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July 2014: Submission to the **Department of Finance (DoF)**, Ireland, in respect of the public consultation report and process[1] on the implications of the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting Project (BEPS).

In April 2014, we made a submission to the OECD on its discussion document: '**Tax Challenges of the Digital Economy**.[2]'

We welcome the belated recognition by the Government that it should prepare for inevitable changes in international tax rules.

The siren voices of the status quo fearing change should be rejected as they should have been during the bubble years - **- there is more to fear from other emerging trends than sensible tax reform of a system that should be perceived as fair to all business irrespective of size or ownership.**

With the retention of the 12.5% corporation tax rate -- the lowest in Western Europe coupled with the experience of a half-century as a host of mainly American sourced FDI (foreign direct investment), despite changes in tax rules Ireland will remain in a relatively strong position in coming years in competing for mobile investment from the US.

We estimate that 40 US firms accounted for two-thirds of annual exports in 2013[3].

Ireland remains a high cost country and in 2013 prices for consumer goods and services were 18% above the European Union (EU) average **despite being the only member country to have experienced a fall in prices in the period 2008-2012[4]**.

In 2013 Ireland's average hourly labour cost whole economy (except agriculture and public administration) was in 10th place in the EU28 at €29, behind Germany at €31 and ahead of the UK at €21 according to Eurostat[5], the EU's statistics office.

Ireland and the UK were among the countries with the lowest employer social security costs in Western Europe at 9.71% and 9.76% respectively, according to the Organisation for Economic Co-operation and Development (OECD)[6] - - in Ireland this comes at a big cost for workers in indigenous SMEs in particular where the majority have no occupational pension coverage.

The OECD said this year that employers in France pay 28.7% of total labour costs in social security contributions, the highest amongst OECD countries. The corresponding figures are also more than 20% in 10 others of 34 member countries.

[1] OECD Base Erosion and Profit Shifting Project in an Irish Context - - paper, Department of Finance, Ireland, May 2014

[2] OECD BEPS Project: Ireland should embrace corporate tax reform - - Finfacts, April 2014 including pdf link to submission

[3] Forty American firms account for two-thirds of Irish exports - - Finfacts, July 2014

[4] Irish prices 18% above EU average in 2013 despite lone fall in 2008-2012 - - Finfacts, June 2014

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

[6] Taxing Wages: tax burden on labour income in 2013 and recent trends - - OECD, 2014

The DoF's 'Ireland's Report Card' for July 2014[7] notes: "Continued competitiveness boost through reduction in unit labour costs with a 20% relative improvement forecast against the Eurozone" -- however an acclaimed productivity miracle is a fiction partly arising from tax-avoidance related output, reflected in half the value of services exports of €92bn in 2013 being virtual (see below).

Central Statistics data show that the average hourly labour cost in industry was €25.03 in Q1 2008 and €25.40 in Q1 2014[8].

IRELAND 2000-2013: Internationally tradeable sectors

A jobless exports surge

Employment '000s by category	2000	2013	% +/-
Industry	268	202	-25%
Services	88	147	+67%
Total	356	349	-2%
Employment '000s by ownership	**2000**	**2013**	
Indigenous firms	172	177	+3%
Foreign-owned firms	184	172	-6%
Total	356	349	-2%
Exports at current prices	**2000**	**2013**	
Merchandise	€80bn	€92bn	+15%
Services	€18bn	€92bn	+411%
Total	€98bn	€184bn*	+88%

The European Commission's Ameco database shows that the real (inflation-adjusted) value of Irish exports of goods and services with 2005=100, rose 72% in the period 2000-2013.

*Revised July 2014

Sources: CSO; Forfás via Finfacts

Recommendations

We recommend that Ireland follow the UK's move in 1988 and have all Irish companies tax resident: The Irish authorities do not know the number of Irish offshore companies[9], known officially as Irish registered non-resident (IRNR) companies, but it is commonly

7 'Ireland's Report Card' - - Department of Finance, Dublin, July 2014

8 Earnings and Labour Costs Q1 20008-Q1 2014 -- Central Statistics Office, Cork, 2014

9 'No figures' for non-resident firms - - Irish Examiner, June 2013

known that many of them are mailbox tax avoidance entities while internationally, there is no distinction made between onshore and offshore Irish companies.

As there is no regulation, the requirement to have a link to an onshore Irish company is no security that some of these shell companies are not being used for illegal purposes - - it is likely that they are being used by criminal organisations as an Irish company has more cachet with authorities across the globe than other island tax haven companies.

The same company can be both onshore and offshore: The US Senate Permanent Committee on Investigations disclosed in 2013[10] that Apple Sales International, an offshore company with an onshore address in Cork, paid tax to Ireland on some transactions, while Finfacts has reported[11] that Apple Operations International, the principal Irish offshore holding company, paid tax in Ireland on global income less an offset for foreign tax paid under its previous name - - Apple Computer Inc. Limited - - until at least 2005 and then it became stateless in 2006/2007 according to the Senate panel's report.

The Government for a change should face down the business lobbies who warn that pre-emptive action should not be taken, maybe in the hope that the current reform process may collapse.

