Narrative Report on Ireland

PART 1: NARRATIVE REPORT

Introduction

Ireland is in 26th place in the 2018 FSI. This is based on a secrecy score of 50.65 out of 100 and a market share of 2.66% of the global market for offshore financial services. This is a relatively high market given the comparative size of Ireland's economy, and compared to many other well-known offshore financial centres.

A tale of two Irelands

Ireland has worked hard to rehabilitate its name as a member of the international tax community. Stung from years of criticism and being branded a tax haven it has worked to improve its reputation, particularly in the area of tax transparency. The country was deemed "compliant" (the highest rating possible) by the OECD's Global Forum on Transparency and Exchange of Information in August 2017, a designation proudly heralded by the government as proof of Ireland's good standing in tax affairs. This ties with the low secrecy score awarded in this report to Ireland.

However, rumblings about Ireland's corporate tax landscape have not gone away. A €13bn State Aid ruling in relation to Apple's Irish tax affairs, an oversized financial services sector and continuing tax structures and reliefs which provide very low effective tax rates to multinationals continue to draw criticism. So which image correctly represents Ireland? The answer is both, while Ireland is complying with international transparency initiatives, it remains beholden to the large multinationals with Irish subsidiaries.

Ireland's role in tax avoidance

Previous versions of this report have detailed the history of Ireland's international financial services centre (IFSC) in the 1980s and the evolution of Ireland's low corporation tax rate to the current rate of 12.5% for trading income. Criticisms of Ireland's corporate tax regime are generally met with an official response defending the 12.5% tax rate and noting that the effective tax rate of companies is very close to the statutory rate.

This response misses the point. The key tax controversies involving Ireland have not been in relation to the 12.5% rate but in relation to the high levels of corporate income which flow through Ireland without being deemed taxable at all (and which therefore are not included in the effective tax rate calculations). While Ireland's general rule on company residence provides that an Irish incorporated company was Irish tax resident, it also provided an exception for certain foreign controlled companies, so long the group had some activities in Ireland. Such Irish registered, non-resident companies were used to accumulate billions of dollars of untaxed royalty income. The extent of the tax avoidance facilitated by this structure became public knowledge following a US Senate Investigation, headed by Senator Carl Levin, which looked at Apple's tax structures. This in turn led to a state aid investigation by the European Commission. The state aid decision, delivered in August 2016, was devastating to Ireland's tax reputation. It found that €13bn of Irish tax had been avoided by two Irish registered, non-resident subsidiaries,

Rank: 26

Chart 1 - How Secretive? 51 Secrecy Score

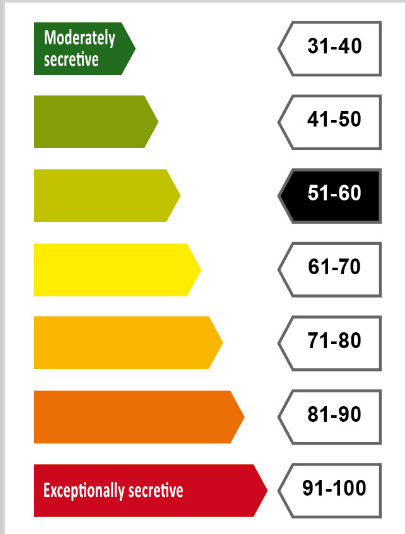
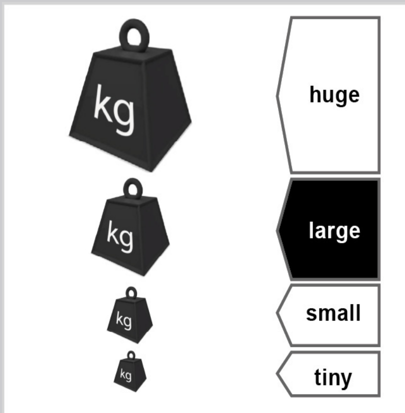


Chart 2 - How Big?



Ireland accounts for more than 1 per cent of the global market for offshore financial services, making it a large player compared with other secrecy juridictions.

