One of the drivers of global inequality is corporate tax avoidance. The UN estimates that developing countries lose around $100 billion annually as a result of this practice. This deprives developing countries of vital revenue needed to provide the health, education and infrastructure that lift people, especially women, out of poverty.

If we want long term solutions to global poverty and inequality, corporate tax avoidance must end.

Oxfam recognises that Ireland has made some reforms to address corporate tax avoidance. The recent ‘Review of Ireland’s Tax Code’ by Seamus Coffey is to be welcomed, and offers some good proposals. However, Oxfam thinks that additional reforms beyond what is recommended in the Coffey Report, need to be implemented to maintain Ireland’s reputation as a champion of the rights of the world’s poorest people.

These reforms will not damage Ireland’s competitiveness. Oxfam is not concerned with Ireland’s corporate tax rate of 12.5%. Our aim is to ensure that companies can no longer avoid paying their fair share of tax either here or in developing countries.

There is broad public support in Ireland for further reforms to address corporate tax avoidance. According to the latest set of public polling undertaken by the EU, 85% Irish people are very supportive of tougher rules on tax avoidance1.
WHAT CAN IRELAND DO?

INCREASE TRANSPARENCY
Ireland should agree legislation with its EU partners to ensure that multinationals PUBLICALLY report on a country by country basis where they make their profits and pay their taxes. Ireland should also agree to publish core elements of any bilateral tax rulings, excluding any sensitive data, as is the practice in other EU countries.

ADDRESS PROFIT-SHIFTING
Ireland’s transfer pricing regime should be made ‘TWO-WAY’, and extended beyond trading activities, so that transfer pricing rules apply to capital allowances (particularly Intellectual Property.) This would give Irish Revenue officials the power to investigate where they believe transfer prices are overstated in Ireland’s favour, potentially cheating developing countries of much needed revenue.

REVIEW AND REFORM IRELAND’S DOUBLE TAXATION TREATIES (DTA)
Ireland should ensure that all DTAs it concludes with developing countries contain appropriate anti-abuse provisions. Ireland should also re-examine its network of Double Taxation Agreements to ensure that companies cannot avail of tax structures similar to the “Double Irish” post-2020.

IMPLEMENT CONTROLLED FOREIGN COMPANY (CFC) RULES
Ireland should demonstrate its commitment to tackling corporate tax avoidance by introducing strong CFC rules in the next budget.
INCREASE TRANSPARENCY

- AGREE TO PUBLIC COUNTRY BY COUNTRY REPORTING (CBCR)

IRELAND SHOULD AGREE LEGISLATION WITH ITS EU PARTNERS TO ENSURE THAT MULTINATIONALS PUBLICALLY REPORT ON A COUNTRY BY COUNTRY BASIS (PUBLIC CBCR) WHERE THEY MAKE THEIR PROFITS AND PAY THEIR TAXES.

PUBLIC BENEFIT

Making this information public will provide decision makers, journalists, and civil society organisations, especially those in developing countries, with data to help them identify, review and, if necessary, suggest reforms to aspects of the tax system that are being used for purely tax avoidance purposes. Without this information being publically available it is not possible for legislators to adequately scrutinise how the corporate tax system is actually operating.

BUSINESS AND INVESTOR SUPPORT

Many businesses and investors support public CBCR as it builds public trust and benefits the wider economy, through making accurate and detailed company data publically available.

EU PROPOSAL

The EU Council is currently considering a proposal by the European Parliament for public CBCR on a worldwide basis. Although this proposal is not perfect, it is a big step forward, as Brian Hayes MEP has stated:

“THE MEASURES AGREED BY THE PARLIAMENT REPRESENT A MAJOR STEP FORWARD FOR TAX TRANSPARENCY. EUROPE IS LEADING ON THIS ISSUE ALONE. COUNTRY-BY-COUNTRY REPORTING IS COMING WHETHER MULTINATIONALS LIKE IT OR NOT AND I BELIEVE TAX INFORMATION FOR LARGE COMPANIES SHOULD BE MADE PUBLIC AS LONG AS IT IS FAIR AND IS IN THE PUBLIC INTEREST..... FINE GAEL IS IN FAVOUR OF CORPORATE TAX TRANSPARENCY.”

BRIAN HAYES MEP

LACK OF FULL TRANSPARENCY IN IRELAND

The Irish Government claims it supports tax transparency but the system in place in Ireland falls well short of full transparency. Although Ireland requires companies to report relevant tax information on a country by country basis, this information remains confidential and is not open to public scrutiny. Ireland has already agreed to public Country by Country Reporting for the European banking sector. This approach should be extended to all sectors.
INCREASE TRANSPARENCY BY PUBLISHING BILATERAL TAX RULINGS

IRELAND SHOULD AGREE TO PUBLISH CORE ELEMENTS OF ANY BILATERAL ADVANCE PRICE RULINGS (TAX RULINGS), EXCLUDING ANY SENSITIVE DATA. THIS IS ALREADY THE PRACTICE IN SOME OTHER EU COUNTRIES.

