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April, 2014: Discussion draft on the OECD's **'Tax Challenges of the Digital Economy'**

We welcome the BEPS (Base Erosion Profit Shifting) project of the Organisation for Economic Co-operation and Development because it's not in Ireland's economic interest to be a facilitator of massive corporate tax avoidance while in these uncertain times, "tax is all about trust"[1] in the words of **Pascal Saint-Amans**, director, OECD Centre for Tax Policy and Administration.

Ireland has gained massively from globalisation in the last fifty years and besides international corporate tax avoidance being a beggar-my-neighbour practice, it also contributes to growing inequality and the imbalance between the rewards for capital and labour.[2]

There is also an inequity when the Irish Revenue aggressively investigates avoidance and evasion by domestic firms while a blind eye appears to be turned to multi-billion euro charges, used to mask profit transfers, in the accounts of foreign firms.

Ireland should not fear a transparent and integrity-based tax system.

In the following, we set out a) how Ireland facilitates corporate tax avoidance; b) we argue why it's in Ireland's economic interest to support reform - - **in 2013, jobs in the Irish internationally tradeable goods and services sectors were below the level in 2000 despite a real (inflation-adjusted) rise in exports in the period of 59% and an increase of 22% in the size of the workforce;**[3] c) we comment on issues raised in the discussion document.

Simply, in a decade of escalating corporate tax avoidance, net job numbers in foreign firms in Ireland were almost static.

US companies reported that profits reflecting activities in Irish affiliates doubled between 1999 and 2002 from $13.4bn to $26.8bn, while profits in most of the rest of Europe fell.[4] In the period since, services exports surged and by 2013 we estimate that at least €45bn ($57bn) or 48% of Ireland's reported services exports of €94bn in 2013 are tax-related - - arising from diversions of global revenues to Ireland that are unrelated to economic activity in Ireland - - and are effectively fake exports.[5]

The escalation of US corporate tax avoidance over the past decade masked realities that while the foreign-owned sector had ceased being a jobs engine in 2000, the indigenous exporting sector had been performing below its potential for many decades.

[1] Tax is all about trust - - Pascal Saint-Amans, director, OECD Centre for Tax Policy and Administration
[2] US corporate profits rise to record in 2013; Real wages flat at Zero - - Finfacts
[3] Irish Economy 2014: Jobless exports boom 2000-2013; What will change to 2020?- - Finfacts
[4] Ireland top location for US Multinational Profits - - Finfacts, 2004
[5] Irish Medium-Term Economic Strategy 2014-2020: Exports to plunge by €50bn - Part 1

Ireland facilitates corporate tax avoidance by:

1) Providing foreign firms with **offshore non-tax resident Irish companies** that are usually domiciled in Bermuda or the Cayman Islands where there are no corporate taxes - - the transactions of these mailbox holding companies, including the details of intellectual property (IP) assets and "Double Irish Dutch Sandwich" scheme[6] receipts, can be shielded from the public via unlimited status under Irish company law. The revelation in May 2013 by the US Senate's Permanent Subcommittee on Investigations[7] that Apple Inc. had for decades treated the Irish companies as having no tax domiciles or in effect being "stateless," showed that the Irish authorities did not have any regulation of these entities. The **domicile loophole was closed** via the Finance (No. 2) Act 2013 and it stipulates that an Irish incorporated company must be considered tax-resident somewhere and cannot remain "stateless."
2) While the Irish Government has stressed in recent times that the country isn't a tax haven, an increasingly popular tax haven activity is for big firms, mainly American-based, **to switch their domiciles to Ireland to avail of the low headline corporate tax rate of 12.5%** and the only Irish activity of a firm of 100,000 staff maybe a small **head office or even zero staff**. Shares of King Digital Entertainment Plc, the maker of the hugely successful mobile video game 'Candy Crush Saga' began trading on the New York Stock Exchange on March 26, 2014. Last July in preparation for the initial public offering (IPO), King registered a holding company in Dublin.[8] The registered office is at the address of the William Fry, a Dublin law firm; the shares are held by 7 nominee companies with addresses at the law firm's office and the directors appear to be staff of William Fry. The company was founded in Sweden in 2002 and has game studios Stockholm, Barcelona, Bucharest, Malmö and London, with offices in San Francisco and Malta. On **its US Securities and Exchange Commission regulatory filing[9] it has the Fitzwilton House, Wilton Place, Dublin 2 address and the contact phone number has a London code**. None of the real directors are Irish and the company has no staff in Ireland but it has become an Irish company **and its activities are reflected in the Irish national accounts.** [10]

Massive tax avoidance is good capitalism?

