



The Tondo slum as seen through a fence in Manila, the Philippines. Previous Oxfam research has found that 200 million more people will be in extreme poverty by 2030 unless economic inequality is addressed. Large-scale tax dodging by corporations and wealthy individuals is a key driver of the growing gap between rich and poor. Photo: Dewald Brand, Miran for Oxfam

# MANTRAS AND MYTHS:

## A true picture of the corporate tax system in Ireland

# CONTENTS

Introduction.....	3
Executive summary.....	5
<b>Part One: Ireland Inc.: The current state of Ireland’s tax policy.....</b>	<b>10</b>
The Double Irish and Double Taxation Agreements.....	13
Ireland’s intellectual property regime.....	14
CASE STUDY: Blue sky thinking: aircraft leasing in Ireland.....	17
Transfer pricing and tax rulings .....	18
Tax rulings system .....	20
Tax and development: Ireland’s role .....	21
Special Purpose Vehicles/ Section 110 companies .....	22
Conclusion to Part One .....	23
<b>Part Two: Ireland on the international stage .....</b>	<b>24</b>
The OECD Base Erosion and Profit Shifting (BEPS) project .....	24
The BEPS agenda at the EU .....	25
EU Anti-Tax Avoidance Directive .....	26
Country by country reporting .....	26
Public country by country reporting .....	27
Formulary apportionment and the CCTB.....	28
A global tax body .....	29
<b>Conclusions and Recommendations .....</b>	<b>30</b>
<b>Glossary .....</b>	<b>34</b>

**Acknowledgement:** This report is based on research undertaken by Hannah Grene and Mary Cosgrove on behalf of Oxfam Ireland. Oxfam Ireland also wishes to acknowledge the assistance of Francis Weyzig, Aurore Chardonnet, and Susanna Ruiz in the production of this report.



This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of Oxfam Ireland and can in no way be taken to reflect the views of the European Union.

# INTRODUCTION

This is an important and timely report. It sets out comprehensively the challenges posed to sustainability – local and global, economic and social – when a tax system is open to be abused by those intent on global tax avoidance. At a time when the world is struggling with the challenges posed by the UN Sustainable Development Goals (SDGs), the issue of tax avoidance and evasion is more critical than ever. The SDGs set out ambitious targets for the world under seventeen headings, and all of them require a functioning, fair and effective tax system. In the presence of tax avoidance of the kind described in this report, it will be impossible for most countries, least of all developing countries, to address issues of poverty, quality education, good health, clean water and sanitation, gender equality, innovation and industrial infrastructure, decent work and economic growth, to cite only seven of the seventeen goals.

This is what is at stake in the debate. Tax avoidance, far from being a victimless crime, is a hidden killer, affecting lives remote from the boardrooms and office blocks in which financial and economic decisions are made; the effects are indirect, but no less real for that. This report, shining a light on the impact of the Irish tax system, deserves careful consideration by anyone with a policy brief.

The major contributions of the report centre on documenting profit shifting through Ireland. There is a timely focus on the aircraft leasing industry, and concern is expressed about the adequacy of a series of specific measures and aspects of the Irish tax system, notably double tax treaties, transfer pricing rules and changes to the S110 tax avoidance measures on SPVs, or special purpose vehicles. The new knowledge box and broader measures around intellectual property (IP) are rightly singled out for scrutiny, and this is an area which merits considerable attention to the implementation of the rules and their impact on the alignment of profits recorded and work done within global groups.

A key recommendation is to work towards greater transparency and accountability. This is clearly in line with public expectations, which have changed significantly in the past decade. Transparency is also necessary in order to appropriately monitor the impact of our tax system; the report notes that the spillover analysis conducted by government would have been more effective had richer data been publicly available.

Transparency in the area of tax rulings, another area highlighted in the report, would also have mitigated the risk which crystallised in the Apple rulings.

Beyond the direct impact of our tax system, the report also tackles the issue of Ireland's tax performance on the world stage, our engagement in international initiatives and our position in the overall context of the OECD Base Erosion and Profit Shifting (BEPS) framework, and proposals from the European Union (EU), European Commission (EC) and civil society. The disparity of such proposals and the imbalance of power faced by taxing authorities in various regions of the world lead the authors to support calls for a global tax body tasked with harmonising

*Tax avoidance, far from being a victimless crime, is a hidden killer, affecting lives remote from the boardrooms and office blocks in which financial and economic decisions are made; the effects are indirect, but no less real for that.*

rules, promoting exchange of information and levelling the playing pitch globally.

The report raises an important question in the context of Ireland's international engagement: is compliance with good practice at OECD and EU level really enough of an ambition for Ireland in terms of a responsible tax policy? This question needs to be set in the context of our exceptional record at drawing in international foreign direct investment (FDI), and the disproportionate risk of international funds being channelled through Irish subsidiaries in global tax avoidance schemes. In that context, is being 'good enough' really good enough? Do we as a country have the imagination and courage to do better?

*Professor Sheila Killian,*

*Assistant Dean, Research, Kemmy Business School,  
University of Limerick.*

## EXECUTIVE SUMMARY

We live in rapidly changing times. The election of President Trump in the US and the prospect of a 'hard' Brexit in the UK have pushed aside old certainties and could be ushering in an era of harmful corporate tax competition. Moreover, the ongoing international processes to tackle corporate tax avoidance and the Apple tax ruling have put Ireland's corporate tax system and its continued role in facilitating corporate tax avoidance in the spotlight.

Oxfam works in some of the poorest countries in the world and seeks to develop long term solutions to global poverty and inequality and has concluded that this is impossible to achieve as long as the current scale of corporate tax avoidance continues to drain essential financial resources from developing countries. Developing countries lose around \$100bn annually<sup>1</sup> as a result of corporate tax avoidance schemes. This amount is more than enough to pay for the education for all of the 124 million children currently out of school and to pay for health interventions that could save the lives of 4 million children<sup>2</sup>.

There is an obvious lack of policy coherence among western governments that are seeking to reduce corporate tax bills while signing up to ambitious Sustainable Development Goals (SDGs). In developing countries revenue from corporate taxation is especially important in helping to build effective states – revenue from corporate tax generates around 20 percent of total tax receipts in low income and lower middle-income countries compared with just 10 percent in higher income countries.<sup>3</sup> For example, tax incentives cost Kenya \$1.1 billion a year – almost twice their entire national health budget.<sup>4</sup>

*Developing countries lose around \$100bn annually as a result of corporate tax avoidance schemes*

The Apple ruling must be seen as a watershed moment for Ireland, as it has led to real public debate about the extent of corporate tax avoidance in Ireland and the most appropriate way to address this. The Irish Minister for Jobs, Enterprise and Innovation, Mary Mitchell O'Connor, remarked after the ruling: *'I am happy to accept that the issue of how Apple or any other company is able to legally avoid tax through complex financial arrangements should be tackled. But it requires an international effort which Ireland can lead on, as we have done already<sup>5</sup>'*. This report has been commissioned by Oxfam to ensure that Ireland develops and employs all the necessary tools to tackle corporate tax dodging.

To its credit, the Irish Government has been involved in both the OECD Base Erosion and Profit Shifting (BEPS) process and discussions at EU level about how to best tackle corporate tax avoidance. Oxfam agrees with the Irish Government that a coordinated international approach is needed to tackle these issues. However, as this report outlines, the BEPS process does not go far enough and ultimately will fall short in its efforts tackle the global nature of corporate tax avoidance.

## FINDINGS

- There is clear evidence of high levels of profit-shifting to and through Ireland, in the order of tens of billions a year<sup>6</sup>. In 2015, Gross Domestic Product (GDP) in Ireland grew by 26 percent, more than triple than was previously estimated.<sup>7</sup> Speaking in the Dáil (Irish parliament) in July 2016, Minister for Finance Michael Noonan explained that this was ‘largely related to the activities of a small number of large multinational firms and reflects a number of exceptional factors which have **limited impact on actual activity in the Irish economy**’.<sup>8</sup> According to Minister Noonan, the main factors explaining the spike in GDP were contract manufacturing, relocation of intellectual property (IP) to Ireland and aircraft leasing – aspects of each can be described as tax avoidance strategies.
- Ireland’s transfer pricing legislation contains exemptions for non-trading transactions, items qualifying for capital allowances and for transactions entered into before 2010. Ireland has only had specific legislation on transfer pricing since 2010, and that legislation is exceptionally weak. The regime is exclusively ‘one-way’ – that is, Irish officials are only mandated to look at instances where trading profits for Irish tax purposes have been understated, whereas we know that the reverse is true for profit shifting into Ireland. In addition, the transfer pricing legislation contains exemptions for non-trading transactions, items qualifying for capital allowances and for transactions entered into before 2010.
- While it is true that Ireland fulfils best practice under the OECD BEPS process, the BEPS process has not gone far enough to tackle the full extent of corporate tax avoidance. The same can be said for efforts at EU level. Although many of the measures agreed internationally are being implemented there has been no data produced by either the Irish Government or the OECD to demonstrate a significant reduction in corporate tax avoidance as a result of these measures.
- Ireland’s Double Taxation Agreements (DTAs) with countries such as Qatar or Panama may allow companies to continue to route profits to low tax jurisdictions, after the Double Irish is closed down in 2020.
- Companies which might have made use of the ‘Double Irish’ structure are increasingly taking up a tax relief against bought-in IP, which allows capital allowances to be claimed on the purchase of intangible assets. Previously, the allowances that could be claimed was capped at 80 percent of profits for the relevant period. From 1 January 2015 – just after the announcement of the closure of the ‘Double Irish’ – this cap was removed, so companies can now offset up to 100 percent of their profits in the relevant trade for the relevant period – potentially eliminating any tax bill whatsoever.

- Despite recent changes to Ireland's double taxation treaties with developing countries, most notably Zambia, most treaties with developing countries contain no anti-abuse provisions, despite the UN, World Bank, IMF and OECD recommending that all treaties with developing countries should include an anti-abuse clause.
- Ireland's Knowledge Development Box, while abiding by the OECD's modified nexus principle, is a questionable approach in stimulating research and development (R&D) in Ireland (its stated aim) as it is applied against profits made from R&D already successfully commercialised.
- While Ireland is to be commended for undertaking a study of the spillover effect of Ireland's tax policy for developing countries, the absence of available data at the time of the study, especially of financial flows through the Netherlands and Luxembourg, implies that this study provides an incomplete picture of the situation in relation to developing countries.
- When information does enter the public domain, for example the Apple tax ruling, it is obvious that Ireland's tax policy has a negative impact on developing countries. The ruling showed that Apple routed profits on global sales, including Africa, through Ireland, resulting in no tax accruing to relevant developing countries. This is not an insignificant consideration as Africa is now a bigger mobile phone market than the US and will shortly surpass Europe.
- Many tax incentives or loopholes targeted at specific sectors of the economy may have facilitated the generation of large profits for those sectors, but have had more limited benefits to Ireland in terms of generation of revenue or job creation. The aircraft leasing industry is one example. Using the figures that are available, we estimated that the aircraft leasing industry could be costing the Irish taxpayer as much as €493,333 in foregone taxes per person employed in that industry – almost half a million euro per employee each year.
- The recent changes to address concerns about section 110 Special Purpose Vehicles (SPVs) tax avoidance strategies will have no effect on the vast majority of distressed property assets held by Section 110 companies, as they are held outside of Ireland.<sup>9</sup> The change to legislation also does not affect SPVs which do not hold property assets – such as the aircraft leasing industry.

## RECOMMENDATIONS

The great financial crash has taught policy makers in Ireland and around the world that you can't obtain positive policy outcomes that protect the public interest, without adequate and quality data. Ireland has moved to address this issue in a number of areas – we now have more and better information on our housing system and credit system. Ireland has a statutory Irish Fiscal Advisory Council to provide objective data and analysis of the budgetary process. However, in the area of corporate taxation it is still very hard to get a true picture of what is really happening in Ireland.

Despite improvements, public reporting requirements for multinational corporations' activities, including taxation, are still opaque and somewhat limited. In fact, many of Ireland's tax policies and international negotiating positions have undermined international efforts to tackle corporate tax avoidance. As leading US economist and UN special adviser Jeffrey Sachs stated on a recent visit to Ireland: *'from a systemic point of view of an international, honest, transparent system, Ireland's policies should not stand the way they do right now'*.<sup>10</sup> The continued perception internationally that Ireland facilitates corporate tax avoidance poses serious reputational risk to Ireland.

There is broad public support for ending corporate tax avoidance and ensuring that companies pay their fair share. A nationwide survey commissioned by Oxfam in advance of the 2016 election found that the vast majority (86 percent) of Irish people believed that big companies were using tax loopholes to dodge paying their fair share of tax, and that this should be addressed by the government. In terms of prioritising Ireland's needs over developing countries' needs, it is not, and shouldn't be, an either/or situation. Ireland can both attract investment and have a positive impact on developing countries. Ireland's interests and the interests of supporting developing countries are in alignment.