Pascal Saint-Amans, director of the OECD's Centre for Tax Policy and Administration, has said that the Double Dutch Irish Sandwich tax dodges will not survive but even if the process was to collapse **it's foolish to hope that the big economies in Europe will continue to tolerate large chunks of revenues in their economies being booked in Ireland and Luxembourg, to avoid tax.**

When the US gets around to corporate tax reform, a territorial system could be agreed where a minimum overseas tax would apply to deter further profit shifting to low or no tax jurisdictions.

President Obama and Max Baucus, former US Senate finance chairman, have proposed minimum foreign tax rates, and last February in The Wall Street Journal, Robert Pozen, a former vice chairman of Fidelity Investments, proposed a foreign rate of 17%[12] -- the tax could not be deferred but if a US corporation had already paid taxes of 17% or more to a foreign country, it would not be taxed again if these foreign profits were repatriated to the US.

Pozen chose the 17% rate as that is "the effective marginal rate paid, on average, by corporations in advanced industrial countries (excluding the US's exorbitant 35%). A global competitiveness tax would encourage US corporations to put foreign profits to use in the US, while removing the incentive for companies to transfer foreign profits to tax havens."

Ireland gains little from the current system but a reputation for sleaze and it does not have to engage in major reforms in the short-term but a change in tax residency would be a positive step now rather than being forced to take action later.

Why take the advice of the people who were blindsided by the international momentum for reform that has united the socialist government of France with the conservative government of Australia?

[10] Offshore Profit Shifting and the US Tax Code - Part 2 (Apple Inc.) - - US Senate Permanent Subcommittee on Investigations, May 2013

[11] Apple's principal Irish company became stateless for tax purposes from 2006 - - Finfacts, June 2014

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

Why take the advice of the once cheerleaders of tax inversions?

The insiders had banked on 1) the EU veto on tax harmonisation 2) political gridlock in Washington DC, to maintain the status quo but now the genie is out of the bottle.

Tax inversions: The trend of American and British companies becoming "Irish" was welcomed with glee some years ago but following a ministerial meeting in June in Dublin with leading US corporate lawyers, it's now clear that the Government views the trend with alarm.

By the end of this year the total payroll of the faux-Irish companies will exceed 600,000 - - more than treble the total employment in FDI (foreign direct investment) exporting firms in Ireland[13].

These companies mess up the Irish national accounts, bring little value to Ireland; US executives make clear that operational headquarters remain the US and the fiction of 'management and control' tax rule is met by directors holding board meetings in Dublin hotels.

King Digital Entertainment Plc, maker of the popular Candy Crush Saga mobile video game, became a brass-plate company in Dublin with its mailbox headquarters in a Dublin law firm, in advance of its March 2014 initial public offering (IPO) on the New York Stock Exchange.

If the US Congress doesn't act on the issue in 2015, Ireland should legislate and also for companies generally - - substance needs to be given to the ministerial claim that foreign-owned companies without substance do not operate in Ireland[14].

Ireland's International Financial Services Centre (IFSC): Last March the IFSC slipped to 66 of 83 cities worldwide - - down 10 ranks -- in the biannual global survey of financial services professionals. The Irish capital is ranked at 19 of the top 20 European centres[15].

Dublin was just ahead of Malta and Manila and its 66th rank compares with 15 in March 2007, 13 in September 2008, and 23 in September 2009.

The June 2014 report[16] of members of the German Bundestag finance committee said that brass plate operations at the IFSC reflecting shadow banking, funds and special purpose vehicles (SPVs) are valued at €2.17tn, while the Irish authorities were said to be sanguine about the risks to the domestic economy. However, what about the risks to the battered reputation of the IFSC itself?

At least, shouldn't the risks be assessed?

Unlimited company status: This should be reviewed as there are implications other than owner risk.

A Dublin law firm has claimed that it's possible to limit liability while having unlimited status.

[13] US-Ireland Tax Inversions 600,000+ staff: Kenny, Noonan met with top US corporate lawyers - - Finfacts, July 2014
[14] "We don't have any brass plate companies like others do have" - - Brendan Howlin, public expenditure minister, Irish Times, February 2014
[15] Global Financial Centres Index: New York overtakes London; Dublin slips to 66 of 83 cities - - Finfacts, March 2014
[16] Bericht von der Reise des Finanzausschusses nach Dublin/Irland - - German Bundestag finance committee members report, June 2014

On a general point about keeping financial data secret, the public sector is the biggest customer for legal services in the State; why do big professional firms have the archaic protection of financial privacy?

Cleanup national accounts: The Government should use the opportunity to flag that the end of the "Dutch Double Irish Dutch[17]' sandwich schemes will result in a plunge in services exports and related output.

We estimate that about €45bn of the July 2014 revised total of annual services exports of €92bn in 2013 were tax-avoidance related[18].

Enterprise strategy: There should be a spin-free assessment of Irish enterprise strategy for the long-term.

Jobs in the FDI exporting sector are below the level in 2000[19] as the workforce rose 22% in the interval and despite recent improvements, the indigenous sector[20] has performed poorly for decades.

