific situations. This proposal is a priority action for the Commission and for Member States, as the issue of sudden and massive tax fraud can have a major impact on national budgets.

The Irish Presidency is actively working towards reaching agreement among Member States on this proposal.

Regulation on the place of supply of business-to-consumer transactions

New rules provided in Directive 2008/8/EC relating to the place of supply of cross-border business-to-consumer (B2C) broadcasting, telecommunications and electronic services will take effect from 1 January 2015. From that date, the VAT on such services will be chargeable in the Member State of the consumer and not the Member State of the supplier, as is the case at present. This proposal, which will amend the VAT Directive Implementing Regulation (282/2011), was published on 18 December 2012. The objective of the proposal is to ensure a common understanding of the new rules among tax authorities and business.

Given the importance of this Implementing Regulation and the tight deadline, it is the intention of the Irish Presidency to begin early technical work on the proposal with a view to possible adoption during the Irish Presidency.

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2 Declan Kelly and Gary Tobin, "Common Consolidated Corporate Tax Base (CCCTB): an Update", *Irish Tax Review*, 25/3 (2012), 82–5.

3 Richard Cowley, "European Commission Review of VAT on Vouchers", *Irish Tax Review*, 25/3 (2012), 96–9.

Energy Tax Directive

In April 2011 the Commission published an amending proposal to Directive 2003/96/EC on restructuring the Community framework for the taxation of energy products and electricity. The aim of the revised proposal is to bring the 2003 Directive into line with the EU's energy and climate change objectives as requested by the March 2008 European Council.

Discussions on this proposal have been ongoing, and progress has not been as rapid as hoped, despite an ECOFIN Ministers' orientation discussion in June 2012. Significant issues remain: these include the minimum levels of taxation to be laid down in the Directive, the reference components (CO_2 and energy component) for setting the single minimum level of taxation, including permitting Member States to express their national levels of taxation as one single tax or as separate taxes provided that the minimum levels laid down in the Directive are respected.

The Irish Presidency is intent on building on the good progress of the Cypriot Presidency (July–December 2012) and is hopeful of progressing the proposal.

Commission Action Plan on Fighting Tax Fraud and Tax Evasion (Including Aggressive Tax Planning and Tax Havens)

The Commission published its Action Plan on fighting tax fraud and tax evasion on 6 December 2012. In addition to a prioritisation of actions following the June 2012 Communication on fighting tax fraud and tax evasion, the Action Plan contains two recommendations from the Commission. The first recommendation relates to measures intended to encourage third countries to apply minimum standards of good governance in tax matters, and the second recommendation relates to aggressive tax planning.

The Irish Presidency intends to prioritise the work of the Council in examining the two recommendations with the intention of agreeing a common position from the Member States.

High Level Tax Group

During the Presidency, Ireland will chair the High Level Group on Taxation. This group is composed of senior officials from Finance Ministries and Revenue agencies and discusses tax policy issues relevant to the Union.

Among the topics that will be discussed are the tax aspects of the European Semester process, the CCCTB, the FTT and the future of VAT, and it is also proposed to have a dialogue on current international taxation topics, including the OECD Base Erosion and Profit Shifting (BEPS) project.

Finally

In the area of taxation, each six-month Presidency is required to prepare a report indicating the progress that has been made on individual dossiers and also in fulfilling the commitments to taxation as set out in the Euro Plus Pact document. This requirement makes it very difficult for Member States simply to ignore dossiers that may be problematic. Ireland's report to the European Council will be published on 28 June 2013.

Ireland's seventh Presidency of the European Council of Ministers presents a big opportunity for a small Member State to advance and influence the European policy agenda. Ireland's previous Presidencies have been well regarded in terms of their achievements. It is to be hoped that in this instance seven will indeed prove to be a lucky number.