*'From a systemic point of view of an international, honest, transparent system, Ireland's policies should not stand the way they do right now.'*

Jeffrey Sachs

The following actions by the Irish Government are recommended to address the issues highlighted in this report:

- Support the formation of a global tax body, as the only truly fair way of ensuring an international tax system which considers the interests of developed and developing countries equally.
- Conduct a follow-up spillover analysis using new data available through country by country reporting (CbCR), introduced in Ireland in 2016, which may help to improve understanding of flows between Ireland and developing countries via third countries.
- Demonstrate its commitment to improving the international tax system by introducing strong Controlled Foreign Company (CFC) rules.
- Ensure that core elements of any bilateral tax ruling should be disclosed, excluding any sensitive data.



- Ensure the EU adopts meaningful legislation on public CBCR, which disaggregates data for every country in which a company has a presence; gives adequate details on assets, sales and subsidiaries, and is applicable to all multinational companies over €40 million.<sup>11</sup>
- Ensure that all Double Taxation Agreements concluded by Ireland contain anti-abuse provisions. While the OECD Multilateral Instrument will ensure that anti-abuse provisions apply to certain arrangements with wealthier nations, many developing countries still fall outside this scope.
- Ireland's transfer pricing regime should be made 'two-way', giving Irish Revenue officials the power to investigate where they believe transfer prices to be overstated in Ireland's favour, rather than only where transfer prices may be understated (the current one-way system). A more extensive automatic information exchange system should also be put in place.
- Ensure that Ireland's commitment to capacity building on taxation with developing countries includes assisting developing countries in concluding treaties with Ireland that are not unduly restrictive or harmful to their interests. The failure to include anti-abuse provisions and withholding tax on management fees in the new Ireland-Zambia double taxation treaty, despite the extensive public attention drawn to the tax avoidance which had taken place as a result of the old treaty, points to significant failures in the negotiations process.
- Re-examine our network of Double Taxation Agreements to ensure that companies cannot avail of tax structures similar to the 'Double Irish' post-2020, and support EU efforts to identify harmful tax structures.
- Ensure that aggregated data from exchanges of information between countries in terms of CBCR reports and bilateral advance pricing rulings are made public in Ireland. Information to be made public could include the number of companies covered by the above information exchanges, broken down by sector, employees, turnover, tax paid and total effective tax rate and effective tax rate per sector. Details of adjustments made as a result of the exchange of information should be made public as well. Public reporting should also be made in relation to firms' mandatory requirement to disclose aggressive tax planning schemes to the government. Information to be made public could include number of disclosures made, potential amount of tax lost and analysis of possible steps to address such schemes.

# PART ONE

## IRELAND INC: THE CURRENT STATE OF IRELAND'S TAX POLICY

There is undoubtedly a high level of real and significant foreign direct investment (FDI) in Ireland, creating jobs and wealth in the local economy. Ireland's 12.5 percent corporate tax rate has clearly played a part in attracting FDI to Ireland, although to place too much emphasis on this as the sole driver of investment detracts from Ireland's other significant advantages: a well-educated, English-speaking workforce with access to the European single market. The following graph developed by Nicholas Shaxson and John Christensen maps Ireland's rising GNP against key events and finds that while corporate tax incentives have been part of Ireland's strategy for six decades, the key turning point in Ireland's fortunes came in 1993, when Ireland entered the European Single Market.

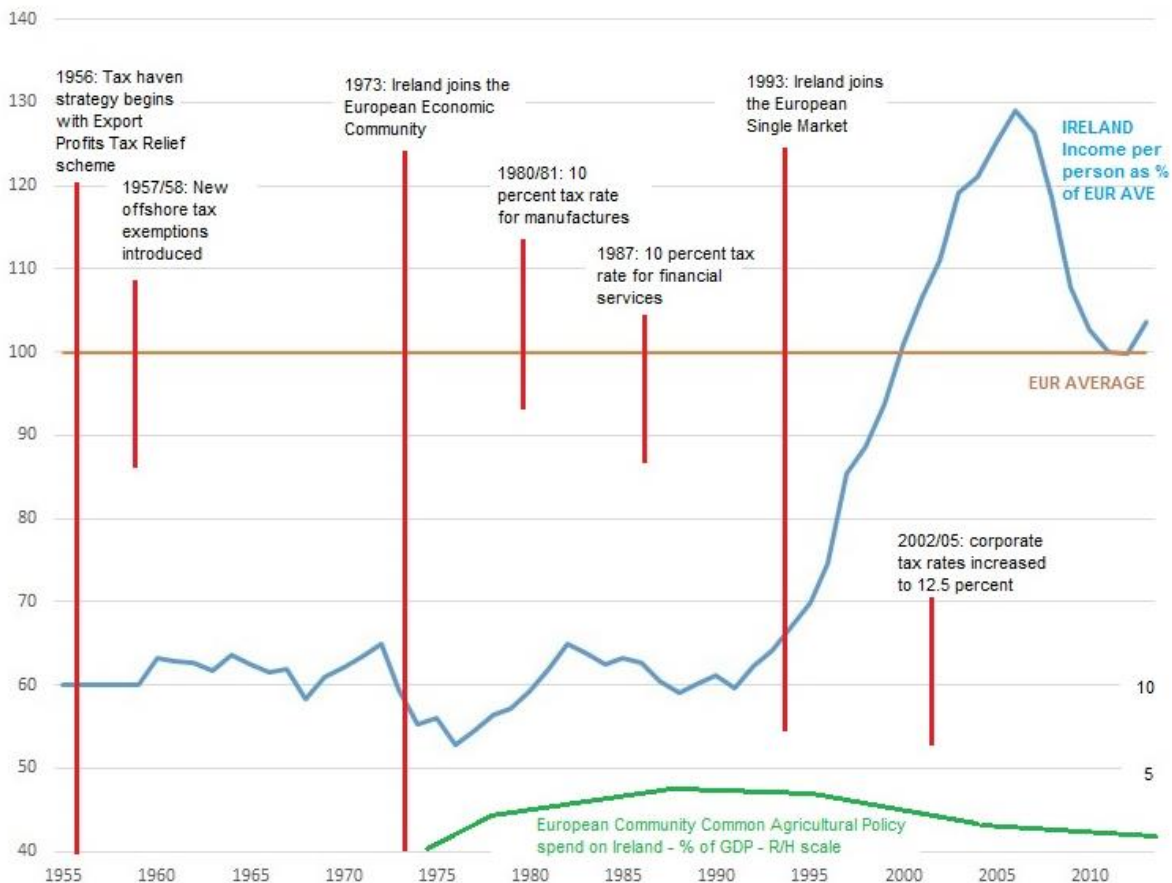


Figure 1: Ireland's tax strategy against income levels

This is borne out by an Economist Intelligence Unit briefing from 2012 which found access to markets was Ireland's single biggest selling point. In a survey of foreign direct investors, 46 percent said that access to EU markets was the biggest consideration, ahead of the corporate tax rate (29 percent).<sup>12</sup>

What we are concerned with here, however, is not the real and substantive foreign direct investment, which generates jobs and income in Ireland, nor Ireland's 12.5 percent corporate tax rate, which is a key factor in attracting this investment. Our concern is with the wide range of tax incentives and loopholes in the Irish taxation system, which encourage and allow multinational companies to artificially shift profits to or through Ireland, while paying little or no tax on these profits either here or in the countries where the economic activity took place. Such tax structures deprive other countries of tax revenues. In many cases this negatively affects developing countries, thus contributing to increasing global inequality.

We can see evidence of this profit shifting in a variety of ways. Our inflated Gross Domestic Product (GDP) figures are one indicator. Ireland's GDP has consistently been higher than our Gross National Product (GNP), as explained by the Central Statistics Office:

*'GDP measures the total output of the economy in a period i.e. the value of work done by employees, companies and self-employed persons. This work generates incomes but not all of the incomes earned in the economy remain the property of residents... The total income remaining with Irish residents is the GNP and it differs from GDP by the net amount of incomes sent to or received from abroad.*

*'In Ireland's case, for many years past, the amount belonging to persons abroad has exceeded the amount received from abroad, due mainly to the profits of foreign-owned companies, and our GNP is, therefore, less than our GDP.'*<sup>13</sup>

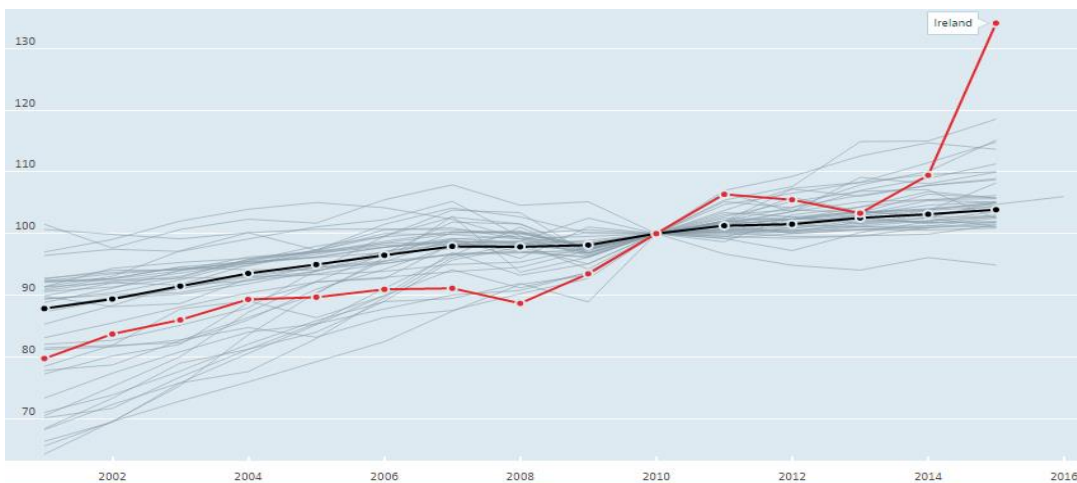
In 2015, GDP in Ireland grew by 26 percent, more than triple what was previously estimated.<sup>14</sup> Speaking in the Dáil in July 2016, Minister Noonan explained that this was *'largely related to the activities of a small number of large multinational firms and reflects a number of exceptional factors which have **limited impact on actual activity in the Irish economy**'* [emphasis added]. He went on:

*'It is important to note that these factors do not reflect activity levels we are seeing on the ground. Although these revisions have significantly boosted investment and net export growth, they do not have a direct bearing on employment and wealth creation for Irish citizens.'*<sup>15</sup>

According to Minister Noonan, the main factors explaining the spike in GDP were contract manufacturing, relocation of intellectual property (IP) to Ireland and aircraft leasing – aspects of each can be described as tax avoidance strategies.

Part of the difficulty in distinguishing profit related to genuine economic value and profit which has been artificially shifted to avail of incentives and loopholes is in the lack of transparency in the international tax system.

However, there are clear indications that the level of profit shifting into Ireland is high. Oxfam’s recent report, *Tax Battles*, found the level of excess profits reported in Ireland, that is profits over and above what one might normally expect based on real economic activity, to be in the tens of billions, while one recent research report estimated that excess profits in Ireland could be as high as \$93 billion.<sup>16</sup> Where public country by country reporting of profits by multinational companies is available, we get much clearer indications. In 2015, for the first time, EU legislation obliged banks to publish country by country information on where profits were generated, and some significant anomalies were clearly apparent. A study by Oxfam and other NGOs found that French banks reported €272 million in profit in Ireland – completely out of proportion to their reported turnover and number of employees in Ireland.<sup>17</sup> For example, for the same turnover, Société Générale recorded profits in Ireland which were eighteen times higher than in other countries and 76 times higher than in France. Irish employees appear to be astonishingly productive, too. Each employee in Ireland generates sixteen times more profit than each employee in France – or, to put it another way, the profit generated compared to the size of the workforce in Ireland is unfeasibly large.<sup>18</sup> This extends beyond the banking sector, as the following figures from the OECD clearly show.



**Figure 2: OECD data on GDP per hours worked**

We can see here that while in 2014 Ireland’s productivity was already high, in 2015 it outstretched the limits of credibility. Ireland is clearly disproportionately far above the average (indicated in bold) but also far above the next most productive nation.<sup>19</sup>

Some of the profit shifted into Ireland will be subject to corporation tax, boosting our tax revenues at the expense of others. But a significant percentage of it will not be taxed here at all, thanks to Ireland’s network of tax incentives and loopholes.

The following section looks at some of the most harmful of these measures, and assesses both their impact on Ireland, and impact on the rest of the world. And it is important to remember that this is not a victimless crime. Not only does Ireland harm its own reputation by allowing

such practices, but profits that flow through Ireland which are not being taxed here are profits which should have been taxed elsewhere.