The decade old science strategy is more dependent on faith than evidence and meanwhile the Irish food trade surplus as a ratio of exports has fallen from 61% in 1990 and 52% in 2000 to 19% in 2013 and today Denmark produces four times the Irish output of potatoes and has a trade surplus ratio of 37%.

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) - - we have an analysis of food opportunities and failures here[21].

Learn bubble lessons: Until personal tax evasion and massive corporate tax avoidance became international issues in recent years, **questioning Ireland's corporate tax regime was almost a taboo issue. It was akin to the "talking down the country" response to dissent during the bubble years.**

When Irish ministers, their advisers, business lobby groups and professional services vested interests have a settled view on an issue, dissent is either drowned out or ignored.

It's a wish again that lessons should be learned rather an expectation.

Consultation report questions: The report has 6 questions;

- **Question 1:** Which of the international tax issues identified in the BEPS Action Plan would need to be considered the highest priorities for Ireland for examination with a view to action?

[17] IMF explains "Double Irish Dutch Sandwich" tax avoidance - - Finfacts, October 2013
[18] Ireland's ephemeral services export boom - - Finfacts, June 2014
[19] IDA Ireland: Jobs in Irish FDI exporting sector remain below 2000 level - - Finfacts, July 2014
[20] Irish indigenous tradeable exports at 9% of total headline exports in 2013 - - Finfacts, July 2014
[21] OECD BEPS Project: Ireland should embrace corporate tax reform - - Finfacts, April 2014 with an introductory feature on the food industry

- **Question 2:** Are there other current international tax proposals that would be of concern to Ireland?
- **Question 3:** In a changing international environment, what's the best way for Ireland to ensure that its taxation provisions, for example in relation to intangible assets, are competitive?
- **Question 4:** Are Ireland's company residence rules appropriate in the context of BEPS and other international tax developments?
- **Question 5:** What are the critical considerations in shaping Ireland's response to current international tax developments -- either in general or with respect to particular issues?
- **Question 6:** Are there any other priority areas or future challenges that should be considered as part of this process?

We have covered above residency and related issues of substance and the distortions of the national accounts.

On intangibles, Arthur Cox, Ireland's biggest corporate law firm, said in a January 2011 tax briefing, 'Uses of Ireland for German Companies[22]':

> "There are numerous advantages for multi-national companies with large Intellectual Property (IP) portfolios who locate and manage these portfolios in Ireland. The **effective corporation tax rate can be reduced to as low as 2.5% for Irish companies** whose trade involves the exploitation of intellectual property. The Irish IP regime is broad and applies to all types of IP. A generous scheme of capital allowances as well as a tax credit for money invested in research and development in Ireland offer significant incentives to companies who locate their activities in Ireland.
>
> A well-known global company recently moved the ownership and exploitation of an IP portfolio worth approximately $7bn to Ireland."

This 'virtual' bonanza is believed to relate to Accenture, the US consultancy, changing its headquarters to Ireland from Bermuda in 2009.

In future, assigning IP via accounting entries will not likely be possible and actual real world substance will be required.

From past experience, this is fertile ground for business lobbies, accountancy bodies, and professional services firms to sell hope to naive policy makers.

All the magic needs are more public spending and tax breaks - **- for a change, demand evidence, even if there is little.**

In 2010 the 28-strong Innovation Taskforce envisaged up the 215,000 science & technology jobs being added by 2020 - - the aspiration was based on faith not evidence and would have required an unprecedented level of firm creation/ failures in an economy with a tiny home high tech market[23].

[22] 'Uses of Ireland for German Companies'
[23] Innovation Taskforce Report - - Irish Government, 2010

Of course public spending on science[24] of an inflation-adjusted €24bn in a decade should produce some positive metrics e.g. a jump in paper citations **but data on relevant outputs are sparse**.

Forfás, the policy advisory unit, said in a report in 2004[25] that analysis of the profile of Irish-based companies engaged in patenting showed that none of the top 50 exporters were among the top ten foreign-owned patenting companies, and leading computer manufacturers were entirely absent.

Only one of the top 15 pharmaceutical exporters (Abbott) appeared on the list. Analysis of top indigenous patentees showed that they were mainly SMEs operating in traditional sectors. "However, the omissions tell us more about the state of indigenous industry than those that are included. The Irish food sector contributes two-thirds of all indigenous industry exports but no major food company or co-operative appears on the list."

While the FDI sector is responsible for almost three-quarters of business R&D spending, a decade later there is no evidence that the big exporters are doing significant research in Ireland.

IDA Ireland said last year that less than a third of its client FDI firms do even minimum R&D from €100,000 annually[26] and while Israel attracts US strategic R&D centres, Craig Barratt ex-CEO of Intel suggested that Ireland is too small to attract big R&D investments[27].

Last year Eurostat reported that business patent applications in the OECD area in 2009 were just over 60% of total patents in Ireland compared with 90%+ in the main knowledge-economy countries[28].

In 2013 Irish resident patent applications to the European Patent Office (EPO), which provides protection in 38 states, were at 548 down from 593 in 2012 and 712 in 2008.