ADVANCE PRICE RULINGS (APR)

Advance Price Rulings or tax rulings are when companies seek clarity from governments as to how their profits will be taxed. There has been many instances, both in Ireland and abroad, where these tax rulings have facilitated significant tax avoidance.

BILATERAL ADVANCE PRICE RULINGS

In July 2016, Ireland commenced a formal bilateral advance pricing agreement programme. This means that multinational companies can apply to have its transfer pricing arrangements agreed in advance between Ireland and another jurisdiction in which it is active. However all such bilateral APRs remain confidential in Ireland.

IRELAND IS IN CONTRAVENION OF EU GUIDELINES

By not publishing relevant tax rulings Ireland is contravening EU guidelines:

“WHERE A TAX RULING HAS HORIZONTAL APPLICATION TO THE AFFAIRS OF OTHER TAXPAYERS IN SIMILAR SITUATIONS (ALSO REFERRED TO AS GENERAL RULINGS BY THE OECD), IT SHOULD BE PUBLISHED AND MADE EASILY ACCESSIBLE TO OTHER TAX ADMINISTRATIONS AND TAXPAYERS. IDEALLY, SUCH RULINGS SHOULD BE PUBLISHED ON THE TAX ADMINISTRATION’S WEBSITE.”

THE EU’S CODE OF CONDUCT GROUP FOR BUSINESS TAXATION GUIDELINES ON THE ISSUANCE OF TAX RULINGS (ENDORSED BY THE ECOFIN ON 6 DECEMBER 2016).

OPEN GOVERNMENT PARTNERSHIP

Ireland became a full member of Open Government Partnership in July 2014, with a commitment to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance. This commitment hasn’t extended to publishing Bilateral Advance Price Rulings.

CONFIDENTIALITY

While some commercial data may need to remain confidential, the core elements of each bilateral tax ruling can easily be disclosed publically to ensure greater transparency. For example, Belgium has a public database with all the final rulings negotiated with individuals or companies. These rulings are published on a no-name basis, in accordance with professional confidentiality rules.
TACKLE PROFIT SHIFTING

IRELAND SHOULD MAKE ITS TRANSFER PRICING REGIME ‘TWO-WAY’. IRELAND’S TRANSFER PRICING REGIME SHOULD ALSO BE EXTENDED BEYOND TRADING ACTIVITIES, SO THAT TRANSFER PRICING RULES APPLY TO CAPITAL TRANSACTIONS (PARTICULARLY RELATED TO INTELLECTUAL PROPERTY.)

RECOMMENDATIONS FROM THE REVIEW BY SEAMUS COFFEY OF IRELAND’S CORPORATE TAX CODE

The Coffey Report recommends that Ireland should consider extending domestic transfer pricing rules to non-trading income and asset transactions. Oxfam supports this proposal.

GOING BEYOND THE COFFEY REPORT

However, these recommendations will not address profit shifting into Ireland. There are clear indications that the level of profit shifting into Ireland is very high. Oxfam’s recent report, Tax Battles\(^{\text{vii}}\), 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 another recent research report estimated that excess profits in Ireland could be as high as $93 billion.\(^{\text{viii}}\)

IRELAND NEEDS TO TACKLE PROFIT SHIFTING INTO IRELAND TO REPAIR ITS REPUTATION

‘Two-way’ transfer pricing legislation would give Irish Revenue officials the power to investigate where they believe transfer prices are overstated in Ireland’s favour. This would allow them to identify potential abuses which could lead to revenue losses in other countries, especially developing countries. Not implementing such legislation poses a large risk to Ireland’s reputation. Ireland has been labelled a tax haven by many reputable business publications such as Forbes, the Financial Times and the Economist. It is hard to see how Ireland can persuade its international partners that it has truly reformed its system without giving the authorities appropriate powers to address this issue.

INDICATORS OF PROFIT SHIFTING IN IRELAND

EXCESS PROFITS\(^{\text{IX}}\) REPORTED IN IRELAND $93 BILLION

HOW TWO WAY TRANSFER PRICING LEGISLATION WOULD WORK

REVENUE GIVEN POWER TO UNDERTAKE ‘TWO WAY’ AUDITS IN RELATION TO TRANSFER PRICING

IF AUDIT IDENTIFIES TRANSFER PRICE OVERSTATED IN IRELAND’S FAVOUR

REVENUE ENGAGE WITH OTHER RELEVANT JURISDICTIONS

REVENUE OBTAIN AGREEMENT AS TO THE LEVEL OF ADJUSTMENT TO BE MADE

APPROPRIATE LEVEL TAX IS PAID IN THE APPROPRIATE JURISDICTION.