## THE DOUBLE IRISH AND DOUBLE TAXATION AGREEMENTS

There is a tendency to speak about Ireland's worst excesses in the area of tax strategy in the past tense. Government ministers point to the closing of the Double Irish in this regard. However, the Double Irish is continuing to benefit companies until 2020. While Irish tax law provides that, generally, a company registered in Ireland is Irish tax resident and so subject to Irish tax on its worldwide income, an exemption is applied to certain foreign controlled companies. This exemption allowed an Irish registered company to be non-Irish tax resident, so long as another company in the group carried out real activities in Ireland. The Double Irish structure took advantage of this provision to create Irish registered companies that were either resident nowhere or in zero tax jurisdictions. The non-resident company would hold valuable intellectual property and the royalties it earned would not be subject to tax anywhere.

Since 2015, changes to Ireland's company residence rules mean that new companies incorporated in Ireland are automatically Irish tax resident, unless they are resident elsewhere under the terms of a Double Taxation Agreement. However, companies in existence before 2015 can continue to be non-resident until the end of 2020. We have no way of knowing the level of foregone tax this will entail. Regulatory filings in the Netherlands have revealed that Alphabet, Google's parent company, saved \$3.6 billion in taxes by moving profits made in Google Ireland and Google Singapore through a Dutch subsidiary, and on to Google Ireland Holdings Limited, which is based in zero corporate tax haven Bermuda, but is registered in Ireland under the 'Double Irish' tax structure.<sup>20</sup>

Companies can use the lengthy lead-in time for the closure of the Double Irish in order to explore alternative tax avoidance strategies. The Knowledge Development Box announced in the same Budget speech as the closure of the Double Irish was widely regarded as its natural successor. This is discussed further below.

Furthermore, Ireland's extensive network of Double Taxation Agreements (DTAs) may allow companies to continue to route profits to low tax jurisdictions.<sup>21</sup> Under the terms of most DTAs a company that is resident in two countries, normally due to being incorporated in one jurisdiction and managed and controlled in another, will be treated as tax resident where the 'effective management' is based. This provision overrides the tax rules which would otherwise treat all new Irish registered companies as Irish tax resident (and companies in existence prior to 2015 as Irish resident from 2021). Using these rules a business which wanted to use a 'Double Irish-like' arrangement could establish an Irish registered company which is 'effectively managed' and thereby tax resident in a country with which Ireland has a DTA, such as Qatar, Malta or Panama.

While Malta was being mooted as a potential destination for those wishing to continue with the Double Irish, changes to its tax regime, arising from the OECD BEPS project mean that passive royalty income from foreign intellectual property will no longer be tax-free there. However, DTAs with countries outside of the BEPS process could potentially still offer opportunities to avoid tax on royalties. Ireland has an extensive network of double taxation treaties, which have few anti-abuse provisions. This allows businesses to ‘treaty shop’ by placing Irish shell companies into their group structures to avail of access to Ireland’s DTAs. The most notorious example of this is perhaps Ireland’s double taxation treaty with Zambia. Associated British Foods used this treaty to avoid paying over \$10m in Zambia between 2007 and 2012. In total ABF avoided paying over \$27m from 2007 to 2012 through this and other techniques, according to research by ActionAid.<sup>22</sup>

One way in which countries can protect their tax revenues is to impose Withholding Taxes (WHT) on those payments most likely to be used in artificial tax structures; royalties, interest, dividends and management charges. While Zambian law provided for such withholding taxes the DTA with Ireland reduced this to zero percent and so royalties and management fees were paid to a shell company in Dublin without any Zambian taxes. The Zambia-Ireland double tax treaty was subsequently re-negotiated – but despite the public attention given to this issue, the new treaty still significantly restricts Zambia’s taxing rights. The new treaty does not allow for any withholding taxes on management fees, the maximum rate of withholding tax on royalties is 10 percent and there are no anti-abuse provisions. Interestingly, the DTA concluded with Pakistan around the same time does allow for withholding tax on management fees. ActionAid’s extensive rating of taxation treaties ranks the 2015 Zambia-Ireland double taxation treaty as very restrictive.<sup>23</sup> In fact, none of Ireland’s treaties with developing countries contain any anti-abuse provisions, even those treaties with Botswana, Ethiopia and Pakistan which have all been concluded after a recommendation in a 2011 report prepared by the UN, World Bank, IMF and OECD that all treaties with developing countries should include an anti-abuse clause.<sup>24</sup>

*None of Ireland’s treaties with developing countries contain any anti-abuse provisions*

## IRELAND’S INTELLECTUAL PROPERTY REGIME

As a well-educated, but small and geographically isolated workforce, it makes sense for Ireland to make considerable efforts to attract research and development activities to Ireland. Unlike large-scale manufacturing, R&D is generally more portable, so can be based anywhere where the skills and other advantages exist. Unfortunately, the portability and difficult-to-define value of R&D also lends itself to massive exploitation of tax systems for systematic tax avoidance.

As mentioned above, the Knowledge Development Box (KDB) was viewed by many as a replacement scheme for the Double Irish. A ‘patent box’ such as this is a special tax regime for intellectual property revenue.

It allows a lower corporate tax rate (in this case, 6.25 percent or half of Ireland's standard corporate tax rate). As law firm Matheson commented:

*'If the KDB had been announced some years ago, draft legislation would have followed quickly as the Minister would have had a relatively free hand in its design within the parameters of domestic policy and EU law. However, recent developments at EU and OECD level now limit that freedom.'*<sup>25</sup>

As a result, Ireland now boasts the first patent box in the world to abide by the OECD's modified nexus principle. The modified nexus principle seeks to link the relief given to the proportion of qualifying R&D expenditure actually being carried out in Ireland. This seems entirely rational, but KPMG state regrettably that the impact of the Knowledge Development Box is therefore *'expected to be limited for multinational groups who typically undertake research and development activities globally'*.<sup>26</sup>

Furthermore, the fact that it is OECD compliant does not actually mean that the OECD or other international bodies consider it a good measure for stimulating innovation. Pascal Saint-Amans, head of the OECD's centre for tax policy put it bluntly while speaking at a conference in Dublin in March 2016: *'What we have said is that if you decide to have a policy that may not be smart but that is your sovereignty then do it in a proper manner that will not take the tax base from your partners in an unfair manner.'*<sup>27</sup>

The European Commission have also concluded that innovation boxes are not the most effective way to stimulate innovation.<sup>28</sup> An Oxfam Novib report looked at an evaluation commissioned by the Dutch Ministry of Finance which showed that their 'innovation box' could cost the Dutch exchequer €1.2 billion.<sup>29</sup> The evaluators said that the innovation box was probably not *'the most powerful means for stimulating R&D and innovation; after all there is no guarantee that the tax benefit is actually used for R&D and innovation'*.<sup>30</sup>

These arguments are not new to Irish policy makers. Ireland used to offer a full tax exemption on income from patent royalties. However, in 2009 the Commission on Taxation successfully recommended that this be abolished on the grounds that the relief, then estimated to cost €84m per annum, had *'not resulted to any great extent in companies carrying out R&D activity'* and the wisdom of a *'windfall gain after a successful invention rather than an incentive to encourage research and development'* was questioned.<sup>31</sup>

This highlights an important point: incentives like the Knowledge Development Box are applied against profits made from R&D already successfully commercialised. Where a tax incentive is arguably justifiable is actually at the research and development stage, where companies need to make investment without guaranteed return: and Ireland **already** has a generous tax incentive for localised R&D. R&D expenditure in Ireland is allowed an additional tax relief of 25 percent – to offset against a corporate tax rate of just 12.5 percent. This effectively gives a triple tax deduction for qualifying R&D expenditure, which includes capital items

such as plant and buildings. If a company does not have sufficient corporation tax liabilities to absorb this additional credit, the credit can be claimed as a cash payment to be paid directly to the company over a three year period. This credit has proved to be open to extensive misuse. Revenue investigations in 2013 showed that R&D tax credits were being improperly claimed in the majority of firms examined – 26 out of 32. The cost of the scheme to the exchequer rose from €80 million in 2004 to €225 million in 2010 in foregone taxes.<sup>32</sup>

The fact of the matter is that, despite good growth in research and development in Ireland in the late nineties and the noughties, much of the intellectual property held by multinationals in Ireland is still developed outside of Ireland – hence the assessment by KPMG that the modified nexus Knowledge Development Box will be of limited value to multinationals. However, there is yet another Irish tax incentive for such situations – tax relief on bought-in intellectual property. Capital allowances can be claimed on expenditure on ‘specified intangible assets’ – patents, copyrights, software and so on. This tax write-off can be granted as a capital allowance or taken against taxable income over a period of 15 years.

Again, companies which might have made use of the Double Irish structure are increasingly taking up this tax relief against bought-in IP. As it is very difficult to value intellectual property such as innovative social media platforms, for example, there is an opportunity to agree a price at the higher end of the scale to ensure that the tax write-off can shelter profits for many years to come. If the IP is currently held in a tax-free location, such as Bermuda, there is no tax downside to taking this approach. Previously, the allowances that could be claimed were capped at 80 percent of profits for the relevant period. From 1 January 2015 – just after the announcement of the closure of the Double Irish – this cap was removed, so companies can now offset up to 100 percent of their profits in the relevant trade for the relevant period – potentially eliminating any tax bill whatsoever.

The past five years have seen a sharp uptake in companies availing of this measure – again, as pointed out by Minister Noonan, part of the sharp increase in GDP in 2015 is attributable to ‘*a relocation of intellectual property-related assets or patents to Ireland*’.<sup>33</sup> These generous tax allowances for IP continue to reward structures which avoid tax by artificially separating the IP from the core activities.

In sum, Ireland’s intellectual property regime has implications far beyond a legitimate desire to incentivise real innovation activity in Ireland. To international tax planners, there is yet another attraction to Ireland as a location for R&D for tax purposes – Ireland’s weak transfer pricing regime.



## CASE STUDY

### Blue sky thinking: Aircraft leasing in Ireland

Ireland is the world capital of the airline leasing business. According to IDA Ireland, 40 percent of the world's leased aircraft are leased through Ireland – representing over a fifth of the entire global fleet of aircraft.<sup>34</sup> An Irish leased aircraft takes off every two seconds – and yet many of these planes will never touch Irish soil.<sup>35</sup>

Why did Ireland become such a global success story in aircraft leasing? In a word: tax. As the ultimate mobile business, aircraft leasing can be based from anywhere in the world, and Ireland's 12.5 percent corporate tax rate is certainly a draw. However, the low rate is just the start. The industry also benefits from no withholding tax on lease rental payments, wide exemptions from withholding tax on interest and dividend payments, and no stamp duty or transfer taxes on the transfer of aircraft or aircraft parts.<sup>36</sup>

Another tax provision frequently cited as an advantage to the aircraft leasing industry is Ireland's depreciation regime, which allows aircraft lessors to depreciate the cost of buying the aircraft over only eight years – while the average lifetime of an aircraft is around 26 years.<sup>37</sup> And finally, the Finance Act 2011 designated aircraft and aircraft engines as qualifying assets under Section 110 relating to Special Purpose Vehicles (SPVs), which means that aircraft leasing businesses can use SPVs to pay little or no tax. Recent Central Bank data shows that there are 300 Irish SPVs whose business relates to aircraft leasing.<sup>38</sup>

Ireland's aircraft leasing industry has been considered a beacon of hope since its establishment in the 1970s. But what is the actual return to Ireland?

Due to the various tax measures applicable to the aircraft leasing business listed above, the sums actually paid in tax are extremely low. As leading Irish law firm A&L Goodbody informs potential clients: '*An attraction in establishing an aircraft leasing operation in Ireland is the 12.5 percent rate of Irish corporation tax, although in many cases Irish tax deductions will **substantially reduce or eliminate taxable profits in Ireland.***<sup>39</sup> In answer to a Parliamentary Question, Minister for Finance Michael Noonan revealed that in 2014 the Irish aircraft leasing business as a whole paid less than €23 million in corporate tax.<sup>40</sup>

In the same year, the industry also benefited from a VAT repayment from Revenue of €15m – because, as a zero VAT industry, the aircraft leasing business collects no VAT for Revenue, but is entitled to a VAT refund on any goods and services which it buys. Employers' PAYE, however, stood at €55 million – more than twice the amount paid in corporate tax, which gives an indication of just how much corporate taxes are foregone. Taking these three figures together, the cash return to Revenue stands at €63 million.<sup>41</sup>

€23 million in corporation tax seems extremely low. In 2015, for example, just one aircraft leasing company increased its group revenues by 15 percent and grew their operating profits by 22 percent to €533 million.<sup>42</sup> If that company was paying all its tax in Ireland, at the 12.5 percent rate, that company alone should

be paying over €66 million in taxes – almost three times the total the entire industry paid in corporation tax in 2014.