The ratio per million inhabitants of EPO applications in 2013 was 115 in Ireland; the EU28 average was 129; the leaders were Switzerland 832; Sweden 402; Finland 360; Denmark 347; Netherlands 347 and Germany 328[29].

Patent Cooperation Treaty[30] (PCT: 148 countries in 2013) patent applications were at 435 in 2013, compared with 390 in 2012 and 481 in 2008

Skype, the Microsoft-owned web phone service, was the top PCT filer in 2012 and 3 universities were among the top 9 filers from Ireland - - no significant exporter is among them[31].

Startups, entrepreneurship, technology and innovation are very important in a modern economy but in Ireland, should most of the focus of enterprise policy be on a VC-backed sector that employs about 10,000 people?

24 Science Budget 2011 -- Forfás, 2012
25 From Research to the Marketplace - - Forfás, 2004
26 IDA Ireland Annual Report 2012 - - Page 05, 2013
27 Irish Innovation: Israel as Startup Nation, why not Ireland? - Part 2 - - Finfacts, Mar 2014
28 Science, technology and innovation in Europe - - Eurostat, 2013 edition
29 European Patent Office Annual Report 2013
30 Patent Cooperation Treaty Yearly Review - - World Intellectual Property Organisation (WIPO), 2014
31 WIPO's Ireland profile

Daniel Isenberg, a former entrepreneur who created the entrepreneurship ecosystem project at Babson Executive Education and previously taught at Harvard Business School, wrote in The Economist earlier this year[32]:

> "THE distinction between tech and non-tech entrepreneurship is false. Today, every business venture, entrepreneurial or otherwise, requires technology to be competitive, whether it is diamond trading, transportation, construction, or energy. There is nothing intrinsically more technological about Twitter and Facebook, say, than about Harley-Davidson or American Express. In fact, medical devices and alternative energy are arguably more technology-intensive, generically, than any of the report's wide-eyed examples. Furthermore, for any business, anywhere, ignoring the opportunities and necessities presented by technology is backing light speed into oblivion, and no different than ignoring the existence of electricity or cars. **And research is showing that as many, if not more, social and economic benefits of entrepreneurship accrue from non-tech entrepreneurship and that the new public policy focus on startups may be badly misplaced**."

In August 2013 we did a detailed analysis of enterprise policy and the reliance on university research[33].

The law of unintended consequences: The OECD's BEPS Project involves updating, replacing or changing many interlinked rules and it would be important to have a review after say five years to plug loopholes or change rules that have had unintended consequences.

The think-tank has acknowledged that "ring-fencing the digital economy as a separate sector and applying tax rules on that basis would be neither appropriate nor feasible."

However, due to the nature of many digital companies, which does not require them to have a physical presence, the concept of a permanent establishment (PE) must be redefined.

Google Inc. noted in its Q1 2014[34] report: "Our revenues from the United Kingdom totalled $1.58b, representing 10% of total revenues in the first quarter of 2014" - - most of these revenues are booked in Dublin.

The search engine giant claims that its PE for EMEA (Europe, Middle East, Africa) is in Dublin and what its staff are engaged in the UK is marketing type activities not sales. It has about 500 engineers employed in the UK.

The House of Commons Public Accounts Committee (PAC) said in a June 2013 report[35]: "It is quite clear to us that sales to UK clients are the primary purpose, responsibility and result of its UK operation, **and that the processing of sales through Google Ireland has no purpose other than to avoid UK corporation tax.**"

[32] Imbalance in focus on tech and non-tech entrepreneurship in Ireland & elsewhere - Part 1 - - Finfacts, May 2014

[33] Irish Innovation: Evidence of science policy failure mounts - -Finfacts, August 2013

[34] Google's Q1 2014 earnings report

[35] Tax Avoidance–Google - - House of Commons Committee of Public Accounts, June 2013

Matt Brittan of Google told the PAC that around 99% of companies in the UK that spend money with Google do so without talking to Google Ltd's staff as they conduct their transaction online, through an automatic auction.

The 1% are big name companies who are responsible for between 60-70% of the total spend of all British companies with Google.

Google Ltd's UK employees have a direct relationship with these clients and meet them regularly.

The challenge is to catch both the 99% and the 1% of big fish.

The existing PE rule is that just selling into a market without physical presence or a dependent agent in the country is not sufficient to create a permanent establishment allowing that country to claim a share of the enterprise's profits.

The Ireland-UK tax treaty provides that an Irish company would be subject to UK tax on its profits earned from UK activities **only if it were trading in the UK through a permanent establishment**.

The OECD is looking at the creation of an "economic presence" PE where a business includes "fully dematerialised digital activities" and such activity in a territory amounts to a "significant digital presence."

Two alternative proposals under consideration for a business that comprises digital goods and/or services, are 1) using the personal data obtained from users in the country and 2) other elements of the business model.

Card data would enable tracking of purchases and a system for sharing information between revenue authorities is likely to be established.

Revenue authorities should also drop the preferential treatment of transnational companies, **which is often in sharp contrast to the treatment of domestic companies**.

On how the **"profits arising"** would be measured in a country where there is a virtual PE would be easy enough in the case of Google and Amazon in the UK where they have significant payrolls and sales.