The ranking is based on a combination of its secrecy score and scale weighting.

Full data on Ireland is available here: http://www.financialsecrecyindex.com/database.

To find out more about the Financial Secrecy Index, please visit http://www.financial-secrecyindex.com.

If you have any feedback or comments on this report, contact us at info@taxjustice.net and that the effective corporate tax rate for one of the entities was just 0.005% in 2014. The state aid decision is being appealed by both Ireland and Apple on the basis that Irish tax law was properly followed, there was no special deal for Apple and therefore there was no state aid. The amount of the income which was able to flow, tax free, through Ireland to a stateless "head office" with no substance or employees is not disputed.

Of course, Apple were not the only multinational utilising Irish registered, non-resident companies. Others known to have availed of the opportunities afforded by such companies (generally through a structure referred to as the "Double Irish") include Facebook, Google, Medtronic and Johnson & Johnson.

Closing the "Double Irish"

The bad press generated from the revelations about the use of Irish companies to create non-taxed income forced Ireland's hand. In October 2013, the then Minister for Finance, Michael Noonan, noting Ireland's desire to "be part of the solution to this global tax challenge, not part of the problem" announced changes to the corporate tax residence rules. The changes closed off the possibility of an Irish registered company, which is managed and controlled in a country with which Ireland has a double taxation agreement (for example, the US) not being resident in either state. However, it was immediately clear that Irish registered companies could continue to earn tax free income if they ensured they were not "managed and controlled" in a jurisdiction with which Ireland had a double taxation agreement. Information provided by the "Paradise Papers" show that many groups using the structure continued to avail it by creating a tax residence in zero tax jurisdictions such as the Cayman Islands, Jersey and the Isle of Man.

A year later, in his Budget 2015 speech Minister Noonan had to go further. This time he announced the closing off of the "Double Irish" with another change to Ireland's corporate tax residence rules. The new measure would ensure that all Irish registered companies would be Irish resident unless, under the terms of a double taxation agreement, they were tax resident in the other jurisdiction. Minister Noonan noted that this was in accordance with international best practice and made no mention of the half-hearted measure introduced just a year before. Unusually for an anti-avoidance measure it did not apply from the date of the Budget. Instead it was announced that the new rules would take effect from 1 January 2015, giving a ten week window for the new "Double Irish" structures to be established. The "Paradise Papers" revealed that an Indian entrepreneur Kamal Karmakar made use of this period to set up an Irish registered non-resident company, Citixysy[1]. It can be assumed that they were not alone, though the Department of Finance says it has no figures on the number of such non-resident companies registered between the date of the announcement and 31 December 2014. Those who had an Irish registered non-resident company at 1 January 2015 would continue to benefit from its non-resident status for another six years, until the end of 2020.

The weakness of the initial amendment to residence rules, the long window announced between the announcement of the closure and it coming into effect and the long additional period granted to those availing of it suggest that the government's urge to improve its international reputation was tempered by a desire to continue to appease the large corporations using Ireland for tax avoidance purposes.

Ireland after the "Double Irish"

At the same time that the closure of the Double Irish was announced, the Irish government announced a ramping up of reliefs for intellectual property. In addition to the already generous tax reliefs for research and development expenditure, an incentive rate of 6.25% was to be introduced for a "knowledge development box" and capital allowances on the acquisition of intellectual property were improved. Tax relief for purchases of a wide range of intellectual property were already generous. The cost could be written off against tax in accordance with the accounting treatment, or over 15 years, whichever the company chose. There were no specific limitations on the allowable purchase price (Ireland's weak transfer pricing rules do not apply to expenditure qualifying for capital allowances) even when the intangible asset was purchased from a group company who may not be subject to any tax on its gains and provided the assets were held for at least five years, there would be no clawback of allowances if they were subsequently sold on. However, in any year, these allowances could only be used to shelter 80% of a company's income.