Eric Schmidt, Google chairman, in December 2012 defended Google's schemes to avoid tax and he said such schemes were legitimate and the company paid taxes "in the legally prescribed ways."[11]

"I am very proud of the structure that we set up. We did it based on the incentives that the governments offered us to operate," he said.

6 IMF explains "Double Irish Dutch Sandwich" tax avoidance - - Finfacts
7 http://levin.senate.gov/download/exhibit1a_profitshiftingmemo_apple
8 King Digital Entertainment application to incorporate a company and Annual Return
9 http://www.sec.gov/Archives/edgar/data/1580732/000119312514056089/d564433df1.htm
10 The Effect of Redomiciled Plcs on GNP and the Irish Balance of Payments - - John FitzGerald, ESRI 2013
11 http://www.independent.co.uk/news/uk/home-news/google-boss-im-very-proud-of-our-tax-avoidance-scheme-8411974.html

He went on to suggest that Google would not turn down the opportunity to draw on the big savings allowed under the law in the countries it operates in: **"It's called capitalism. We are proudly capitalistic. I'm not confused about this."**

Last year **Prof John Kay** wrote in his column[12] in The Financial Times that "avoidance is facilitated and enhanced by corporate manipulation of the prices at which capital, goods and services are transferred across borders. The resulting accounts show profit being earned in low-tax jurisdictions in which little or no real business takes place. It is disingenuous for companies to claim they pay the tax legally due when their assessments are based on accounts that defy economic and business realities.

In the main, however, **tax authorities have preferred to cut deals with big corporations rather than pursue costly legal action. They will not do the same for you and me.** It makes no sense for a small company to pay an accountant to do anything but calculate the amount of tax that is properly due, or to incur legal fees resisting a challenge. The unacceptable outcome is an entirely correct perception that there is one law for the little guy and another for the big battalions. The potential effect of that perception on tax compliance is one that it is well worth spending millions of pounds to avoid.

A serious reform agenda would involve a principled reappraisal of the basis for taxing corporations both nationally and globally, and a strategy for effective enforcement of existing rules. **Such a strategy would make clear that executives of companies which present accounts to tax authorities that are essentially false, and the accountants who support them, will in future run serious risks.** The door they hear closing behind them might be the door of a prison cell rather than the door of 10 Downing Street."

Philip Stephens, an associate editor of The Financial Times, wrote[13] that "As the Google boss (Eric Schmidt) will be well aware from his personal as well as his professional life **thriving societies depend on more than strict adherence to the letter of the law. Communities work because citizens, institutions and, yes, even companies observe norms, conventions and mutual obligations that are nowhere on the statute book.**

There is nothing new about this. If Mr Schmidt has any doubts, he should read the excellent new biography of the 18th-century philosopher Edmund Burke written by Jesse Norman, the Conservative MP.

To suggest that each and every responsibility and duty must be codified in statute is to invite a lurch towards totalitarianism - - the micromanagement by an over mighty state of every dimension of our myriad relationships.

There is no law (in Britain at least) that obliges me to join the back of a queue for, say, theatre tickets or a restaurant table rather than infiltrate myself at the front. I suspect, though, that Mr Schmidt would agree that queue-jumping is pretty antisocial.

To be legal, in this instance, is not to be right. Or would he suggest that the government should legislate?

[12] http://www.ft.com/intl/cms/s/0/9bb6f2ec-d785-11e2-a26a-00144feab7de.html#axzz2xMApXsRG
[13] http://www.ft.com/intl/cms/s/0/28b783de-c857-11e2-acc6-00144feab7de.html#axzz2xMApXsRG

<finfacts>

Then there is that fiduciary duty. Of course, companies should not pay 'voluntary' tax.

But they do not face the binary choice posited by Mr Schmidt. **Somewhere between charitable giving to the tax authorities and the setting up of Byzantine pyramids of shell companies in every tax haven known to man and womankind, there is what my lawyer friends call the wholly justifiable use of the tax code to protect shareholders.**

The odd thing is that, at times, Google seems to understand that it ought to look beyond the letter of the law. The company boasts about its many 'good works' in local communities. Presumably these are consistent with its fiduciary duty?