For a games company selling digitally with no physical presence in the UK, agreeing on how profit would be determined is challenging.

A related development on value-added tax (VAT) is that from January 01, 2015 in the EU28, telecommunications, broadcasting and electronic services will always be taxed in the country where the customer belongs:*

– whether customer is a business or consumer

– whether supplier based in the EU or outside

* For a business (taxable person) = either the country where it is registered or the country where it has fixed premises receiving the service.

* For a consumer (non-taxable person) = the country where they are registered, have their permanent address or usually live.

So tax at destination prevents consumer-oriented companies such as Apple (iTunes), Amazon, eBay/PayPal and Skype, which are located in Luxembourg, from exploiting VAT differentials in Europe.

For VAT on e-commerce and a requirement for non-resident companies to register for VAT, the OECD recommends simplified registration schemes and **thresholds to minimise the compliance burden**. It also says that countries should improve international co-operation and information-sharing to facilitate the enforcement of tax collection and audits.

VAT rates in the EU range from 15 to 25% with Luxembourg the lowest[36].

According to The Guardian newspaper, Amazon employed 4,191 people at the end of 2012 in the UK, and thousands more in its warehouses via contracting agencies, but reduced payments to the British government by routing sales via a subsidiary in Luxembourg.

The UK standard rate is 20% and the base in Luxembourg not only gives it a 5% VAT differential that it can pass on to the UK consumer or keep some of it but it also slashes its corporate tax bill[37].

General comment

We are in a time when governments are struggling with high public debt and citizens facing squeezed incomes contemporaneous with growing inequality in their societies, are together no longer willing to tolerate massive international personal tax evasion and corporate tax avoidance.

Switzerland with 300 banks has been forced to make significant changes in its 1934 banking secrecy regime and last May it was announced that 47 countries had agreed to an Organisation for Economic Co-operation and Development (OECD) framework that commits them to "swiftly" pass new domestic laws, which will allow them to collect information on all bank accounts and automatically exchange it with other participating countries.

The signatories include the significant financial centres of Singapore and Switzerland (and besides Switzerland, the other 33 members of the OECD).

The Swiss government said on May 06 that the sharing agreement underscored its commitment to tackling tax fraud and evasion. It said: “Switzerland supports the OECD ministers’ declaration concerning the development of a new automatic exchange of information (AEOI) standard in tax matters.”

The Swiss Bankers Association said: “The banks in Switzerland are willing to adopt the automatic

[36] European Union VAT rates
[37] Amazon paid £3m tax on £4bn UK sales - - The Guardian, May 2013

exchange of information along with other financial centres, provided that the exchanged information is only applied for tax purposes."

Stories of big US consumer giants such as Apple, Amazon and Google paying no or very low taxes in the UK prompted a commitment from the UK government together with France and Germany to tackle tax avoidance which culminated in commitments in 2013 by the Group of 8 leading developed countries and Russia, and the Group of 20 leading developed and emerging economies, to work with the OECD to produce new rules on disclosure and base erosion by 2015.

Meanwhile, the June visit by Enda Kenny, taoiseach, to Silicon Valley showed that the traditional welcome in America for Irish leaders drumming up jobs should not be taken for granted.

Most chief executives Kenny met refused to be photographed with him and **Jerry Brown, governor of California**, made a barbed comment on Apple to an audience in San Francisco that included the taoiseach: "We thought they were a California company but when you look at their tax return, they are really an Irish company. Anyway, that is part of the creativity - - yeah**, it's called creative accounting.** Anyway, I won't go there."

Upton Sinclair (1878–1968) the American writer wrote in a 1935 book[38]: "It is difficult to get a man to understand something, when his salary depends upon his not understanding it!"

Since late 2012 when corporate tax avoidance became the focus of international attention, the responses from ministers and **the business lobby groups in defending the status quo have been surreal**.

Some humility could have been expected from the Consultative Committee of Accountancy Bodies – Ireland (the representative committee for the main accountancy bodies in Ireland) after their disastrous support of the status quo during the property bubble, when "lending as a fraction of GNP increased from 60% in 1997, to over 200% in 2008, twice the level of other industrialized economies[39]."

However in their submission[40] to this consultation, it's *plus ça change, plus c'est la même chose*.

> "Certain of our academics and other members of the commentariat, widely reported by certain of our news agencies, make inaccurate and damaging claims with regard to the way Ireland conducts its tax affairs. These claims must be discounted. Published explanations, for example those published by your Department concerning Ireland's effective Corporation tax rates, dispense with such claims, which in any event have little traction with the fair-minded in the business community [ ] Harmful tax practices are simply not a feature of the Irish tax landscape."

The accountants **also appear to want the Dutch Sandwich schemes to continue**: "At an absolute minimum it will be important to retain the concept of Irish incorporated companies not being tax resident in Ireland, at least as regards those companies managed and controlled within our treaty

[38] **I, Candidate for Governor: And How I Got Licked (1935)**

[39] The Irish Credit Bubble - - Prof Morgan Kelly, University College Dublin (December 2009)

[40] Consultative Committee of Accountancy Bodies – Ireland submission - - Department of Finance consultation on corporate taxes, July 2014

partner countries."