According to the IDA, the aircraft leasing industry manages more than €100 billion in assets.<sup>43</sup> While we do not have profit figures, industry observers suggest that return on investment in aircraft leasing can be between 3 and 15 percent.<sup>44</sup> If we suppose, for example, a 5 percent return on those assets, then profits would be in the region of €5 billion, which, taxed at 12.5 percent, would give us €600 million in corporate tax. This would mean that incentives and tax relief for the aircraft leasing industry cost the Irish taxpayer approximately €577m in foregone corporate taxes every year. What do we receive in return for this?

In terms of what most people would consider a success story for Ireland – actual jobs – again, the aircraft leasing business underperforms. According to the IDA, 1,200 people are employed by the industry – and this is including those who are not employed directly by aircraft leasing companies, mostly financial and tax services.<sup>45</sup> To put this in perspective, Musgraves (which owns the Supervalu and Centra stores) employs 35,000 in Ireland<sup>46</sup> and Supermacs employs 2,500.<sup>47</sup> To put it another way, if we divide the estimated potential cost to Revenue in foregone taxes by the number of employees in Ireland, the aircraft leasing industry could be costing the Irish taxpayer €493,333 per employee – almost half a million euro per employee per year.

However, as the Central Bank points out: *'it should be noted that under the transfer of economic ownership approach which was adopted under ESA [the European Accounting Standard] 2010, those aircraft that are purchased (or leased inwards under a finance lease) by an Irish-resident entity are deemed to be Irish assets and imports into Ireland, **regardless of whether they physically enter Irish territory or not.***<sup>48</sup> The extent to which any real economic activity is actually taking place in Ireland as a result of these Irish-resident aircraft leasing firms is questionable. As mentioned above, this was discussed in response to a Parliamentary Question by Michael Noonan, citing as one of the factors in the higher-than-expected GDP figure for 2016: *'an increase in new aircraft imports to Ireland for international leasing activities generating substantial fee income **without significant employment effects.***<sup>49</sup> [emphasis added]. In other words, while this may have benefited some large accounting firms, it has not led to any new jobs.

The case study above gives a snapshot of how Ireland's broad range of tax incentives have been used to attract one specific industry – but without substantial contribution to the Irish economy.

## TRANSFER PRICING AND TAX RULINGS

Transfer pricing is the way in which transfer of goods and services between subsidiaries of the same group of companies are accounted for. A subsidiary will agree to provide goods to the parent company or another subsidiary at an agreed price: this is the transfer price. Trades between different entities within the same company are supposed to happen at market value: this is known as the 'arm's length' principle.

However, particularly where intangible assets such as intellectual property are concerned, it can be difficult to gauge what is a fair market price. Multi-national companies can take advantage of this by shifting profit into low-tax locations – or locations which offer significant tax breaks on IP, such as Ireland.

Ireland has only had transfer pricing specific legislation since 2010, and that legislation is exceptionally weak. The regime is exclusively one-way – that is, Irish officials are only mandated to look at instances where trading profits for Irish tax purposes have been understated, whereas we know that the reverse is true for profit shifting into Ireland. In addition, the transfer pricing legislation contained exemptions for non-trading transactions, items qualifying for capital allowances and for transactions entered into before 2010.

This issue is explored in detail in Dr Sheila Killian's 2011 report: *Driving the Getaway Car: Ireland, tax and development*.<sup>50</sup> She points out that while Irish officials have justified the one-way regime by saying that parent companies are typically based in jurisdictions such as the US, Japan and Germany which have more than adequate expertise to detect transfer mispricing, which might be artificially boosting Ireland's profits, she found: *'this ignores the fact that an Irish subsidiary may be owned by, for example, a US parent, but may also have related companies within the group operating in Southern countries*.<sup>51</sup> Clearly, Southern countries do not have the same capacity to monitor and investigate misuse of transfer pricing as developed Northern countries do. Thus, the harm done by Ireland's one-way transfer pricing regime is disproportionately suffered by developing countries.

*Southern countries do not have the same capacity to monitor and investigate misuse of transfer pricing as do developed Northern countries. Thus, the harm done by Ireland's 'one-way' transfer pricing regime is disproportionately suffered by developing countries.*

Dr Killian also calls for more automatic information exchange between Ireland and other revenue authorities, both in her 2011 paper and in a submission to the Irish government paper on possible spillover effects of the Irish tax system on developing countries.<sup>52</sup> The spillover analysis responded by saying that automatic exchange might result in even less tax being paid, since *'... many developing countries lack the skills, expertise and relevant databases to successfully adjust the taxable profits...'* and concludes that *'we would prefer that assistance is provided to these tax administrations to enhance their transfer pricing capability*.<sup>53</sup>

However, this lack of expertise is also the key reason for Dr Killian's call for automatic information exchange, since, as she stated: *while taxing authorities can request information from each other, the requesting authority may not be aware of what kind of records are available, and so might not get the information best suited to tackling their loss of revenue*.<sup>54</sup> Clearly, capacity building is essential in this regard, but capacity building could be enhanced by putting in the underlying systems to promote a fairer transfer pricing system.

## TAX RULINGS SYSTEM

Partly because of the complexity of ascertaining what will be considered a fair transfer price, many companies seek advance tax rulings from governments to determine how their profits will be taxed. While in some cases this can be a legitimate way of obtaining certainty around how certain elements will be treated for tax purposes, there are often instances where advance rulings are used by companies to obtain ‘sweetheart deals’: low or no tax in exchange for inward investment. While Ireland did not, until recently, have a formal advance pricing agreement system, in practice they were willing to give their approval to the transfer pricing methodology used by multinationals, if requested, in a non-binding advisory opinion.<sup>55</sup>

Ireland’s infamous deal with Apple is one such example: in 2016, the European Commission ruled that Apple had received illegal state aid from Ireland as a result of the ‘non-binding advance judgment’ agreed between Irish Revenue officials and Apple, and has ordered that Ireland should collect €13 billion in unpaid taxes.

Apple routed two-thirds of its global profits through Ireland and then attributed most of those profits to two Irish unlimited companies, paying tax in Ireland on only a fraction. Much of the debate has focused on how much of that tax is owing in the United States, since the vast majority of Apple’s innovation and R&D is carried out there. The Irish companies, through a ‘cost sharing agreement’ paid for up to 55 percent of the Apple group’s research and development.

However, in her statement regarding the ruling, Commission Vestager also drew attention to the way in which Apple structured its Europe, Middle East and Africa (EMEA) headquarters in Ireland. Effectively, all profits from iPhones or other Apple products sold in Europe, the Middle East or Africa are recorded in Ireland. Commissioner Vestager pointed out that this was not a matter for state aid rules, but that: ‘*other countries in the EU or elsewhere can look into our investigation, they can use our data, our reasoning. If they conclude that Apple should have recorded its sales in those countries instead of Ireland, they could require Apple to pay more tax in that country.*’<sup>56</sup>

This is worth considering in the context of developing countries in Africa. Africa has often been hailed as a technological leap-frogger, particularly in the realm of mobile banking, where Kenyan M-PESA is leading the way.<sup>57</sup> Africa is now a bigger mobile phone market than the USA, and will shortly surpass Europe.<sup>58</sup> Apple is cashing in on this growing market – sales of the iPhone grew by 133 percent in 2015 in the Middle East and Africa.<sup>59</sup> But African tax revenues are not benefiting from this boom – all profits from these sales are routed back to Apple in Cork.

Apple is not the only firm with their EMEA headquarters in Ireland. Google, Facebook, Microsoft, Pfizer and Airbnb are just a few of the other multinationals that have chosen to base their EMEA HQ here. While we do not have as much detail on their structures as we do with regard to Apple, thanks to the European Commission investigation, it is

*Apple is cashing in on this growing market – sales of the iPhone grew by 133 percent in 2015 in the Middle East and Africa. But African tax revenues are not benefiting from this boom – all profits from these sales are routed back to Apple in Cork.*

clear that the various tax schemes explored in this paper provide these companies with an incentive to route as much of their profits as possible from Europe, the Middle East and Africa through Ireland, thus depriving both developed and developing countries of potential tax revenue. Without greater transparency with regard to tax reporting, however, it is impossible to gauge the extent of the harm.

As of July 2016, Ireland has a formal bilateral advance pricing agreement programme. This means that a multinational company can now apply to have its transfer pricing arrangements agreed in advance between Ireland and another jurisdiction in which it is active. However, all information relating to the Advance Pricing Agreement (APA) will be treated as confidential, and the only publicly disclosed material will be that provided to the European Commission in the form of the number of APAs in force, the number of APA requests and the number of APAs granted in a given year.<sup>60</sup> While some commercial data may need to remain confidential, the core elements of each bilateral tax ruling should be disclosed publicly to ensure greater transparency.

## TAX AND DEVELOPMENT: IRELAND'S ROLE

The tax avoidance facilitated by Ireland's tax system is sorely at odds with Ireland's good – and well deserved – reputation as a champion of principled development and human rights. Ireland has an excellent record in supporting and assisting development, including in the area of taxation. Ireland's Revenue Commissioners have worked with the Rwanda Revenue Authority to improve capacity, have engaged in the OECD Tax Inspectors Without Borders initiative, and contribute to both the OECD Tax and Development Fund and the African Tax Administration Forum.<sup>61</sup>

But while such capacity building is commendable, it is consistently undermined by Ireland's reluctance to address failures within its own system. In this regard, Ireland is to be commended for commissioning a spillover analysis of the possible effects of the Irish taxation system on the developing world. Researchers examined two groups of countries: six developing countries with a double taxation treaty with Ireland and seven developing countries which did not have such a treaty.

They found that flows to and from Ireland from these countries were very low, and as such, concluded that it was likely that the Irish tax system has little or no spillover effect on developing countries.<sup>62</sup>

However, the fact that significant bilateral flows were not found between the selected countries and Ireland does not in itself suggest that no harm is being done. Rather, it illustrates the complexity of trying to assess harmful effects with incomplete data. As we know, many companies use sophisticated tax planning strategies which skip from country to country – and sometimes back again, as in the case of the so-called 'Double Irish Dutch sandwich'. The spillover analysis acknowledges this, stating: 'a substantial part of Irish FDI goes to global financial centres, like

*The fact that significant bilateral flows were not found between the selected countries and Ireland does not in itself suggest that no harm is being done. Rather, it illustrates the complexity of trying to assess harmful effects with incomplete data.*

*Luxembourg, Bermuda and Jersey, raising the question whether that is the final destination of this FDI.*<sup>63</sup>

It is clearly difficult to trace flows through third countries, but country-by-country reporting could tell us in which of its countries of operation a company is reporting profits, and in which it is not, giving an indication of where profit may have been shifted from one jurisdiction to another. Given that (non-public) country by country reporting has now been mandated for Irish companies from 2016, the Irish government will be in a position to investigate whether this new evidence brings to light any possible spillover effects.

The spillover analysis was conducted while negotiations for a new Zambian tax treaty were ongoing, and the report mentions the Zambian tax treaty should be re-negotiated '*without delay*' since it does not '*allow the source state to levy any withholding tax on dividends, interest and royalties*' and '*lacks even the most basic anti-abuse provisions*'.<sup>64</sup> As mentioned above, it is astounding that, given this analysis and the concrete harm demonstrated by ActionAid's work, the new double taxation treaty still lacks anti-abuse provisions, and does not allow any withholding tax on management fees. Capacity building for tax administration for developing countries should surely extend to ensuring that developing countries get a fair deal in their bilateral dealings with Ireland.

## SPECIAL PURPOSE VEHICLES

### SECTION 110 COMPANIES

*As the market has become more sophisticated, Ireland as a jurisdiction has constantly responded, in terms of its legal and tax framework, in order to continue to position itself as the location of choice for SPVs*<sup>65</sup>. Matheson brochure

A special purpose vehicle is a mechanism which allows a company to create a corporate entity for a specific purpose with a separate legal structure. Originally established in Ireland for securitisation purposes (the repackaging of financial assets), their permitted use has been widened to many non-securitisation purposes, including aircraft leasing, as featured above, and acquisition of distressed property assets. They are used to isolate the company creating them from financial risk, but are also frequently used to hide debt, obscure ownership and avoid taxes. In Ireland, Section 110 of the Taxes Consolidation Act 1997 governs the taxation regimes of special purpose vehicles with 'qualifying assets', allowing '*organisations to achieve a neutral tax position providing certain conditions are met*'<sup>66</sup>. In other words, most Section 110 companies pay little or no tax.

Public attention has been drawn to Section 110 companies by the use of these structures by so-called 'vulture funds' buying up Irish property after the housing crash, some spending billions on distressed property assets in Ireland, but paying as little as €250 in tax.<sup>67</sup> Research carried out by University College Dublin on just 24 such Section 110 SPVs found that

despite controlling assets of almost €20 billion, they had paid less than €20,000 in tax. They estimated the loss to the exchequer to be between €250m and €350m<sup>68</sup>.

