

"We'll lose our 12.5% tax rate..."



The Claim

This is what the EU has always wanted.

The EU's long term hidden agenda is to "take control over taxation", according to Irish EU Commissioner Charlie McCreevy.¹

They'll get this through the back door.

Libertas stated that the Lisbon Treaty introduces the possibility of a Consolidated Corporate Tax Base "which would destroy the Irish economy"² and destroy our corporate tax rate with it.

The EU is only obsessed with competition.

Amendment of Article 2.79 of the Treaty of Lisbon "to avoid distortion of competition" would enable the European Court of Justice to decide that Ireland's corporate tax rate of 12.5% is a distortion of competition.³ In Case C-35/98 the ECJ stated that "although direct taxation falls within their competence, the Member States must nonetheless exercise that competence consistently with Community law."

We've lost our real veto on tax issues.

It has been said that Article 48 of the TEU, the so called 'self-amendment' or Passerelle clause, allows a removal of the Irish veto on taxation and the right of Irish voters to be consulted on any future amendment of the Treaties.⁴ The National Platform has also claimed that "The Lisbon Treaty will give the EU the power to impose its own EU taxes directly on us."⁵

The Short Answer

Worried about changes to our corporate tax rate? Keep an eye on the Dáil, not Brussels.

The Long Answer

Under the Lisbon Treaty, Ireland will not lose its 12.5% corporate tax rate.

Some say that based on Article 113 of the Treaty, the EU would be able to change our corporate tax rate. However, this article only relates to *indirect* taxation (like tariffs on goods). Corporate tax is not an *indirect* but a *direct* tax, and the EU does not have the power to decide on *direct* taxation. EU laws on competition, including the distortion of the competition principle, cannot override this.

As with security and defence issues, there are a series of checks and balances in place, outlined clearly in the Lisbon Treaty, that ensure that Ireland is not forced into accepting changes in tax rates that it deems unacceptable or bad for the Irish economy. Ireland has a veto on tax issues and on the system that decides tax policies. In other words, tax policy cannot be changed without the explicit consent of the Irish government. So keep an eye on what is happening at home about this issue.

There is no connection between the Lisbon Treaty and the Common Consolidated Corporate Tax Base (CCCTB). This policy was established by the Commission in 2001 and confirmed in 2003 and was already part of the Commission's work before the Treaty was drafted.

The Commission has confirmed that it does not intend making a proposal on harmonising tax rates.⁶

The Passerelle Clause cannot be used in the area of tax without Ireland's explicit consent and therefore we retain our veto. For more information on the Passerelle, please see our factsheet dealing with the myth "This Passerelle Clause will just mean creeping federalism..."

This European Movement Ireland fact sheet is part of a series of research conducted to clarify the issues in the Lisbon Treaty debate. European Movement Ireland is a pro-European non-profit organisation which does not advocate either side of the Lisbon Treaty Referendum, we advocate the facts.



Current legal situation

Direct taxation is generally considered a matter for individual countries to decide upon, and there are no specific Articles in the Treaties relating to it.

Chapter 2 of the EC Treaty contains provisions relating to tax. The European Commission explains the EU tax policy:

"The Treaty clearly states in Article 93 that there is a need for an approximation of laws on the indirect taxes because they affect the free movement of goods and freedom to provide services. This is not true to the same extent of direct taxes, and the EC Treaty does not specifically call for them to be aligned. Some aspects of direct taxation do not in fact need to be harmonised or co-ordinated at all and are left to the discretion of the Member States, in accordance with the principle of subsidiarity. The situation is somewhat different where direct taxation has an impact on the four freedoms provided for by the EC Treaty (free movement of goods, persons, services and capital) and the right of establishment for individuals and companies."⁷

EU countries' tax systems and tax treaties must in any event respect the fundamental Treaty principles on the free movement of workers, services and capital and the freedom of establishment and the principle of non-discrimination. There are **no provisions in Treaty law on direct taxation**.