Enda Kenny has repeated mantras that the effective rate of tax (based on the template of a non-exporting SME ceramic flower pot manufacturer), is close to the headline 12.5% rate; the system is "rules based," "ethical," "transparent" and the OECD says Ireland isn't a "tax haven."

- No member country of the OECD, which includes all developed countries, meet its definition of a corporate tax haven but the simple truth is that **Ireland, the Netherlands, Switzerland and Luxembourg**, are the main facilitators of corporate tax avoidance in Europe;
- In May 2013, United States senators Carl Levin and John McCain in response to a letter from the Irish ambassador to the US referred to **"a common-sense definition of a tax haven,"** which gets to the core of the issue in terms of international reputation and credibility;
- In March 2014 a DoF spokesperson suggested that inclusion of profits routed through Ireland to an Irish registered non-resident (IRNR) company, which is incorporated in Ireland under Irish company law but is not resident for tax purposes, was based on a "flawed premise"[41];
- In regulatory filings US companies make no distinction between onshore companies and mailbox Irish companies in island tax havens; statistical returns to US government agencies also make no distinction;
- Ireland did close the "stateless" loophole - - claiming no tax residency anywhere - - in 2013 that was used by Apple according to a US Senate panel **but the fact that the Irish authorities do not know how many Irish companies are non-tax resident and what they do, is a serious flaw**;
- In 2011/2012, Apple's foreign tax rate was 1.9%, Microsoft's was 4% in its 3 regional sales centres: Ireland, Puerto Rico and Singapore, and Google's rate was 5.3% in 2012, rising to 8.6% in 2013 (average OECD country tax rates are about 25.5% down from 42.7% in 1989 when the organisation had 22 members and Sweden's rate was 60.1% compared with 22% in 2013[42]). Google's total (US and overseas) effective rate was 15.7%, down from 19.4% in 2011. **Google (ex-Motorola) had a payroll of 37,500 in December 2012 and 2,200 workers in Dublin "produced" €15.5bn in revenues (41% of Google Inc.'s global revenues ex Motorola). Microsoft Operations Ireland reported a 37% rise in revenues in the year ended June 30, 2012 to €13.7bn (24% of Microsoft Inc's global revenues) without any significant change in its operations company payroll of less than 700. Microsoft Inc. employed about 90,000. Facebook books about half its global revenues in Ireland** - - the accounting entries magic up services exports for Ireland of about €45bn - - almost half the annual total.
- Contrary to Irish myth, **France's effective corporate tax rate is not about 8%**, which is based on a headline rate of 15% for small firms and applies to taxable profits up to €38,120. The main headline rate is 34.43% rising to 38% during the financial crisis.

The Financial Times reported[43] in 2013 that Apple would have paid a tax rate on US + foreign income of about 15% in 2012, far below the 25.2% it reported, had it not used a form of reserve accounting that sets it apart from other big US technology companies. The US federal rate is 35%.

The Irish accountants engage in calamity-howling citing the past closures of Ford's car assembly in Cork (1984); Digital Corporation's computer manufacturing in Galway (1993) and Dell's computer

[41] Corporate Tax 2014: Irish Government's "flawed premise" on Apple's avoidance - - Finfacts, March 2014
[42] OECD Corporate Income Tax Rates 1981-2013 - - Tax Foundation, US
[43] Apple faces grilling over US tax rate - - FT, May 2013

manufacturing plant in Limerick (2009) - - Dell Products today books the output of its Polish plant in Ireland.

These closures resulted from changes in industries - - for example most PC manufacturing is done today in Asia.

Each year for every 10 jobs added by IDA Ireland client companies, about 5 are lost while for every 10 added by an Enterprise Ireland client company, about 7 are lost.

It is striking that while sustainable growth has been dependent on foreign-owned firms since at least 1990, the chart above shows that the FDI (foreign direct investment) sector is no longer a jobs engine.

The late Dr. Garret FitzGerald wrote in the Irish Times in 2006 that during the brief Celtic Tiger period from 1993 to 2001, our living standards rose by one-half**. But this was due to two special factors - - both of which were essentially temporary in character.**

The first was the impact upon our national productivity of a quite exceptional inflow of new US investment. For a number of years Ireland, with only 1% of Europe's population, attracted up to 25% of all US greenfield industrial investment in our continent. The new technology and skills that this inflow brought contributed to a 4% annual increase in output per worker at national level, i.e. productivity.

The second factor, which played an even larger role in boosting our living standards during this time, was the huge increase in the total number of people at work, and the corresponding drop in the proportion of dependants in our population. Several factors contributed to this: the exceptional inflows of young workers emerging from the educational system and of women transferring from "home duties" to the labour force, and also the flow of unemployed people returning to work and of recent emigrants coming back to jobs here.

Within a decade these inflows into our labour-force reduced from 230 to 115 the number of dependants that every 100 workers had to support, either directly within their families or indirectly through taxation.