Yet when the company says that the billions in revenues garnered every year by its sales force in Britain are not liable to local tax because technically, the business is 'closed' in Dublin**, it frankly looks sleazy**. Someone, somewhere at Google headquarters would do well to apply the 'what would any reasonable person' think test?"

Why Ireland should revert to a sleaze-free system

Massive corporate tax avoidance has added to distortions in Ireland's national accounts and masks the poor performance of the indigenous sector.

Like its predecessors, the current Irish Government had banked on the status quo being protected by a) the EU veto on tax harmonisation b) political gridlock in Washington DC. However, it has been left flat-footed by the sudden prospect of reform of international tax rules and it has been floundering with the help of the siren voices of professional services vested interests and others.

It's not credible to claim that US Bureau of Economic Analysis data[14] on profitability of US firms with Irish affiliates is invalid because it includes untaxed profits in Irish offshore companies in "other jurisdictions" that are usually routed through Ireland.[15]

Claims that the effective corporate tax rate is close to the headline rate of 12.5% are also bogus[16] as is the claim of tax transparency when companies can shield all their Irish financial data from public view.[17]

Whether it's **King Digital Entertainment Plc with its headquarters in Ireland and based and the offices of a Dublin law firm or Microsoft Inc.'s Round Island One Unlimited, an Irish company, based at the Hamilton, Bermuda, offices of a local law firm,[18]** they are both engaged in exploiting loopholes to deprive other jurisdictions of lawful tax revenues.

In May 2013, Joe Nocera, New York Times columnist wrote:[19]

[14] US company profits per Irish employee at $970,000; Tax paid in Ireland at $25,000 -- Finfacts

[15] Corporate Tax 2014: Irish Government's "flawed premise" on Apple's avoidance -- Finfacts

[16] Corporate Tax 2014: Ireland's effective rate for US companies in 2011 was 2.2% and Kenny's bogus Irish effective tax rate claim - - Finfacts

[17] Apple, Anglo Irish Bank and Irish company law -- Finfacts

[18] Foreign government requests Bermuda to investigate Microsoft's Irish subsidiaries - - Finfacts

[19] Here comes the sun -- New York Times

"Question for the government of Ireland: Do you really want your country to be known as an offshore tax haven? Indeed, at a time when your citizens are dealing with the pain of an austerity program, how can you justify allowing Apple to pay virtually no taxes on a subsidiary established solely to avoid taxes in the United States? Just wondering."

Ireland can prosper with the lowest national corporate tax rate of 12.5% among developed countries and with a half century of experience as a host for FDI (foreign direct investment) firms. Ireland also has low non-wage labour costs and with the exception of the UK, hourly pay compares favourably with most of Europe's developed economies.[20]

In contrast, with the FDI sector, the indigenous internationally trading sector with similar low corporate and social security taxes including no obligation to provide staff with occupational pensions, has performed poorly over the period since Ireland first embraced globalisation in the 1950s.

FDI firms are responsible for about 90% of headline exports by the internationally tradeable goods and services sectors but **the chart below shows that the indigenous sector provides as many jobs as the FDI sector - - it has the potential to provide many more.**

IRELAND 2000-2013: Internationally tradeable sectors

Employment '000s by category	2000	2012	% +/-
Industry	268	197	-26%
Services	88	140	+59%
Total	356	337	-5%
Employment '000s by ownership	**2000**	**2013**	
Indigenous firms	172	174	+1%
Foreign-owned firms	184	175	-5%
Total	356	349	-2%
Exports at current prices	**2000**	**2013**	
Merchandise	€80bn	€82bn	+2.5%
Services	€18bn	€95bn	+428%
Total	€98bn	€177bn	+81%

The European Commission's Ameco database shows that the real (inflation-adjusted) value of Irish exports of goods and services with 2005=100, rose 59% in the period 2000-2013.

Sources: CSO; Forfás via Finfacts

[20] Hourly labour costs ranged from €3.7 to €40.1 across the EU28 Member States in 2013 - - Eurostat 2014

If total exports of €177bn in 2013 were discounted to €100bn to account for excess transfer pricing and fake services exports, total indigenous exports (including tourism and transport) would only amount to 24% of the resultant total.