In response to pressure by Stephen Donnelly TD and others, the Finance Act 2016 contains amendments to Section 110 to prevent such tax avoidance – but only, as tax advisers were quick to reassure their clients, for those Special Purpose Vehicles specifically relating to Irish property assets.<sup>69</sup> As Professor James Stewart and Cillian Doyle have pointed out, the vast majority of distressed property assets held by Section 110 companies are held outside of Ireland.<sup>70</sup> The change to legislation also does not affect SPVs which do not hold property assets – such as the aircraft leasing industry.

A Central Bank study of those SPVs not engaged in securitisation activities published in October 2016 shows that despite the fact that Irish non-securitisation SPVs hold €3.8 trillion in assets, these entities actually benefit the Irish economy very little.<sup>71</sup> It is worth quoting at length:

*‘The contribution from domestic SPVs to Irish GDP is very limited. They are generally designed to be tax neutral and most are established as companies with Irish directors but **no dedicated employees**. Their contribution arises indirectly through fees to resident professional services, primarily in the legal and financial sectors. Estimates by the Central Bank suggest that fees paid in Ireland were less than €100 million in 2015.’<sup>72</sup> [emphasis added].*

## CONCLUSION TO PART ONE

In 2015, Minister Noonan claimed that: *‘we never have been involved in any kind of tax malpractice. Sometimes international tax planners used Ireland – for example, in the so-called Double Irish but the Double Irish wasn’t an Irish policy.’*<sup>73</sup> This statement, and others like it, are somewhat disingenuous. It’s a bit like a farmer telling you that it wasn’t his fault his sheep escaped and ate your prize roses – he didn’t tell them where the hole in the fence was.

However, the Minister is correct in believing that what will benefit developing countries most is a fair, fully joined-up international tax system which will consider the rights of all countries equally. Various international processes have begun to try to improve the global tax network. We now turn to looking at these efforts, and Ireland’s role on the international stage.

## PART TWO

# IRELAND ON THE INTERNATIONAL STAGE

In December 2016, debating the Oxfam *Tax Battles* report in the Dáil, Stephen Donnelly TD said:

*‘Deputy O’Sullivan quite rightly refers to this as the need for tax justice. Another way to look at this might be enlightened self-interest. If we do our bit for global taxation, it will make for a stronger reputation and stronger investment in Ireland in the future.’<sup>74</sup>*

As public attention is increasingly drawn to tax justice and its implications for human rights, equality and development, Ireland’s international reputation is under mounting scrutiny. In this section, we briefly discuss current international efforts to curb profit shifting and international tax avoidance, and the role which Ireland plays in these efforts.

## THE OECD AND BASE EROSION (BEPS) PROJECT

As far back as 1998, the OECD published a report entitled: *Harmful Tax Competition: An emerging global issue*.<sup>75</sup> As pointed out by Oxfam’s *Tax Battles* report, OECD member countries which were actively engaged in such tax competition banded together to ensure that its recommendations went no further.<sup>76</sup>

Ireland may therefore have the dubious honour of being the catalyst for putting profit shifting back on the agenda. In 2013, the US Senate investigation into Apple’s tax affairs in Ireland started a process which not only resulted in the European Commission’s ruling against Apple, but kick-started discussions on harmful tax practices in the OECD once again, culminating in the Base Erosion and Profit Shifting project.

The central aim of the OECD BEPS project – to prevent profit shifting and ensure that profits are taxed where the economic activity takes place – is laudable, and without the modified nexus approach, as we have seen above, Ireland’s Knowledge Development Box might have been almost as harmful as the Double Irish.

The BEPS process has also succeeded in drafting of a multilateral instrument (MLI) on tax treaties which, on signing, will automatically amend the application DTAs entered into by the signatory States to include strong anti-avoidance provisions. The instrument provides for States to deny treaty benefits either where a transaction was undertaken mainly for tax avoidance purposes (primary purpose test) or where the entity claiming the relief is a shell company not held by residents of that state (limitation of benefits test). States can either register reservations on particular elements of the MLI and thereby avoid the application of



particular rules or decide, in certain cases, not to abide by a particular rule if both states are in agreement. Ireland is expected to sign the instrument in 2017, and it is important that the Irish government accepts the MLI without any reservations and commits to providing information on any circumstances where they agreed not to apply the MLI.

But vested interests have prevented the OECD BEPS project from being as effective as it could be. The Economist labels it a '*missed opportunity*'.<sup>77</sup>

One of the criticisms levelled against the OECD BEPS project is its failure to include developing countries in the initial negotiations. The BEPS project has effectively been a partnership between the OECD and the G20: the G20 requested that the OECD produce the BEPS recommendations, which were subsequently adopted by the G20. The combined membership of the OECD and the G20 is 44 countries – and how can this group of countries plan a truly international tax system?

Developing countries have now been invited to join an Inclusive Platform to implement BEPS – now that all the decisions have been made.<sup>78</sup> While over 100 countries were involved in the MLI and are expected to sign the instrument during 2017, many developing countries are not. Therefore, the MLI will not strengthen the Double Taxation Agreements Ireland has with countries such as Botswana and Ethiopia, for the time being at least.

## THE BEPS AGENDA AT THE EU

Despite Ireland's public commitment to the OECD BEPS process, it is arguable that Ireland may be one of the vested interests preventing the BEPS project from fulfilling its full potential. At a Eurozone ministers' meeting on the BEPS project in 2015, Michael Noonan told reporters he was '*very much in favour*' of the OECD recommendations but that '*we will be very much interested in ensuring... that there are not bells and whistles that work against our interest added on by the European Commission*'.<sup>79</sup>

The European Commission have been active recently in pursuing an anti-tax avoidance agenda. In addition to the ruling on Apple in Ireland, state aid rulings have been issued against selective tax advantages given to Fiat in Luxembourg and Starbucks in the Netherlands, and rulings concerning Amazon and McDonalds are currently pending. In legislative terms, the EU Anti-Tax Avoidance Directive, which puts into practice many of the OECD BEPS recommendations, was agreed in 2016, and a further addition to that directive (known as ATAD2) is currently being negotiated. An EU directive to implement BEPS action on country by country reporting to relevant tax authorities was agreed in May 2016, and limited public country by country reporting has been mandated for certain sectors, while a proposal is currently on the table to mandate public CBCR in the EU for large multinationals. Finally, the European Commission have presented a revised proposal on the Common (Consolidated) Corporate Tax Base, which moves towards a system of formulary apportionment.

However, attempts at European level to promote tax justice are consistently watered down or rejected by countries, such as Ireland, trying to prevent ‘bells and whistles’.

## EU ANTI-TAX AVOIDANCE DIRECTIVE

The EU Anti-Tax Avoidance Directive is a good example of a legislative effort which started strong and has seen its efficiency eroded by member states, as Oxfam analysis shows.<sup>80</sup>

In the Irish context, however, it will provide for a number of elements which have been absent. The exit taxation provision, which includes transfers both to Member States and to third countries, is likely to lead to significant legal changes. Ireland has an existing exit charge provision, but it is subject to significant exemptions. Interestingly, the entry into force of the exit charge has been delayed until 2020, unlike the other provisions which must be put in place by 2019.

The Anti-Tax Avoidance Directive also provides for Controlled Foreign Companies (CFC) rules, which are conspicuous by their absence in Ireland. CFC rules mitigate against tax haven abuse by allowing countries to tax parent companies where subsidiaries abroad are not deemed to be appropriately taxed. The final version of the directive provides governments with two options for CFC rules. The first option is to tax interest, royalties and other relevant types of income of all low-tax foreign subsidiaries. This could be relatively effective. However, countries can choose not to apply this type of CFC rules if the low-taxed subsidiary carries on substantive economic activity. As Oxfam have pointed out, this could be easily circumvented by having just one employee in a tax haven.<sup>81</sup> The second option is to tax income of low-tax subsidiaries arising from non-genuine arrangements which have been put in place for the essential purpose of obtaining a tax advantage. This is a very weak option, because it only protects against profit shifting out of the home country and requires the tax authority to analyse many individual transactions of low-tax subsidiaries. Ireland has until the end of 2018 to provide for CFC rules.

## COUNTRY BY COUNTRY REPORTING

Country by country reporting by large multinationals – that is, the requirement to report details on revenue, profits, taxes paid, employees and assets for each jurisdiction in which they do business – entered into force in Ireland in 1 January 2016 for Irish parent companies or for Irish subsidiaries whose parent company will not be required to file in their home country.<sup>82</sup>

This information will be shared with other competent authorities on an automatic exchange basis; it remains, however, confidential. The failure of the OECD BEPS project to make this information publicly available means that separate requirements are now needed for public country by

*Without public country by country reporting, the efforts of civil society to review and comment on taxation are hampered, and it does nothing to aid those developing countries which will not receive the information on an automatic exchange basis.*

country reporting. Without public country by country reporting, the efforts of civil society to review and comment on taxation are hampered, and it does nothing to aid those developing countries which will not receive the information on an automatic exchange basis. Countries like Ireland that reject being labelled a tax haven will find it harder to convince the public that this is untrue if companies do not report their profits and taxes for each country publicly. It is only by having public access to where profits are recorded and taxes paid that we can put an end to harmful tax practices.

## PUBLIC COUNTRY BY COUNTRY REPORTING

Recent years have seen piecemeal efforts at EU level to mandate public country by country reporting. A limited public country by country reporting regime has been put in place for the extractives industry, but companies are only required to report all payments to governments (including taxes) on a country-by-country basis, and not details on turnover, assets and profits, or full-time employees, so this information is of limited value in trying to ascertain whether tax take is in line with economic activity in each country. Fuller public country by country reporting has been put in place for the financial sector, and as discussed above, Oxfam France and others have been able to use the data published by French banks to highlight likely instances of profit shifting – including into Ireland.<sup>83</sup>

In April 2016, the European Commission put forward a proposal for public country by country reporting across all sectors. This could be a vital tool in combating harmful tax practices, allowing developing countries to access data, especially where they do not have access to automatic information exchange. However, the proposal as it stands is extremely limited, in three key respects.

Firstly, the proposal only obliges extremely large multinational companies to report – those with a turnover of more than €750 million, which excludes an estimated 85 percent of multinational companies. It also excludes the majority of what the EU itself classifies as large groups of companies – those with over €40 million in consolidated turnover. This would be a more appropriate threshold for public country by country reporting.

Secondly, the proposal leaves out many important elements, such as assets, sales and a full list of subsidiaries, without which assessing whether a multinational is paying its fair share of tax relative to the economic activity in each country becomes extremely difficult.

Finally, the proposed directive obliges multinationals to publicly report information on a country-by-country basis only in terms of operations in EU member states and in yet-to-be determined tax havens – the figure for operations in the rest of the world would be aggregated. This renders the information useless to developing countries' governments and

citizens, who will be unable to see what taxes are being paid and what economic value is being created by companies.

In addition, tax transparency should not be perceived as a sanction to be imposed on operations in tax havens only but as a tool which allows better corporate accountability. Furthermore, the chances for the EU to put in place a strong tax haven 'blacklist' remains very thin. Indeed, Ireland is among those countries that have blocked the inclusion of a zero or near zero tax rate as a criterion for inclusion on the blacklist – thereby potentially excluding well-known tax havens such as Bermuda.<sup>84</sup>

Public country by country reporting is essential in the current global tax environment, where transfer pricing can be used between subsidiaries of a parent company to artificially shift profits from one jurisdiction to another. An alternative approach is to treat all subsidiaries of a group as a single entity, and allocate tax between the various countries of operation on the basis of economic activity. This system is known as formulary apportionment.

*Public country by country reporting is essential in the current global tax environment, where transfer pricing can be used between subsidiaries of a parent company to artificially shift profits from one jurisdiction to another.*

## FORMULARY APPORTIONMENT AND COMMON (CONSOLIDATED) CORPORATE TAX BASE

As we have seen, the arms-length principle is intended to ensure that transfer prices between two entities in the same corporate group are set fairly, at market rates. However, while the concept may seem simple, in practice it can be difficult to attribute market prices to certain transactions (particularly in relation to IP) and applying a strict arm's length price to standard activities, in very profitable groups, can result in excess residual profit attributed to the IP. These difficulties can result in harmful tax practices – which hurt developing countries most, as they are least able to monitor transfer pricing.

An alternative to arms-length transfer pricing is 'formulary apportionment'. Instead of treating subsidiaries of one group as separate entities and requiring them to trade with each other at market prices, formulary apportionment treats the group as a single entity. It then applies a pre-determined formula for the division of profits for taxation purposes among the countries in which the group operates, based on the economic activity of the group in each country concerned. This eliminates the tax benefits of artificially locating particular activities in separate legal entities and so puts large groups of companies on a more level footing with single companies. It is also much simpler than arms-length transfer pricing and therefore easier to police against tax avoidance.