Henry Ford (1863-1947), the Irish-American industrialist, remains the hero of American FDI in Ireland and the peak employment at the Henry Ford & Son plant in Cork City was 7,000 in 1930, when the city had a population of 80,000. Dunlop, the rubber tyre company, opened a plant adjacent to Fords' in 1935.

In 1919, the year that the tractors began rolling off the assembly lines in Cork, the war of independence against British rule began.

Ford had a strong affinity with his father's homeland and he was also influenced by his mother's adoptive father, Patrick Ahern, from Fair Lane off Shandon Street in Cork City.

During the property boom from 2001 to 2007, the indigenous sector with an export ratio of about 40% added 10,000 jobs and the FDI exporting sector lost 10,000 jobs.

The indigenous sector mainly stagnated in past decades as ready-made jobs from foreign firms could be created without challenging any sacred cows and as we noted above, the food sector has been operating far below par.

The chart above also shows that indigenous direct employment in the exporting sector is above the level in FDI firms.

The revised total for exports in 2013 was €184.1bn and the indigenous tradeable exports ratio amounted to 9.3%.

When inward tourism and transport exports are added to the indigenous tradeable exports, the total is €25bn.

As a ratio of adjusted total exports of €119bn, total indigenous exports amount to 21%.

The merchandise trade surplus was €36bn in 2013 - we assume that €20bn of the total is profit shifting while €45bn of total services exports of €92bn are assumed to be tax-avoidance related revenue diversions from other countries, giving an adjustment of €65bn to produce a more realistic total export value of €119bn.

Note that there was no overall growth in employment in the exporting sectors despite a surge in exports

The FDI sector has brought important intangible assets: improved standards of management, technical competence, integrity and treatment of workers -- the local chief is an employee like everyone else.

Patrick Honohan, the central bank governor, who is a former professor of economics, said in a speech[44] last March:

> “While the importance of foreign-owned firms can be traced back to pre-independence times, the present patterns of foreign ownership dominance have emerged as a clear consequence of Government policy from the 1950s on to encourage inward foreign direct investment. The efforts of the IDA and other agencies, combined of course with the tax structure, have played a powerful role. The model has been a significant driver of Ireland’s success in achieving high average living standards, even if critics have long-noted the potential vulnerability associated with such heavy reliance on this segment of enterprise.
>
> One hoped-for element of the policy of encouraging foreign-owned firms is the inward transfer of technology and business know-how including to locally controlled firms.
>
> **As the decades passed, this transfer does seem to have happened to an increasing extent.** But the reliance on foreign-owned firms has lasted a long time. Irish-owned companies have grown and prospered over the past half-century, and the most pessimistic of prognostications have not materialised. Nevertheless, this systemic dependence on foreign capital and know-how has skewed Irish development. **In the interests of robust**

[44] Address by Governor Honohan at the Royal Irish Academy -- March 2014

diversification, most Irish economists observers would hope for a greater convergence towards normality in this aspect of Irish economic development, with a stronger emergence of innovative Irish companies alongside those steered from abroad.

One side-effect of the heavy reliance on multinational corporations for driving employment and productivity growth has resulted from the fact that these companies generally bring most of their financing with them, thereby reducing the pressure on the local financial intermediaries and markets to innovate in the direction of designing and appraising financing packages for modern industry. While this did not discourage Irish banks from expansion, it likely contributed to their slide into a monoculture of property lending."

Up to three-quarters of the staff at the big services firms are foreign nationals because of the lack of language skills among the native Irish.

Localisation, sales, administration and call centres tend to be the main activities. Hedge fund administration is an important activity at the financial services centre.

International Data Corporation (IDC) estimated in 2013 that there were 46,000 tech professionals working in the broad ICT (information, communications, telecoms) sector in 2013[45] - - almost half the sector total and 2% of the overall workforce - - and there were 25,000 in the rest of the economy.

Google employs 71 nationalities in Dublin and the number of Irish has risen to about 30%[46].

American companies account for about 75% of FDI exporting employment and Ireland has a large number of pharmaceutical/medical devices and high tech firms where export revenues are high **as is the related incentive to exploit the dysfunctional corporate tax system that has been long due for an overhaul**.

Corporate tax avoidance and evasion are problems in many areas of the world[47].

Ireland's headline corporate tax rate of 12.5% is the lowest national rate in the developed world but American companies, **from the late 1990s took advantage of an unintended loophole in US tax regulations to avoid the high federal rate of 35% while in Ireland in 1999, legislation requested by the EU had the goal of having all Irish companies tax resident. However, under pressure from the American Chamber of Commerce in Ireland, an exemption was made where US companies could use Irish offshore companies without having to pay tax in Ireland.**

US companies discovered that they could do better with Irish help and pay tax at a lower rate than the best rate in the developed world.

The calculation for Ireland was that overall Irish tax paid would not be reduced as giving the companies the facility to suck in lots of income from around the world would deepen roots in Ireland and also boost Dublin's offshore financial services centre.