PROTECTION CLAUSE - Such a clause can be included in legislation to ensure that a reduction in taxable income in Ireland will only happen when Revenue is satisfied that the income will be assessable in another jurisdiction.

WHAT IRELAND NEEDS TO DO TO END CORPORATE TAX AVOIDANCE 5
REVIEW AND REFORM IRELAND’S DOUBLE TAXATION TREATIES

IRELAND SHOULD ENSURE THAT ALL DOUBLE TAXATION AGREEMENTS (DTA) IT CONCLUDES WITH DEVELOPING COUNTRIES CONTAIN APPROPRIATE ANTI-ABUSE PROVISIONS. IRELAND SHOULD ALSO RE-EXAMINE ITS NETWORK OF DTAS TO ENSURE THAT COMPANIES CANNOT USE TAX STRUCTURES SIMILAR TO THE “DOUBLE IRISH” POST-2020.

DOUBLE TAXATION AGREEMENT

A Double Taxation Agreement (DTA) is a legal agreement between countries to determine cross-border tax liability. It defines which jurisdiction has the right to tax cross-border activities and at what rate. It seeks to prevent corporations being ‘double taxed’ in both jurisdictions, but mismatches can result in no tax being paid in either jurisdiction.

PROGRESS MADE BY IRELAND

Renegotiated DTAs with Zambia and Pakistan; Supported capacity building with Rwanda Revenue Authority; engaged in the OECD Tax Inspectors Without Borders initiative; contributed to both the OECD Tax and Development Fund and the African Tax Administration Forum; Signatory to the OECD’s Multilateral Instrument (MLI).

MORE NEEDS TO BE DONE

Ireland needs to adopt the UN Model Double Taxation Convention between developed and developing countries (the UN model.) It should also ensure that all DTAs concluded by Ireland contain anti-abuse provisions as not all developing countries are covered by the MLI.

DTAs AND THE DOUBLE IRISH

Use of the world famous ‘Double Irish’ will finally end in 2020. However, provisions in Ireland’s DTAs with countries outside of the Base Erosion and Profit Shifting (BEPS) process could still offer opportunities to avoid tax. There is a need to re-examine Ireland’s network of DTAs to ensure that companies cannot avail of tax structures similar to the ‘Double Irish’ post-2020.
IMPLEMENT CONTROLLED FOREIGN COMPANY (CFC) RULES

IRELAND SHOULD DEMONSTRATE ITS COMMITMENT TO IMPROVING THE INTERNATIONAL TAX SYSTEM BY INTRODUCING STRONG CFC RULES IN THE NEXT BUDGET.

CFC RULES

CFC rules are imposed by the home country of a multinational (where the parent company is based) if the income of a subsidiary is taxed at a low effective rate. Good CFC rules make it less attractive for a company to shift profits to jurisdictions with very low or no corporate tax rates. These rules can also discourage companies headquartered in the EU from shifting profits from subsidiaries in developing countries to tax havens.

ANTI-TAX AVOIDANCE DIRECTIVE (ATAD)

Under the Anti-Tax Avoidance Directive (ATAD) all EU member states, including Ireland, must introduce CFC rules by the end of 2018. Ireland can demonstrate its commitment to ensuring that Ireland’s corporate tax system isn’t facilitating corporate tax avoidance by introducing strong CFC rules in the next Budget.

STRONG CFC RULES

CFC RULES SHOULD BE APPLIED TO SUBSIDIARIES IN A JURISDICTION THAT HAS A CORPORATE TAX RATE OF 75 PER CENT OF IRELAND’S CORPORATE TAX RATE.

THE DEFINITION OF CFC INCOME SHOULD BE AS BROAD AS POSSIBLE TO BE EFFECTIVE. IT SHOULD INCLUDE INCOME FROM GOODS AND SERVICES, AS WELL AS BOTH DISTRIBUTED AND NON-DISTRIBUTED CFC INCOME (AS IS THE CASE IN ITALY).

A ‘SAFE HARBOUR’ CLAUSE SHOULD BE INCLUDED TO MEET REASONABLE CONCERNS ABOUT ANY UNINTENDED EFFECTS OF CFC RULES ON GENUINE BUSINESS ACTIVITIES.
ENDNOTES


iii https://fairtaxmark.net/our-businesses/

iv https://fairtaxmark.net/our-businesses/


vi Irish Times, July 5th, 2017. All Fine Gael MEPs voted in support of the public CBCR proposal put before the European Parliament

vii Oxfam International, Tax Battles—the dangerous global race to the bottom on corporate tax, (2016).


ix Excess profits are profits that are those over and above what one might normally expect based on real economic activity. In Ireland research estimates that excess profits in Ireland to be in the tens of billions.