Two-thirds of Irish private sector workers are in non-exporting sectors with "a huge amount" working in traditional sectors - - in Hotels and Restaurants, Wholesale and Retail, Business and Professional Services.[21]

Food and drink exports now account for two thirds of total indigenous exports[22] and about 50% of total indigenous exports are to the UK market (including Northern Ireland).[23]

In 1973 when Ireland joined the then European Economic Community, 55% of total Irish exports went to the UK.[24]

In 2012, 18% of total headline exports from FDI and indigenous firms went to the UK and 79% went to Europe and the US.[25]

The total export intensity of Irish-owned industry has increased from 37% in 2003 to 52% in 2012. In the period 2008 to 2012, domestic sales fell from €20.4bn to €13.3bn while exports have increased from €11.3bn to €14.2bn.[26]

In the peak years of the property bubble 2001-2007, despite the workforce growing by 384,000 people or 22%, indigenous internationally trading firms added only 10,000 jobs, which was offset by a similar decline in job numbers in FDI firms.

The issue of distortions in the national accounts, including the impact of tax avoidance, not only exaggerates the performance of the economy but it also reduces pressure on policy makers to seriously address the challenges that face the indigenous sector - - which has the potential to have the highest impact in terms of employment.

Decisions on the destination of most exports from Ireland are not made locally but when government ministers speak of export opportunities in emerging markets, they invariably conflate data on exports by the FDI and indigenous sectors for public relations impact.

Eamon Gilmore, minister of foreign affairs and trade, and tánaiste (deputy prime minister), was in China in June 2013 leading a trade mission and he said in an interview in Beijing that China was key to Irish economic recovery. **The claim was absurd as exports to China in 2012 accounted for about 2% of the headline value of total exports in 2012**.[27]

[21] Irish SMEs: Stylised facts from the real economy and credit market - - Central Bank presentation
[22] Export Performance & Prospects: Irish Food, drink and horticulture – 2013/14 - - Bord Bia, Irish food &drinks agency
[23] Cost Competitiveness and Export Performance of the Irish Economy - - Derry O'Brien and John Scally, Central Bank 2012
[24] Ireland and the EU 1973-2003 - - Central Statistics Office (CSO) 2004
[25] Geographic locations of Irish merchandise and services export in 2012 - - CSO 2013
[26] Annual Business Survey of Economic Impact 2012 - - Forfás, 2014
[27] Gilmore says China key to Irish recovery; Exports at 2% of total - - Finfacts

Last February a government report noted: "**Computer Services: accounting for 40% of total services exports in 2012, realising a 49% growth over a five year period**."[28]

In February 2013, **Michael Noonan, finance minister**, at a Bloomberg event in London, attributed the jump in services exports to "the significant price and cost adjustments that have taken place in recent years."[29]

The facts were that in 2012 two firms, Google and Microsoft, with less than 3,000 employees in Dublin, accounted for about 80% of what were classified as 'computer services' exports.

On labour competitiveness, while the headline data suggest that unit labour costs (productivity), will show a 21% relative improvement against the Eurozone average in 2008-2015,[30] Eurostat, the EU's statistics office, says Irish labour costs grew by 0.5% in 2008-2013[31] - - the difference is mainly explained by a jump in tax-related virtual output.

Irish GNP (gross national product) until recent times has been viewed as a better measure of Irish economic performance compared with GDP (gross domestic product) because the metric excludes the inflated profits of the FDI sector that are included in GDP. In 2011, the value of GDP exceeded GNP by 23% and by 18% in 2013, according to the CSO. In the early 1970s for example, GNP exceeded GDP because of emigrant remittances.

In 2013 while GDP growth fell 0.3%, GNP rose 3.4% but Finfacts has estimated that GNP growth may have been as low as 1%.

GNP is no longer a reliable metric and recent research has shown that the redomiciling of foreign firms in Ireland for tax purposes had boosted GNP growth by 2.9% in 2010 and by 1.1% in 2012.[32] The official result was 3.4% - - the same level in 2013.