Formulary apportionment is used in many jurisdictions at subnational level and is being proposed for large groups within the EU under a proposal called Common Corporate Consolidated Tax Base (CCCTB). Under the proposal, profits derived within the EU would be divided among the member states based on the level of real economic activity

carried out by the group in that state. The proposal suggests a split based one third on end sales destination, one third on employment and one third on tangible fixed assets. Ireland is one of seven states where national parliaments have, so far, objected to the scheme. In fact, the elements of CCCTB which Ireland looks most favourably upon are those of which Oxfam would be most critical – a ‘super-deduction’ for R&D which would be even more advantageous to companies than Ireland’s current R&D credit discussed above.

Objections to the CCCTB appear to be primarily based on the view that the weighting given to sales would result in large wealthier economies being allocated a disproportionate amount of the taxable income. There is merit to these objections. The linking of taxing rights to economic activity is sought, in part, to ensure that businesses are paying their way for the services they utilise. For sales made online, a business may have no real presence in the country into which they sell, so sales may not be a good indicator of real economic activity.

These concerns however can be addressed by adjusting the apportionment formula. With a well thought out formula, this system of taxation can align tax payments with investments in employees and real assets. It can incentivise businesses to create real jobs, rather than use subcontractors and can better link the location of tax payments to state services used. There is no reason preventing the Irish government supporting formulary apportionment in principle while continuing to argue for a considered apportionment formula.

Although CCCTB will only provide for a formulary apportionment system within Europe, CCCTB would be effective against profit shifting out of developing countries into individual EU member states. For example, a firm will not be able to shift profits from Tanzania to Luxembourg any more if it also has large operations in Spain, because a large part of its total EU profits will then be allocated to Spain instead of Luxembourg.

A CCCTB, if agreed with the right formula, would provide a hugely important reference system for the rest of the world, and might eventually lead to a global system of formulary apportionment – which should be overseen by a truly global tax body.

## A GLOBAL TAX BODY

As we have seen above, efforts to create an international tax system which prevents harmful tax practices have stepped up in recent years. But neither the EU nor the OECD are qualified to represent the international community, and a forum which does not include developing countries on an equal footing will, inevitably, not take their interests sufficiently into account.

Since 2012, the G77 have been calling for the UN to step up as a global regulator for international tax affairs. This was put forward again by the Ecuador finance minister to UN General Assembly in September 2016, and was one of the primary recommendations by UN Independent Expert

Alfred de Zayas in his most recent report on tax evasion and tax fraud.<sup>85</sup> Oxfam was involved in a side event at the UN General Assembly in September 2016 that was co-hosted by Ecuador and the Economic Commission for Latin America and the Caribbean exploring the formation of a Global Tax Body and will continue to work on this issue in the future.

However, such calls have been consistently resisted by wealthier nations, including Ireland. Minister for Finance, Michael Noonan expressed the Irish Government's opposition as follows:

*'The Irish position has always been that the issues of base erosion and profit shifting are best addressed by a multilateral solution and that the OECD has the recognised international experts in this area. It is, therefore, important that the work of the EU, the UN or other intergovernmental work on tax takes into account the ongoing work at the OECD, and that a twin-track and potentially conflicting approach is avoided.'*<sup>86</sup>

Eurodad has put it another way: *'The developing countries insist on having an intergovernmental UN body and the developed countries insist on not having it.'*<sup>87</sup>

## CONCLUSIONS AND RECOMMENDATIONS

The great financial crash has taught policy makers in Ireland and around the world that you can't obtain positive policy outcomes that protect the public interest, without adequate and quality data. Ireland has moved to address this issue in a number of areas – we now have more and better information on our housing system and credit system. Ireland has a statutory Irish Fiscal Advisory Council to provide objective data and analysis of the budgetary process. However, in the area of corporate taxation, it is still very hard to get a true picture of what is really happening in Ireland.

Despite improvements, public reporting requirements for multinational corporations' activities, including taxation, are still opaque and somewhat limited. In fact, many of Ireland's tax policies and international negotiating positions have undermined international efforts to tackle corporate tax avoidance. As leading US economist and UN special adviser Jeffrey Sachs stated on a recent visit to Ireland *'from a systemic point of view of an international, honest, transparent system, Ireland's policies should not stand the way they do right now.'*<sup>88</sup> The continued perception internationally that Ireland facilitates corporate tax avoidance poses serious reputational risk to Ireland.

There is broad public support for ending corporate tax avoidance and ensuring that companies pay their fair share. A nationwide survey commissioned by Oxfam in advance of the 2016 election found that the vast majority (86 percent) of Irish people believed that big companies were using tax loopholes to dodge paying their fair share of tax, and that this should be addressed by the government. In terms of prioritising

A nationwide survey commissioned by Oxfam in advance of the 2016 election found that the vast majority (86%) of Irish people believed that big companies were using tax loopholes to dodge paying their fair share of tax, and that this should be addressed by the government.

Ireland's needs over developing countries' needs, it is not, and shouldn't be, an either/or situation. Ireland can both attract investment and have a positive impact on developing countries. Ireland's interests and the interests of supporting developing countries are in alignment.

Coordinated efforts at EU, OECD and G20 level will make it harder for individual nations in the EU to engage in tax competition based on tax loopholes in the future. This means that competition for investment will, in the future, be centred on corporate tax rates, quality of infrastructure and cost of living. Ireland has little or no scope to move in the area of corporate tax rates as it has already set its rate so low. Any reduction would have serious budgetary implications and reduce the Government's ability to ensure competitiveness in infrastructure and cost of living (like housing costs, which in turn drives wage inflation). Although Ireland's corporate tax strategy has been of benefit in the past, the changing geopolitical conditions make it incumbent that Ireland properly engage at an international level to stem the negative effects of corporate tax avoidance. This is the conclusion that has been reached by another small open trading nation, Vanuatu:

*'Reliance on passive foreign investment to support our economy is now a major risk as there is international pressure (through the OECD work on international tax avoidance) on multinational companies to pay taxes in the place where the economic benefits arise.(...) In order to attract foreign direct investment (FDI) to Vanuatu, we must improve our infrastructure, education and health standards. FDI will come to Vanuatu if our economy is sound, our legal system is effective and we can provide a good environment for investment.'*<sup>89</sup>

Business leaders also recognise this fact, with AIB chief executive, Bernard Byrne, recently commenting:

*'This [attracting investment] goes well beyond headline tax rates...But, in order to attract business, we must have the required supporting infrastructures such as commercial office space, housing and transport – and efficient access to finance.'*<sup>90</sup>

The following actions by the Irish Government are recommended to address the issues highlighted in this report:

- Support the formation of a global tax body, as the only truly fair way of ensuring an international tax system which considers the interests of developed and developing countries equally.
- Conduct a follow-up spillover analysis using new data available through country by country reporting, introduced in Ireland in 2016, which may help to improve understanding of flows between Ireland and developing countries via third countries.
- Demonstrate its commitment to improving the international tax system by introducing strong controlled foreign company rules.

- Ensure that core elements of any bilateral tax rulings are disclosed, excluding any sensitive data.
- Ensure the EU adopts a meaningful legislation on public CBCR, which disaggregates data for every country in which a company has a presence; gives adequate details on assets, sales and subsidiaries, and is applicable to all multinational companies over €40 million.
- Ensure that all Double Taxation Agreements concluded by Ireland contain anti-abuse provisions. While the OECD Multilateral Instrument will ensure that anti-abuse provisions apply to certain arrangements with wealthier nations, many developing countries still fall outside this scope.
- Ireland's transfer pricing regime should be made 'two-way', giving Irish Revenue officials the power to investigate where they believe transfer prices to be overstated in Ireland's favour, rather than only where transfer prices may be understated (the current one-way system). A more extensive automatic information exchange system should also be put in place.
- Ensure that Ireland's commitment to capacity building on taxation with developing countries includes assisting developing countries in concluding treaties with Ireland that are not unduly restrictive or harmful to their interests. The failure to include anti-abuse provisions and withholding tax on management fees in the new Ireland-Zambia double taxation treaty, despite the extensive public attention drawn to the tax avoidance which had taken place as a result of the old treaty, points to significant failures in the negotiations process.
- Ensure that disaggregated data from exchanges of information with countries in terms of CBCR reports and bilateral advance pricing rulings are made public in Ireland. Information to be made public could include the number of companies covered by the above information exchanges, broken down by sector, employees, turnover, tax paid and total effective tax rate and effective tax rate per sector. Details of adjustments made as a result of the exchange of information should be made public as well. Public reporting should also be made in relation to firms' mandatory requirement to disclosure of aggressive tax planning schemes to the government. Information to be made public could include number of disclosures made, potential amount of tax lost and analysis of possible steps to address such schemes.
- Re-examine our network of Double Taxation Agreements to ensure that companies cannot avail of tax structures similar to the Double Irish post-2020, and support EU efforts to identify harmful tax structures.
- Actively support the establishment of a clear EU list of the worst tax havens, based on objective criteria and free from political



interference. The criteria must include transparency measures, zero percent or very low tax rates and the existence of harmful tax practices granting substantial reductions. Strong measures (including sanctions and incentives depending on the context) should be then be used to limit base erosion and profit shifting.

- Ensure that incentives for intellectual property are sufficiently targeted to encourage real research, development and innovation in Ireland. Any incentive which does not have a demonstrable impact on increasing research and development should be abolished.
- All incentives should be regularly reviewed to limit private long-term benefits and public harm; all tax exemptions should be phased out where there is no clear evidence that they are effective.
- Use the opportunity of the current CCCTB proposal to engage on the question of formulary apportionment and how best to have a formula which fairly reflects real economic activity.
- Significantly limit the use of Special Purpose Vehicles under Section 110 of the tax code.

# GLOSSARY

## **Anti-abuse provisions**

Provisions in a tax treaty which are aimed at preventing tax avoidance. Anti-abuse provisions can either be specific – aimed at preventing tax avoidance in specific areas or general.

## **Automatic Exchange of Information**

A system whereby relevant information about the wealth and income of a taxpayer, individual or company, is automatically passed by the country where the income is earned to the taxpayer's country of residence. As a result, the tax authority of a taxpayer's country of residence can check its tax records to verify that the taxpayer has accurately reported their foreign source income.

## **Base Erosion and Profit Shifting (BEPS)**

This term is used to describe the practices of shifting taxable income or gains out of countries where they were earned, to low-tax countries; or of structuring transactions so that, due to differences in national rules, a transaction falls out of the tax net entirely. These practices results in 'erosion' of the tax base of the countries affected, and therefore reduce revenues (see also below under 'transfer mispricing').

## **Common Consolidated Corporate Tax Base (CCCTB)**

CCCTB is a proposal that was first launched by the European Commission in 2011, but failed to reach unanimity. An amended legislative proposal was launched in 2016. It entails a common EU system for calculating the profits of multinational corporations operating in the EU and dividing this profit among the EU Member States based on a formula to assess the level of business activity in each country (see **Formulary apportionment**).

## **Controlled Foreign Corporation (CFC) rules**

A CFC is a foreign company controlled by persons in a particular country. CFC rules allow the country where the shareholders are resident to limit profit shifting by multinational corporations by deeming certain income of the CFC to be income of the shareholder and taxable in their hands. Generally these rules are applied where the tax suffered by the CFC on its activities is significantly lower than the tax rate of the shareholder country.

## **Country by country reporting**

Country by country reporting requires multinational companies to provide a breakdown of profits earned, taxes owed and taxes paid, as well as an overview of their economic activity in every country where they have a presence. A country by country reporting requirement was introduced in Ireland from 1 January 2016. However, such information is only available to the Revenue authorities (the authority to which it is submitted and

other tax authorities with whom they may exchange this information). Oxfam and others have called for **public country by country reporting**, in the interests of greater transparency.

### **Double Irish**

The Double Irish is a tax avoidance structure which uses an Irish registered non-resident company. Groups which were controlled by certain non-Irish residents or which were listed on a stock exchange could set up an Irish incorporated company which was effectively stateless for tax purposes. This company could then be used to hold valuable intellectual property and its income would not be taxed. Since 2015, all new companies which register in Ireland are tax resident here unless they are resident elsewhere under the terms of a Double Taxation Agreement. This amendment closes the double Irish structure, although those companies currently availing of the structure have until the end of 2020 to restructure.

### **Double Taxation Agreement (DTA)**

A legal agreement between jurisdictions to determine the cross-border tax regulation and means of cooperation between the two jurisdictions. Double Taxation Agreements often revolve around questions about which of the jurisdictions has the right to tax cross-border activities and at what rate. While the objective is nominally to prevent an individual or corporation being 'double taxed' in both jurisdictions, practically the result can sometimes be that tax is paid in neither jurisdiction.

### **Excess profits**

Profits over and above what one might normally expect in a particular jurisdiction, which can be an indicator of **profit shifting**.

