Tondo Slum through a fence in Manila, 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

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

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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 annually1 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.

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 (SDG). 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.[2] For example, tax incentives cost Kenya $1.1 billion a year – almost twice the entire national health budget[3].

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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.'*[4] 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.[5] In 2015, Gross Domestic Product (GDP) in Ireland grew by 26%, more than triple what was previously estimated.[6] 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**.'[7] 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 just 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 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.
- 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 its 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 Apple 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.[8] The change to legislation also does not affect SPVs which do not hold property assets – such as the aircraft leasing industry.

'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

RECOMMENDATIONS

Despite improvements, public reporting requirements for multi-national corporation's 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.*'[9] The continued perception internationally that Ireland facilities 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 per cent, 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.

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 rulings are 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.[10]
- 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 many 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 with other 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 schemes and analysis of possible steps to address such schemes.

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[10] The €40m threshold is based on the EU Accounting Directive definition for large groups.

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