The European Commission noted in its 2013 EU Industrial R&D Scoreboard[33] that Seagate Technology (12.6 %), Covidien (12.5%) and Accenture (11.2%), accounted for 60% of the R&D of companies based in Ireland. **These are American companies that have their headquarters in Ireland and most of the sixteen entries for Ireland are in fact American.**

The Global Innovation Index (GII) co-published by Cornell University, INSEAD, the French business school, and the World Intellectual Property Organization (WIPO, an agency of the United Nations) has also been misled by surging ICT services and Ireland was ranked the world's 10th most innovative **count**ry in 2013[34] - - despite the dominant FDI sector not doing significant research and less than a third of firms spending on R&D. [35]

[28] Irish Economy 2014: Gilmore launches Lilliputian wish-list on trade and tourism - - Finfacts
[29] Speech by Michael Noonan, finance minister, London, February 2013 -- Department of Finance
[30] Ireland's continuing progress, March 2014 - - Department of Finance (page 12)
[31] Hourly labour costs ranged from €3.7 to €40.1 across the EU28 Member States in 2013 - - Eurostat 2014
[32] Irish adjusted GNP in 2013 estimated at 1% compared with official level of 3.4% - - Finfacts
[33] The 2013 EU Industrial R&D Investment Scoreboard - - European Commission
[34] The Global Innovation Index 2013
[35] IDA Ireland Annual Report 2012 - - Page 6, client firms engaging in R&D at about 28% of total

Ireland should embrace corporate tax reform and have a national accounting system that presents the economic realities not a fantasy image, which provides bragging material for politicians.

If the current G20-OECD project fails, it would be foolish to bank on continued political gridlock in Washington DC.

In recent years the Obama Administration has proposed a minimum foreign profits tax to clamp down on the flow of profits to low-tax or no-tax jurisdictions. A rate wasn't **specified but if it was to be higher than the Irish headline corporate tax rate of 12.5%, the incentive would be made redundant for US firms.**[36]

With the exception of independent members, it's almost a taboo to raise the issue of corporate tax avoidance in the Oireachtas (the Houses of the Irish Parliament) because of fears that job creation would be put at risk.

In a speech at the US Chamber of Commerce headquarters in Washington DC on March 13, 2014,[37] **Enda Kenny, taoiseach/ prime minister**, told a group of business persons: "If you got a problem, you have an issue or anxiety or concern or a proposition or a proposal I want to hear it. **My number is a public number you can call me anytime**."

The taoiseach's assurance was consistent with a common belief, that with the exception of large indigenous firms, American firms, which are responsible for about two-thirds of FDI, always get priority attention compared with local SMEs.

The Irish Government ostensibly supports the BEPS project but it is undoubtedly sympathetic to the intense private lobbying from various vested interests that is currently underway.

The **Clearing House Group** is a forum chaired by the secretary general to the Government and comprises public officials, representatives of financial services companies that operate in the International Financial Services Centre (IFSC), Dublin's offshore centre, and representatives of the Big 4 accounting firms.[38]

The group has a positive role in ensuring that the IFSC responds with speed to changes/ new opportunities in international financial services but it also has a key lobbying role and according to The Financial Times, "before the 2012 budget, this group… recommended a series of 21 taxation and legal incentives sought by the finance industry, according to documents released under a freedom of information by an Irish MEP (Nessa Childers). Virtually all the changes were introduced in the subsequent budget."

IFSC Ireland, which represents firms at the IFSC claims that it is "non-lobby and a-political."

John Bruton, a former taoiseach/prime minister, is the president and in the common use of words it's a lobbying organisation.

[36] Corporate Tax 2014: US proposal of 17% rate for foreign profits -- Finfacts

[37] Enda Kenny: 'Call me anytime ' - - Irish Independent

[38] Minutes of an October 2013 meeting of the Clearing House Group at Government Buildings

The most important lobby group is the **American Chamber of Commerce in Ireland**, a unit of the powerful US Chamber of Commerce, and the FT report says that the Irish Government "amended its tax code following lobbying by US industry, reducing the tax burden on multinationals that funnel royalty payments to offshore tax havens.

The changes enabled some multinational companies to make royalty payments from their Irish-based operations directly to subsidiaries based in tax havens such as Bermuda or the Cayman Islands, without having to pay a 20% withholding tax on the royalties."[39]

Pascal Saint-Amans, the director of the OECD's tax centre, confirmed in a briefing on April 02, 2014 that "Double Irish Dutch Sandwich"[40] type tax schemes, which involve global revenues of services giants being routed through Ireland and transferred via the Netherlands to Irish offshore companies in Bermuda and the Cayman Islands, will be axed. [41]

On April 07, 2014, Ireland's Department of Finance issued a technical paper[42] on methodologies for determining the effective corporation tax rate in Ireland.

The paper gives a 'tour d'horizon' on several ways of calculating effective corporate tax rates **but the political purpose is to undermine the argument that US firms pay low single digit tax rates in Ireland**.