[45] Addressing Future Demand for High-Level ICT Skills - - Forfás / EGFSN (Expert Group for Future Skills Needs), November 2013
[46] Google was never meant to be this big in Ireland – but plans change - - Sunday Independent, March 2014
[47] Vast hidden profits: from Asia's palm oil giants to a tiny British tax haven - - The Guardian, May 2014

The test for using the offshore entities was that these companies would be controlled and managed outside Ireland (most onshore affiliates in practice are in the same boat) - - in reality they were mailbox companies domiciled in island tax havens such as Bermuda, the Cayman Islands and the British Virgin Islands, where there are no corporate taxes.

The companies were effectively tax avoidance entities and given the importance of foreign direct investment (FDI) for Ireland, the Irish Revenue had a history of being cooperative with FDI firms.

The offshore entity would charge the Irish onshore affiliate of the US Company for IP (intellectual property); the Irish affiliate would shift profits from other foreign subsidiaries by invoicing for IP and other services. There would be some tax paid in Ireland and by foreign subsidiaries but most of the income from subsidiaries would be channelled via the Netherlands to the island tax havens and arrive tax free.

The advantage for the US company in having an Irish offshore entity was that to tax authorities around the world, funds were being moved to a sister unit in Ireland not to a tax haven.

The Irish exemption was made at a crucial time when US companies were beginning to take advantage of a tax loophole called 'check the box' that had been inadvertently introduced by President Clinton's Treasury Department to simplify the tax code through allowing companies to file subsidiaries' income with parent company income. The companies also were able to designate which units were irrelevant for tax purposes, termed "disregarded entities."

In the four years, between 1999 and 2012, profits of Irish affiliates of US companies doubled from $13.4bn to $26.8bn (including income in Irish offshore companies). They became the most profitable in the world according to Tax Analysts, a US tax research firm.

Tax Analysts said in 2004 that for each dollar of profit taken in Luxembourg in 1999, US corporations took $4.56 of profit in 2002. The result for Bermuda was $2.96; for Ireland $2.01; and for Singapore $1.72. It said these countries were viewed as tax havens or partial tax havens. For UK, each dollar of profit taken in 1999 was equal to 67 cents in 2002; for Germany, it was 46 cents.

Corporate payments to members of Congress ensured that the 'check the box' loophole could not be closed[48].

The DoF (Department of Finance) said in a 1998 paper[49]: "An Irish registered non-resident (IRNR) company is one which is incorporated in Ireland under Irish company law but is not resident here for tax purposes because the company is controlled and managed abroad. Under existing tax law, a company is resident in the State for tax purposes if its effective management is located in the State...**IRNR companies have posed a threat to Ireland's international image and its reputation as a well-regulated jurisdiction for conducting business**. These 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.**

[48] Tax Havens: International Tax Avoidance and Evasion - - Congressional Research Service, January 2013
[49] Irish Registered Non-Resident Companies - - paper, Department of Finance , November 1998

A number of fraud cases involving IRNR's have been covered recently in the press. On the other hand, IRNR companies are used by several multinationals for legitimate international tax purposes."

In the Finance Act, 1999, under pressure from the EU, all Irish-incorporated companies became resident; however, there are a number of exceptions to the rule, some of them to accommodate the situation of multinational companies (many American) who have established themselves in Ireland.

The most important exceptions are:

1) An Irish-incorporated company which is resident in a treaty country (Ireland has Double Tax Treaties with 69 countries of which 64 are in effect) and which is not resident in Ireland will continue to be regarded as non-resident in Ireland;
2) An Irish-incorporated company which is under the ultimate control of a person or persons resident in an EU member state or in a country with which Ireland has a double tax agreement, or which is, or is related to, a company whose principal class of shares is substantially and regularly traded on a stock exchange in an EU country or a treaty country AND which carries on a trade in Ireland or is related to a company which carries on a trade in Ireland will continue to be able to be non-resident under the management and control test. ('Related to' means that either one of the two companies owns at least 50% of the other, or that both are owned at least 50% by a third company; 'Control' is interpreted within Irish rules that attribute the rights of shareholders to related parties and associates.)

The Lowtax portal says[50]: "As can probably be seen, these rules are far from restrictive, and in most cases it was possible for companies either to continue non-residence as they are currently structured, or else to make reasonably straightforward adjustments to fall within the new rules."

In an unlimited company there is no upper limit on the personal liability of shareholders for the company’s debts upon the company’s insolvency. William Fry, a law firm, says[51]: "Although one might expect this type of company to be rare, **2% of all Irish companies are unlimited, and Ireland has more than twice as many unlimited companies as it has PLCs."**

Grant Thornton, an accountancy firm, says[52]: "an unlimited company is generally not required to file a copy of its annual accounts with the Registrar of Companies provided at least one of its members does not have a limit on its liability."

However, LK Shields, another Dublin law firm, says[53] it is possible to use a structure, using non-EU companies as holding companies, where an unlimited company can avail of the non-filing exemption while also providing the original shareholders with limited liability.

[50] Ireland: Offshore Legal And Tax Regimes Introduction - - Lowtax Global Tax & Business Portal
[51] Risks in Using Unlimited Companies - - William Fry, Dublin 2010
[52] Doing Business in Ireland - - Grant Thornton, Dublin 2011
[53] Ireland: Unlimited Companies: No Obligation to Publicly File Accounts - - LK Shields Solicitors, Dublin 2010