### **Exit tax**

A company which transfers assets from one country to another may be liable to exit tax in the first country.

### **Formulary apportionment**

Formulary apportionment (or unitary taxation) is an alternative to **transfer pricing**. Instead of treating subsidiaries of one group as separate entities and requiring them to trade with each other at market prices, formulary apportionment treats the group as a single entity. It then applies a pre-determined formula for the division of profits for taxation purposes among the countries in which the group operates, based on the economic activity of the group in each country concerned. The formula used to reflect economic activity is generally based on sales, assets and number of employees in any given country, but the weighting of each of these to accurately reflect economic activity is the subject of much debate.

## Hybrid mismatches

A hybrid mismatch is where an entity or financial instrument is treated differently for tax purposes in different jurisdictions. **Hybrid mismatch arrangements** are ones where multinational companies seek to exploit these differences to avoid tax.

## Intellectual property

Intangible assets which arise as a result of creative thought, and for which the owners of that creative thinking are assigned a monopoly (such as patents, copyright etc.).

## Patent box

A 'patent box' or 'innovation box' is a special tax regime that includes tax exemptions or reduced tax rates for activities related to research and innovation. These are intended to stimulate research and development, but have been used by multinational corporations to avoid taxation by shifting profits out of the countries where they do business and into a patent box in a foreign country, where the profits are taxed at very low levels or not at all. Ireland's patent box, the Knowledge Development Box, complies with OECD standards to discourage profit shifting, but has still attracted criticism as not the best tool to encourage innovation.

## Profit shifting

See 'base erosion and profit shifting'.

## Shell company

A company without active business operations or significant assets.

## Special purpose vehicle

Special purpose vehicles (or **special purpose entities**) allow a company to create a separate corporate entity for a specific purpose. Initially established in Ireland to allow for securitisation (the repackaging of financial assets), their use in Ireland has expanded to cover a variety of non-financial activities, including aircraft leasing and property assets. A distinction is therefore made between **financial vehicle corporations** (securitisation vehicles) and SPVs engaged in activities other than securitisation. A **Section 110 company** is an Irish resident special purpose vehicle which holds 'qualifying assets' and generally allows such SPVs to pay little or no tax where certain conditions are met.

## Spillover analysis

A spillover is the effect of one country's rules and practices on another. In 2015, the Irish Department of Finance commissioned an analysis of the possible spillover effects of the Irish corporate tax system on the revenues of developing countries.

## Tax avoidance

Technically legal activity which results in the minimisation of the tax burden. Generally refers to activities that do not comply with the intent of the tax legislation.

**Tax evasion**

Illegal activity that results in not paying or under-paying taxes.

**Tax incentives**

Tax incentives are deliberate measures which are designed to encourage a particular economic activity, usually by providing for lower or no taxes on that particular activity.

**Tax loopholes**

A tax loophole refers to an omission or obscurity in the tax code, which allows the reduction of tax liability, usually in a manner which is at odds with the overall logic of the tax system.

**Transfer pricing**

Pricing conditions for transactions between subsidiaries of the same group. Such intra-group trading is governed by the OECD's arm's length principle requiring companies to apply the same conditions as if trading with third companies. Market prices can be difficult to quantify, however, particularly with respect to the sale of intangible assets such as services or intellectual property rights, and intra-group transactions are often used to avoid taxes (referred to as transfer mispricing).

**Transfer tax**

A tax on the passing of title to property from one person or entity to another.

**Withholding tax**

In the case of multinational corporations, withholding taxes refer to when income is taxed at source in the country where the profit arises by requiring the person making the payment to withhold the tax and pay it over to the authorities. Generally a foreign tax credit is given in the country of residence of the multinational, to reflect that tax has already been paid in another jurisdiction.

## NOTES

- <sup>1</sup> UNCTAD (2015). World Investment Report 2015 – Reforming International Investment Governance. UNCTAD, Geneva. [http://unctad.org/en/PublicationsLibrary/wir2015\\_en.pdf](http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf)
- <sup>2</sup> The total annual financing gap to achieve universal pre-primary, primary and secondary (as per the SDGs) is \$39 billion each year. The number of children out of school is 124 million (59 million young children, 65 million adolescents). See UNESCO (2016). *Education for people and planet: creating sustainable futures for all*. <http://unesdoc.unesco.org/images/0024/002457/245745e.pdf> and UNESCO. (2015). *Out of school children data release 2015*. <http://www.uis.unesco.org/Education/Pages/oosc-data-release-2015.aspx>
- \$32bn would fund the key healthcare to save the lives of six million children across the world each year. See Steinberg, K. et al. (2014). *Advancing social and economic development by investing in women's and children's health: a new Global Investment Framework*. *The Lancet*. Volume 383, No. 9925, p1333–1354, 12 April 2014. [http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(13\)62231-X.pdf](http://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(13)62231-X.pdf)
- <sup>3</sup> Cottarelli, IMF Fiscal Affairs Department, *Revenue Mobilization in Developing Countries*, 2011 p.33
- <sup>4</sup> Corporate tax incentives are estimated to cost Kenya around \$US1.1 billion per year or KShs 100 billion ([http://www.taxjustice.net/cms/upload/pdf/kenya\\_report\\_full.pdf](http://www.taxjustice.net/cms/upload/pdf/kenya_report_full.pdf)). Kenya's health budget for 2015/16 was KShs 60 billion or US\$591 million dollars. See: ABP Kenya (2016) Kenya: Analysis of budget policy statement 2016. <http://www.internationalbudget.org/wp-content/uploads/kenya-2016-budget-policy-statement-analysis.pdf>
- <sup>5</sup> *Irish Independent*, 9 September 2016.
- <sup>6</sup> Cobham, A. and Janský, P. (2015) *Measuring Misalignment: the Location of US Multinationals' Economic Activity Versus the Location of their Profits*. ICTD Working Paper 42, Brighton.
- <sup>7</sup> European Commission (undated). Economic performance by country. [Online] [http://ec.europa.eu/economy\\_finance/eu/countries/ireland\\_en.htm](http://ec.europa.eu/economy_finance/eu/countries/ireland_en.htm)
- <sup>8</sup> Written Answers to PQs 154&210, 19 July 2016, <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2016071900068#N57>
- <sup>9</sup> Jim Stewart and Cillian Doyle, 'Section 110 companies: a success story for Ireland?' TASC seminar, 12 January 2017.
- <sup>10</sup> *Irish Times*, October 26<sup>th</sup>, 2016. <http://www.irishtimes.com/business/economy/economist-jeffrey-sachs-accuses-irish-government-over-taxation-1.2843064>
- <sup>11</sup> The €40m threshold is based on the EU Accounting Directive definition for large group
- <sup>12</sup> Lyons, R (2012) *Investing in Ireland: A survey of foreign direct investors*, Economist Intelligence Unit.
- <sup>13</sup> CSO (2014). What are GDP and GNP? Central Statistics Office. [Online] <http://www.cso.ie/en/interactivezone/statisticsexplained/nationalaccounts/whatareqdpandgnp/>
- <sup>14</sup> CSO, July 13<sup>th</sup>, 2016. <http://www.cso.ie/en/media/csoie/newsevents/documents/IrelandEconomicGrowthFigures.pdf>
- <sup>15</sup> Written Answers to PQs 154&210, 19 July 2016, <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2016071900068#N57>
- <sup>16</sup> Cobham, A. and Janský, P. (2015) *Measuring Misalignment: the Location of US Multinationals' Economic Activity Versus the Location of their Profits*. ICTD Working Paper 42, Brighton.
- <sup>17</sup> CCFD Terre-Solidaire, Oxfam France et al (2015). *Following the Money: French Banks' Activities in Tax Havens*. <http://www.taxjustice.net/2016/03/16/following-the-money-french-banks-activities-in-tax-havens/>
- <sup>18</sup> *Ibid.*
- <sup>19</sup> *Ibid.*
- <sup>20</sup> Bloomberg Technology (2017). Google lowered 2015 taxes by \$3.6 billion using 'Dutch sandwich'. [Online]. <https://www.bloomberg.com/news/articles/2016-12-21/google-lowered-2015-taxes-by-3-6-billion-using-dutch-sandwich>
- <sup>21</sup> *Irish Times*, Nov 9<sup>th</sup>, 2016 – <http://www.irishtimes.com/business/economy/multinationals-still-able-to-use-double-irish-tax-arrangement-after-2020-1.2860102>

- <sup>22</sup> ActionAid (2016). Sweet Nothings: The human cost of a British sugar giant avoiding tax in southern Africa, February 2013; ActionAid Mistreated: the tax treaties that are depriving the world's poorest countries of vital revenue: Ireland edition. [http://www.actionaid.org/sites/files/actionaid/mistreated\\_report.pdf](http://www.actionaid.org/sites/files/actionaid/mistreated_report.pdf)
- <sup>23</sup> ActionAid: Mistreated: the tax treaties that are depriving the world's poorest countries of vital revenue: Ireland edition, April 2016. <http://www.actionaid.org/publications/mistreated-tax-treaties-are-depriving-worlds-poorest-countries-vital-revenue>
- <sup>24</sup> IMF, OECD, UN and World Bank (2011). Supporting the development of more effective tax systems. A report to the G-20 development working group by the IMF, OECD, UN and World Bank. IMF, OECD, UN and World Bank. <https://www.oecd.org/ctp/48993634.pdf>
- <sup>25</sup> Matheson, 'Ireland's Knowledge Development Box: What will it look like?', 2015, p1. [http://www.matheson.com/images/uploads/brochures/Knowledge\\_Development\\_box.pdf](http://www.matheson.com/images/uploads/brochures/Knowledge_Development_box.pdf)
- <sup>26</sup> KPMG (2017) Knowledge Development Box [Online]. [https://home.kpmg.com/ie/en/home/services/tax/knowledge-development-box.html?gclid=Cj0KEQjAvNrBBRDe3lOwzLn6\\_O4BEiQAmbK-DgLtmc\\_IQZ3drvYjS6tREjQp2TCKNwEC3vEkxN1f-UaAqbx8P8HAQ](https://home.kpmg.com/ie/en/home/services/tax/knowledge-development-box.html?gclid=Cj0KEQjAvNrBBRDe3lOwzLn6_O4BEiQAmbK-DgLtmc_IQZ3drvYjS6tREjQp2TCKNwEC3vEkxN1f-UaAqbx8P8HAQ)
- <sup>27</sup> As reported by the Irish Times, 10 March 2016, <http://www.irishtimes.com/business/economy/oecd-tax-director-cautions-against-patent-box-tax-incentives-1.2567501>
- <sup>28</sup> Alstadsaeter, A., Barrios, S., Nidodeme, G., Skonieczna, M. and Vezzani, A. (2015) Patent boxes design, patents location and local R&D European Union. <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/patent-boxes-design-patents-location-and-local-rd>
- <sup>29</sup> Oxfam Novib (2016) *The Netherlands: A tax haven*. <https://www.oxfam.org/en/research/netherlands-tax-haven>
- <sup>30</sup> Ibid.
- <sup>31</sup> Commission on Taxation (2009). Report 2009. Government Publications, Dublin. <http://www.finance.gov.ie/sites/default/files/Commission%20on%20Taxation%20Report%202009.pdf>
- <sup>32</sup> As reported by the Irish Times, 12 August 2013, <http://www.irishtimes.com/business/revenue-to-move-on-tax-research-loop-hole-as-millions-lost-1.1491122>
- <sup>33</sup> Written Answers to PQs 154&210, 19 July 2016, <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2016071900068#N57>
- <sup>34</sup> <http://www.idaireland.com/business-in-ireland/industry-sectors/financial-services/>
- <sup>35</sup> Orix Aviation and IDA Ireland infographic video, at 1:41 in, <http://www.orixaviation.com/index.php?id=207>
- <sup>36</sup> Grant Thornton (2016). Ireland as a location for aircraft leasing and financing. Grant Thornton. <http://www.grantthornton.ie/insights/publications/ireland-as-a-location-for-aircraft-leasing-and-financing/>
- <sup>37</sup> Forsberg, D. (2015). Aircraft retirement and storage trends. Economic life analysis reprised and expanded. Avolon White Paper, Dublin. p3: <http://avolon.aero/wp/wp-content/uploads/2015/03/Avolon-White-Paper-FInal-30-March-2015.pdf>
- <sup>38</sup> Osborne-Kinch, J., Coates, D. and Nolan, L. (2017). The Aircraft Leasing Business in Ireland: Cross-Border Flows and Statistical Treatment' Central Bank Quarterly Bulletin, Q1 2017, <http://www.centralbank.ie/press-area/press-releases/Pages/CentralBankpre-releasessignedarticlesfromQuarterlyBulletin12017.aspx>
- <sup>39</sup> A&L Goodbody (2012). Insights – Ireland a hub for aircraft leasing. [Online] <http://www.algoodbody.com/knowledge.jsp?i=2159>
- <sup>40</sup> Answer to PQ by Michael McGrath, TD, 20 October 2015, <https://www.kildarestreet.com/wrans/?id=2015-10-20a.465>
- <sup>41</sup> Answer to PQ by Michael McGrath, TD, 20 October 2015, <https://www.kildarestreet.com/wrans/?id=2015-10-20a.465>
- <sup>42</sup> O'Halloran, B. (2016). Profits at aircraft lessor SMBC Aviation Capital hit \$530 million. *Irish Times*. [Online]. <http://www.irishtimes.com/business/transport-and-tourism/profits-at-aircraft-lessor-smbc-aviation-capital-hit-530-million-1.2728237>
- <sup>43</sup> IDA Ireland (2016). International Financial Services. [Online] <http://www.idaireland.com/business-in-ireland/industry-sectors/financial-services/>