Questions are raised about the reliability of US Bureau of Economic Analysis data which includes Irish affiliate income in West Atlantic tax havens including large amounts from equity investments.

What is missing from this narrative is that when Google booked 41% of its 2012 global revenues in Ireland; Facebook booked 48% and in 2011/12, Microsoft diverted 24% of its global revenues, the tax due in Ireland was calculated after the booking of **big charges to shift most of the profits tax-free to Irish offshore mailbox companies in Bermuda and the Cayman Islands.**

The offshore companies are protected from public scrutiny through unlimited status under Irish company law.

Apple Inc. booked about $100bn in sales through Irish subsidiaries in 2013 but the Irish Government is bizarrely claiming that the Irish incorporated offshore affiliates are not Ireland's concern because they do not trade in Ireland.

It does not make the same argument about the large redomiciled foreign companies that move to Ireland to avail of the low tax rate without having trading operations in the economy.

Apple Inc. makes clear in its Form 10-K filing with the US Securities and Exchange Commission for year ending September 28, 2013, that most of the international revenues and profits were booked through Irish subsidiaries.

[39] Dublin cut tax burden on multinationals after US lobbying - - Financial Times 2013
[40] IMF explains "Double Irish Dutch Sandwich" tax avoidance - - Finfacts 2013
[41] Corporate Tax: OECD's Saint-Amans says "Double Irish Dutch" sandwich tax scheme will be axed - - Finfacts 2014
[42] Effective Rates of Corporation Tax in Ireland: Technical Paper, April 2014 -- Department of Finance

Apple said: "During 2013, the Company's domestic and international net sales accounted for 39% and 61%, respectively, of total net sales...The Company is subject to taxes in the US and numerous foreign jurisdictions, including Ireland, where a number of the Company's subsidiaries are organized...The foreign provision for income taxes is based on foreign pre-tax earnings of $30.5bn, $36.8bn and $24.0bn in 2013, 2012 and 2011, respectively...**Substantially all of the Company's undistributed international earnings intended to be indefinitely reinvested in operations outside the US were generated by subsidiaries organized in Ireland**, which has a statutory tax rate of 12.5%."[43]

The foreign earnings tax rate was 1.9% in 2012 and 3.8% in 2013.

The tax rate in Apple's big foreign markets is a multiple of the Irish 12.5%.

In 2013, the average OECD rate weighted for GDP was 32.5% and a simple average of 25.5%.[44]

In 2012 **Google Ireland** paid €17m tax on €137m profit - - a 12.4% rate.

However the total Google Inc. net income was at a ratio of 22% of revenues and Irish reported revenues of €15.5bn should have produced €3.4bn in income using a ratio of 22% but big charges from Irish affiliates in Bermuda ensured that most of the profit was transferred tax-free.

Apple Inc. did not have to use the Double Irish Dutch Sandwich scheme because it classified the Irish subsidiaries as "stateless" with no tax residency anywhere. That loophole was closed by a change in Irish company law late last year.

The BEPS also provides for reform of transfer pricing which may impact profit shifting by pharmaceutical firms to Ireland.

Looking ahead, a reduction in employment by big service giants that currently centralise European services in Ireland can be offset by development of the indigenous sector.

As Ireland is unable to meet the demand for multilingual staff, a company such as Google has about 2,500 employed in Dublin and about 70% are from overseas.[45]

Intel, the US chip giant, is twenty five years in Ireland this year[46] and its decision to open a plant in Ireland was a crucial trigger for the best decade for FDI - - the 1990s.

It disclosed in March that it had invested $5bn in upgrading its Leixlip campus in the past three years, which underlines its commitment to Ireland.

Craig Barrett, the former Intel CEO, was asked in a newspaper interview earlier this year if Ireland could attract the really valuable Google and Twitter type R&D and innovation functions as well as supplying hewers of wood and drawers of water?

[43] Apple Inc. Form 10-K year end September 28, 2013 - - Page 64

[44] OECD Corporate Income Tax Rates, 1981-2013 - - Download Excel spreadsheet

[45] Google was never meant to be this big in Ireland – but plans change - - Sunday Independent 2014

[46] Intel 25 years in Ireland: Employs 2,800 not 4,500 - - Finfacts 2014

"No," Barrett replied. "I think to a degree it's a matter of numbers. You can have an Intel invested here as a creator of jobs but it's primarily a manufacturing investment."