There are two main arguments in relation to tax harmonisation; there are those who believe that there should be one tax system as we live in such a globalised world while others say that tax competition is healthy between countries. Because we as a country benefit so greatly from our low corporate tax rate (one of the lowest in the EU), we are of the latter view and prefer that this is something

for countries to continue to decide for ourselves.

There were various discussions over the course of the Treaty negotiations about tax harmonisation, but an article on tax harmonisation was never included in the final text.

The Common Consolidated Corporate Tax Base (CCCTB) policy is a Commission policy first mooted in 2001 and is designed to allow companies to follow the same rules for calculating their tax base (e.g. what is taxable income) for all their EU-wide activities, rather than in accordance with the existing 27 systems, with the aim of simplifying procedures and reducing compliance costs. The CCCTB would offer an optional method of calculating tax for companies.

The Irish Government has indicated that it does not favour the introduction of the CCCTB and does not see how it will improve the competitiveness of the European Union. It is also concerned that the CCCTB will undermine the principles of subsidiarity and national sovereignty. The Irish Government regards tax structure as a matter for each individual national Member State to decide.⁸

Introducing the CCCTB in a number of EU countries may be possible under the Enhanced Co-operation procedure if at least 8 of those countries decide to proceed. Member States would have to approve the idea by QMV and the co-operation must be open to other Member States to join. The enhanced co-operation procedure has never been used in its 12 years of existence.

The last meeting of the CCCTB Working Group was held in April 2008. If the proposition of introducing the CCCTB is to progress, it will require unanimity in the Council. This means that Ireland would have a veto.

What Lisbon introduces

Articles 110 to 118 of the Lisbon Treaty deal with taxation matters. Nowhere in these articles is it stated that the EU will have control over direct taxation such as corporate tax. Furthermore, the current Treaty provisions remain unchanged and **unanimous decision-making is maintained in all areas of tax**.⁹

After our vote in June 2008 which highlighted that tax was an issue that we were worried about, the Irish Government spoke with our European partners agreed the following statement to assuage our concern:

"Nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the competence of the European Union in relation to taxation."¹⁰

There is no connection between the Lisbon Treaty and the Common Consolidated Corporate Tax Base (CCCTB). This policy was established by the Commission in 2001 and confirmed in 2003 which means it was already on the Commission's agenda before the Treaty was drafted. As stated above, the last meeting of the CCCTB Working Group was held in April 2008. If the proposition of introducing the CCCTB is to be progressed, it will require unanimity in the Council. This means that Ireland has a veto. The Lisbon Treaty does not change this.

The 'Passarelle' Clause does not affect the powers of each country to govern its internal tax regimes. One of the fundamental features of the passerelle clause is that it requires our Taoiseach and the other European leaders to each agree on whether an area is moved from unanimity to Qualified Majority Voting. For details on what the Passerelle Clause does, please see our factsheet that tackles the myth *"This Passerelle clause will just mean creeping federalism..."*

¹ <http://www.independent.ie/business/irish/mccreevy-slams-ec-hidden-tax-plan-655022.html>

² <http://www.libertas.eu/ireland/120-vote-no-to-reject-common-corporate-tax-libertas>

³ Anthony Coughlan, <http://nationalplatform.wordpress.com/category/tax-harmonisation-economic-effects>

⁴ <http://blogs.libertas.eu/ireland>

⁵ "Lisbon Treaty: How it will affect – Your Pay, Your Say, Your Way of Life." www.nationalplatform.org/wordpress/?page_id=68

⁶ CCCTB/WP/046, Common Consolidated Corporate Tax Base Working Group (CCCTB

WG), Progress to date and future plans for the CCCTB.

⁷ "Tax policy in the European Union" Europe on the move series, Luxembourg: Office for Official Publications of the European Communities, 2000.

⁸ Common Consolidated Corporate Tax Base, Ireland's Position, <http://www.finance.gov.ie/viewdoc.aspx?DocID=4543>.

⁹ Articles 113 and 115 TFEU, as amended by the Lisbon Treaty.

¹⁰ http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/108622.pdf.