- <sup>44</sup> AviaAM Leasing (2013). Investor's homework: assessing the aircraft finance market. [Online]. <http://www.aviaam.com/en/news/view/investor-s-homework-assessing-the-aircraft-finance-market>
- <sup>45</sup> IDA Ireland (2016).
- <sup>46</sup> Musgrave Group (2017). People make our brands. [Online] <http://www.musgravegroup.com/people/>
- <sup>47</sup> Supermacs (2017). Corporate. [Online]. <http://supermacs.ie/corporate/>
- <sup>48</sup> Osborne-Kinch, J., Coates, D. and Nolan, L. (2017).
- <sup>49</sup> Written Answers to PQs 154&210, 19 July 2016, <http://oireachtasdebates.oireachtas.ie/Debates%20Authoring/DebatesWebPack.nsf/takes/dail2016071900068#N57>
- <sup>50</sup> Killian, S. (2011). Driving the Getaway Car: Ireland, tax and development, Debt and Development Coalition Ireland. <http://communityplatform.ie/uploads/driving%20the%20getaway%20car%20-%20Debt%20and%20Development.pdf>
- <sup>51</sup> Ibid, p23.
- <sup>52</sup> Ibid and Department of Finance (2015). IFBD Spillover Analysis: Possible Effects of the Irish Tax System on Developing Countries. Department of Finance. [http://www.budget.gov.ie/Budgets/2016/Documents/IBFD\\_Irish\\_Spillover\\_Analysis\\_Report\\_publication.pdf](http://www.budget.gov.ie/Budgets/2016/Documents/IBFD_Irish_Spillover_Analysis_Report_publication.pdf)
- <sup>53</sup> Department of Finance (2015) p. 75
- <sup>54</sup> Killian, S (2011) p. 19
- <sup>55</sup> As of July 2016, Ireland now has a formal bilateral advance pricing agreement programme. Prior to that, Ireland would only enter into bilateral APA discussions where an APA application had been accepted by another competent authority with whom Ireland had a double taxation agreement.
- <sup>56</sup> Statement by Commission Vestager, 30 August 2016: [http://europa.eu/rapid/press-release\\_STATEMENT-16-2926\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-16-2926_en.htm)
- <sup>57</sup> See, for example: The Economist, Why does Kenya lead the way in mobile money? 27 May 2013, <http://www.economist.com/blogs/economist-explains/2013/05/economist-explains-18>
- <sup>58</sup> Counterpoint Technology Market Research, Market Monitor Q3 2016
- <sup>59</sup> Counterpoint Technology Market Research, Market Monitor Q3 2015
- <sup>60</sup> Revenue Operational Manual, Bilateral Advance Pricing Agreement Guidelines, September 2016, paragraph 87.
- <sup>61</sup> Revenue (2008). Revenue commissioners and Rwanda revenue authority sign agreement on cooperation. [Online]. [http://www.revenue.ie/en/press/archive/2008/pr\\_060308-rwanda.html](http://www.revenue.ie/en/press/archive/2008/pr_060308-rwanda.html)
- <sup>62</sup> Department of Finance (2015) p6.
- <sup>63</sup> Department of Finance (2015) p19.
- <sup>64</sup> Department of Finance (2015) p7.
- <sup>65</sup> Matheson, 'Ireland: The SPV Jurisdiction of Choice for Structured Finance Transactions', 2012, [http://www.matheson.com/images/uploads/documents/Matheson\\_Ireland\\_-\\_The\\_SPV\\_Jurisdiction\\_of\\_Choice\\_for\\_Structured\\_Finance\\_Transactions.pdf](http://www.matheson.com/images/uploads/documents/Matheson_Ireland_-_The_SPV_Jurisdiction_of_Choice_for_Structured_Finance_Transactions.pdf)
- <sup>66</sup> PWC (2017). Structured finance (Section 10). [Online]. <http://www.pwc.ie/services/tax/international-tax/structured-finance.html>
- <sup>67</sup> Jack Horgan-Jones, Sunday Business Post Special Investigation, 24 July 2016. <https://www.businesspost.ie/business/slashing-their-tax-bills-325894>
- <sup>68</sup> Guider, I. (2017). How vulture funds paid €20k in tax on assets of €20bn. *Sunday Business Post*. [Online]. <https://www.businesspost.ie/news/revealed-vulture-funds-paid-e20k-tax-assets-e20bn-375290>
- <sup>69</sup> William Fry (2016). Changes to Section 110 regime relating to Irish SPVs holding Irish property assets. [Online]. <http://www.williamfry.com/newsandinsights/news-article/2016/09/08/changes-to-section-110-regime-relating-to-irish-spv-holding-irish-property-assets>
- <sup>70</sup> Jim Stewart and Cillian Doyle, 'Section 110 companies: a success story for Ireland?' TASC seminar, 12 January 2017.
- <sup>71</sup> Barrett, D., Godfrey, B. and Golden, B. (2016): New Data Collection on Special Purpose Vehicles in Ireland: Initial Findings and Measuring Shadow Banking. Quarterly Bulletin 04. <http://www.centralbank.ie/publications/Documents/New%20Data%20Collection%20on%20Special%20Purpose%20Vehicles%20in%20Ireland%20-%20Initial%20Findings%20and%20Measuring%20Shadow%20Banking.pdf>



<sup>72</sup> Ibid.

<sup>73</sup> As reported in the Irish Independent, 5 October 2015: Kelpie, C. and Collins, S. (2015). New OECD global tax proposals target corporate tax avoidance. *Independent*. [Online]. <http://www.independent.ie/business/world/new-oecd-global-tax-proposals-target-corporation-tax-avoidance-31583371.html>

<sup>74</sup> Dail debates, 14 December 2016 – <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2016121400011?opendocument>

<sup>75</sup> OECD. (1998). Harmful tax competition: An emerging global issue. OECD, Paris. <https://www.oecd.org/tax/transparency/44430243.pdf>

<sup>76</sup> M. Sullivan. (2007). Lessons from the last war on tax havens. Tax Analysts. <http://www.taxanalysts.org/content/lessons-last-war-tax-havens>, quoted in Oxfam (2016) Tax Battles: The dangerous race to the bottom in corporate tax. Oxfam, Oxford. <https://www.oxfam.org/sites/www.oxfam.org/files/bp-race-to-bottom-corporate-tax-121216-en.pdf>

<sup>77</sup> The Economist (2015). New Rules, Same Old Paradigm. [Online]. <http://www.economist.com/news/business/21672207-plan-curb-multinationals-tax-avoidance-opportunity-missed-new-rules-same-old>

<sup>78</sup> Tax Justice Network (2015). Developing countries and BEPS: an equal footing? [Online]. <http://www.taxjustice.net/2015/09/23/developing-countries-and-beps-an-equal-footing/>

<sup>79</sup> As reported by the Irish Independent, 5 October 2015: <http://www.independent.ie/business/world/new-oecd-global-tax-proposals-target-corporation-tax-avoidance-31583371.html>

<sup>80</sup> Oxfam International (2016). The European Commission's anti-tax avoidance package. A brief Oxfam analysis of key points. Oxfam International – EU Advocacy Office. [https://www.oxfam.org/sites/www.oxfam.org/files/oxfam\\_atap\\_analysis-final.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/oxfam_atap_analysis-final.pdf); Oxfam International (2016). EU finance ministers unwilling to address tax avoidance. [Online]. <https://www.oxfam.org/en/pressroom/reactions/eu-finance-ministers-unwilling-address-tax-avoidance>

<sup>81</sup> Oxfam press release, 21 June 2016, <https://www.oxfam.org/en/pressroom/reactions/eu-finance-ministers-unwilling-address-tax-avoidance>

<sup>82</sup> Revenue (2016). FAQ on Country by Country Reporting. [www.revenue.ie/en/practitioner/tech-guide/country-by-country-reporting.pdf](http://www.revenue.ie/en/practitioner/tech-guide/country-by-country-reporting.pdf)

<sup>83</sup> CCFD Terre-Solidaire, Oxfam France et al (2015). Following the Money : French Banks' Activities in Tax Havens – <http://www.eurodad.org/files/pdf/1546560-following-the-money-french-banks-activities-in-tax-havens-.pdf>

<sup>84</sup> The Guardian, 7 November 2016, <https://www.theguardian.com/world/2016/nov/07/treasury-tries-to-thwart-eu-plans-for-tax-haven-blacklist>

<sup>85</sup> United Nations, 5th report of UN Independent Expert Alfred-Maurice de Zayas, 4 August 2016 – <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16461&>

<sup>86</sup> Darcy, S. (2015). Irish Parliament debates corporate tax avoidance, inequality and human rights. Business and Human Rights in Ireland. [Online]. <https://businesshumanrightsireland.wordpress.com/2015/10/19/irish-parliament-debates-corporate-tax-avoidance-inequality-and-human-rights>

<sup>87</sup> Eurodad (2015). Briefing Paper on the global tax body. Eurodad. <http://www.eurodad.org/files/pdf/5673eee20133e.pdf>

<sup>88</sup> Burke-Kennedy, E. (2016). Economist Jeffrey Sachs accuses Irish Government over taxation. *Irish Times*. [Online]. <http://www.irishtimes.com/business/economy/economist-jeffrey-sachs-accuses-irish-government-over-taxation-1.2843064?mode=sample&auth-failed=1&pw-origin=http%3A%2F%2Fwww.irishtimes.com%2Fbusiness%2Feconomy%2Feconomist-jeffrey-sachs-accuses-irish-government-over-taxation-1.2843064>

<sup>89</sup> Vanuatu Revenue Review (2016). Vanuatu Revenue Review consultation paper – The case for revenue reform and modernisation. Vanuatu Revenue Review. [http://revenueireview.gov.vu/images/Publications/Consultation\\_Paper\\_for\\_launch\\_v1\\_20\\_sept\\_2016\\_B.pdf](http://revenueireview.gov.vu/images/Publications/Consultation_Paper_for_launch_v1_20_sept_2016_B.pdf)

<sup>90</sup> Hancock, C. (2016). AIB has written off €1.3bn in mortgage debt to 'right-size' loans for customers. *Irish Times*. [Online]. <http://www.irishtimes.com/business/financial-services/aib-has-written-off-1-3bn-in-mortgage-debt-to-right-size-loans-for-customers-1.2880472?mode=sample&auth-failed=1&pw-origin=http%3A%2F%2Fwww.irishtimes.com%2Fbusiness%2Ffinancial-services%2Faib-has-written-off-1-3bn-in-mortgage-debt-to-right-size-loans-for-customers-1.2880472>

## FURTHER INFORMATION

For further information on the issues raised in this paper please contact Senior Research and Policy Co-ordinator Michael McCarthy Flynn on 01 6350 461 or by email on [michaelmccarthy.flyn@oxfamireland.org](mailto:michaelmccarthy.flyn@oxfamireland.org)

[www.oxfamireland.org](http://www.oxfamireland.org)

# OXFAM IRELAND

## BELFAST OFFICE

Oxfam Ireland  
115 North Street  
Belfast  
BT1 1ND

t: +44 (0)28 9023 0220  
f: +44 (0)28 9023 7771

Charity Number  
(Northern Ireland) XN 89651

Charity Commission for Northern Ireland  
Charity Number NIC100848

Company Number  
(Northern Ireland) 33800

## DUBLIN OFFICE

Oxfam Ireland  
2nd Floor, Portview House  
Thorncastle Street  
Ringsend  
Dublin 4

t: +353 (0)1 672 7662  
f: +353 (0)1 672 7680

Charity Number  
(Republic of Ireland) 5988

Charities Regulatory Authority Charity  
Reg. Number 2000946

Company Number  
(Republic of Ireland) 284292

e: [info@oxfamireland.org](mailto:info@oxfamireland.org)

[facebook.com/oxfamireland](https://facebook.com/oxfamireland)

[twitter.com/oxfamireland](https://twitter.com/oxfamireland)

[www.oxfamireland.org](http://www.oxfamireland.org)



**OXFAM**  
Ireland