"Those are good paying jobs and I think the Irish are very happy to have them and Intel is happy to be here. Intel also has engineering applications here with 300 employed in Shannon. But that's small compared to the engineering base it has in Santa Clara or Portland or Arizona, for example, and that's just a matter of numbers.

"The multinationals are going to go where the resources are. And the bulk of resources are not in Ireland because it's a small country of four or five million people. Look at it on the positive side at least they're putting their HQs here."[47]

This highlights the serious flaw in the flagship enterprise policy, which was first launched in 2006 with the goal that Ireland by 2013 would be recognised as a "world-class knowledge economy." When that wasn't achievable it was replaced with the more audacious target "in which Ireland in 2020 is the best country in the world for scientific research excellence and impact."[48]

The universities were to produce the research and while the private sector lead by foreign firms would raise the level of innovation done in the Irish economy.[49]

Following public spending of an inflation-adjusted €24bn on science policy in a decade, publication citations have risen, patent filings are at a 30-year low while science and technology educational output has improved.

The current policy objectives will not be met despite the number of business claims for the 25% R&D tax credit and it remains unrealistic for Ireland to expect to emulate Israel's success in creating a research base over 60 years.[50]

Nevertheless, there will always be durable demand for food and drink - - sectors where Ireland has sustainable strengths.

In 2013 Ireland's agri-food exports were valued at €8.7bn, compared with €16bn in Denmark (population 5.5m) and €79bn in the Netherlands (population 17m).

As a ratio of total merchandise exports, Ireland was at 11%, Denmark 20% and the Netherlands ratio excluding re-exports was at 25%.

The trade surplus as a ratio of exports in the sector was lowest in Ireland at 19%; it was 37% in Denmark and 32% in the Netherlands.

The Netherlands in particular is a leader in agri-food innovation and during the April 2014 state visit of Xi Jinping, China's president, an agreement was signed on helping China to boost milk production.

[47] Irish Innovation: Craig Barrett says triple R&D spending; Public welfare? - - Finfacts 2014
[48] Irish Science Policy: 2020 replaces 2013 as target to be 'best country in...world for scientific research' - - Finfacts 2012
[49] Irish Innovation: Evidence of science policy failure mounts - - Finfacts 2013
[50] Irish Innovation: Israel as Startup Nation, why not Ireland? - - Finfacts 2014

With as many workers in the indigenous exporting sector as in FDI firms despite the huge gap in ex-tax avoidance output, there is significant potential for job creation with improved policy making.

The OECD's 'Tax Challenges of the Digital Economy'

Ideally, there should be a balance between compliance and regulation but it's crucial to be aware that high-paid tax accountants and lawyers will exploit flexibility in rules while politicians in many countries will continue to lean on revenue authorities.

It's well to remember recent history that massive tax avoidance by US companies was triggered by the unintended consequences of a well-meaning goal of the US Treasury Department in 1996 to ease regulatory compliance.

The "check-the-box" loophole introduced by the Treasury enables US companies to strip profits from operations in high-tax countries simply by marking an Internal Revenue Service form that transforms subsidiaries into what the agency terms a "disregarded entity."

A Congressional Research Service report[51] says that on average very little tax is paid on the foreign source income of US firms while the cost of check-the-box to the US alone has been estimated from $10 to $60bn per year.

In 2011 a joint report by ProPublica, a US public interest media organisation and the financial Times[52] said:

> "within days of its announcement in 1996, tax lawyers were on the phone saying the Treasury Department had overlooked the international ramifications. Inadvertently, the government had provided a way for companies to move profits from subsidiaries in high-tax countries like Germany to Luxembourg, the Caymans or other jurisdictions with lower or no taxes on certain kinds of income. Often, this is done by making royalty or interest payments between operations in different countries.
>
> For decades, the IRS has had anti-abuse rules to make sure such payments could be subject to taxes. However, these rules generally don't apply to payments made within a corporation. Check-the-box made it simple for a company to designate a subsidiary as a branch, with no U.S. tax consequences for the income unless it is repatriated.
>
> Joseph Guttentag, international tax counsel at Treasury when check-the-box was introduced, said the government may not have understood, but tax lawyers quickly "saw all the avoidance goodies they could do."
>
> **Countries like the UK and Germany quickly raised concerns that the rule was stripping earnings from their tax bases. By early 1998, the US said check-the-box was being used to "circumvent" anti-abuse rules.**
>
> Treasury proposed new regulations—and corporate America erupted.

[51] Tax Havens: International Tax Avoidance and Evasion - - US Congressional Research Service 2013
[52] Corporations couldn't wait to 'check the box' on huge tax break - - ProPublica/The Financial Times 2011

> **General Electric, PepsiCo, Morgan Stanley, Merrill Lynch, Monsanto and other major companies urged Congress to resist the change. The US, they said, was trying to be 'the tax policeman for the world.' Allies in Congress dug in and Treasury quickly rescinded the proposal.**
>
> What followed was a check-the-box boom as multinationals and tax advisers around the globe embraced its benefits."

In 1998, Ireland's Department of Finance in response to pressure from the European Union acknowledged that Irish registered non-resident (IRNR) companies "are regularly advertised 'for sale' in international magazines, often alongside companies which are incorporated in tax havens and jurisdictions with relaxed regulatory regimes. Many IRNR companies have little or no connection with the country and **some may be used for tax evasion, money laundering and fraud.**"[53]

In 1999 the Irish Government planned to have all Irish incorporated companies tax resident. However, with corporate America in control of a valuable Pandora's Box that would bring huge short-term gains, Ireland agreed to an exemption **under pressure from the American Chamber of Commerce in Ireland to maintain the offshore facility for US companies**. So the Finance Bill of that year provided that an offshore company which was tax resident in a double-tax agreement country could maintain its status while a new non-tax resident company could be setup if it was related to an existing firm with Irish operations - - in practice this latter provision was easy to abuse.

Permanent Establishment: On Page 2 we provided an example of how a holding company with just a mailbox registered office in Dublin can impact Ireland's national accounts while providing little of value to the local economy.

On April 2nd, the European Parliament supported the European Commission's Parent Subsidiary Directive,[54] which is designed to prevent the double taxation of same-group companies in Europe.

The existing general anti-abuse rule is replaced and a new rule which provides that a transaction is considered to be artificial if it does not reflect economic reality. The benefits under the Parent Subsidiary Directive will not apply if "an artificial arrangement or an artificial series of arrangements which have been put into place for the essential purpose of obtaining an improper tax advantage under the Directive and which defeats the object, spirit and purpose of the tax provisions invoked." Five examples that qualify transactions as artificial have been included in the rule.

a) Businesses should have a choice between local incorporation and a withholding tax while operations with a "significant presence" should be required to incorporate. So a giant like Amazon.com would not be able to treat its biggest European markets as depots for its Luxembourg operation[55];

b) A withholding tax via transactions with credit card companies regulated in a jurisdiction would be necessary to foreclose on ecommerce companies using a multiplicity of companies that would

[53] Irish Registered Non-Resident Companies - - Department of Finance Ireland 1998
[54] Parent Subsidiary Directive proposal - - European Commission 2013
[55] UK MPs to question Google, Amazon and Starbucks on corporate tax strategies - - Finfacts 2012

receive payments from different customers, to make it difficult for tax authorities to track transactions;

C) On thresholds for VAT, low-value consignment relief, and the requirements on digital products and services suppliers, the draft document has two options i) to reduce or eliminate the generally available exemptions for imports of low valued goods ii) require a non-resident supplier to register and account for the VAT on supplies sold in the jurisdiction of the consumer. The draft acknowledges the compliance burden involved and recommends simplified registration regimes and registration thresholds. In addition, the draft says enhanced governmental enforcement activities related to non-resident suppliers would likely be required, involving exchange of information, assistance in recovery and simultaneous audits.

The proposal that suppliers of digital products and services register and account for VAT in the countries in which their consumers are located would be the more preferable solution and EU member countries support this model.

From January 1, 2015, EU suppliers of digital products and services will be subject to the same rules as non-EU suppliers. To minimise administration, the EU is working on a “one-stop shop” whereby a business registers for VAT in only one EU member state, and accounts for all the VAT arising in other EU member states to that home state for onward payment.

d) While acknowledging that the some businesses always have been able to sell products and services into a country without having a physical presence, The OECD says ICT has significantly increased the scope for businesses to do so. The think-tank makes clear that it is not ring-fencing the digital economy as a separate sector and applying specific tax rules.

So other BEPS initiatives such as Action 6 (Prevent Treaty Abuse) and Action 7 (Prevent the Artificial Avoidance of PE Status) will also bolster source taxation and compliance.

e) Artificial transactions such as allocating intellectual property (IP) to island tax havens or jurisdictions that did not produce it, have no place in a credible tax system.