From 1 January 2015, this 80% restriction was removed and so companies with such allowances could shelter all their income. The timing of this move to coincide with the winding down of the "Double Irish" is not a coincidence. Opposition TD (member of parliament) Pearse Doherty has revealed that Apple lobbied for the change.[2] Despite the prospect of utilising the "Double Irish" for another six years, it appears a number of companies decided to move their intellectual property into an Irish resident company immediately, knowing that the related income could be sheltered in full by the resultant allowances. In 2014 the total value of capital allowances claimed on such assets was €2.7bn, in 2015 it was €29bn. The transfer of these assets played a key part in the 26% growth in Ireland's GDP for 2015 which led to economist Paul Krugman to coin the phrase "leprechaun economics" as the apparent growth was not reflected in real economic activity. While the massive "onshoring" of intangible assets is likely to reduce the flow of royalties from Ireland to jurisdictions such as the Netherlands, Bermuda, Luxembourg and Switzerland (see the Christian Aid report for further details) it is not likely to result in any additional tax take for Ireland.

International Financial Services

Ireland hosts[3] over half of the world's top 50 banks and half of the top 20 insurance companies; in October 2017 it hosted over 13,800 funds administering some €4.2 trillion in assets; with €2.3 trillion of assets in funds domiciled in Ireland.[4] The Irish Stock Exchange hosts about a quarter of international bonds.

Many assets held by funds operating in Ireland's financial centre are placed in special purpose vehicles referred to s110 companies. Section 110 refers to the section of the taxes acts which, effectively, exempts these entities from tax despite allowing them to avail of Ireland's double taxation network. Amendments were made to s110 during 2017 following a furore about their tax status. However, the amendments relate only to those entities holding Irish assets and so the tax treatment of the majority of s110 companies remains unchanged. A 2017 report by Oxfam[5] noted that:

"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." It quotes the Central Bank report which states "They are generally designed to be tax neutral and most are established as companies with Irish directors but no dedicated employees".

Rehabilitation?

Ireland's tax story is not just one of a country beholden to the financial sector and large multinationals. It has, at times contradictorily, been a leader in some areas of tax transparency. In 2015 Ireland published a spillover analysis of its corporation tax policy, assessing the impact of its regime on developing countries.[6] Despite a call in 2011 for all G20 countries to carry out such an exercise, no G20 country has and Ireland, with the Netherlands, are the only counties to have done so. While the Irish report has been subject to some criticism in relation to the methodology used and conclusions drawn, it has also been widely commended for commissioning this report. It is notable that the decision to do so is credited to lobbying from the NGO sector.

In addition, in 2016 the Irish government commissioned a review of its corporate tax policies to be carried out by economist Seamus Coffey. While the 12.5% tax rate was not for review, the terms of reference specifically encompassed "achieving the highest international standards in tax transparency" and "further implementing Ireland's commitments under the Organisation for Economic Co-Operation and Development's Base Erosion and Profit Shifting (BEPS) Project to tackle harmful tax competition and aggressive tax planning". The report, which was published in June 2017, followed extensive consultation by Mr Coffey with interested parties, which included not only the tax industry but also a number of NGOs. The resulting recommendations included continued participation in the Global Forum on Tax Transparency, strengthening of Ireland's transfer pricing rules, introducing controlled foreign company (CFC) regulations and returning to an 80% deductibility for allowances on intellectual property[7]. A public consultation has begun to seek opinions on the implementation of some of the recommendations. The change to the capital allowance regime for intellectual property was implemented in October 2017 but does not have retrospective application and so the intangible assets brought on-shore in in 2017 will continue to fully shelter related income in the coming years.

Ireland has participated fully in the BEPS project. Country-by-Country reporting (though not public) has been mandated for large groups for accounting year ending after 1 January 2016. Ireland has signed the Multilateral Instrument to amend its double taxation agreements and is expected to ratify it shortly. In addition, domestic legislation has required that lobbying activities be registered since the end of 2015. The register shows that timing and issues on which key individuals, including the Minister for Finance, are lobbied. This register includes information lobbying undertaking by large multinationals and accounting firms, among others, in relation to tax matters.

A bright future?

It is tempting to brush off criticisms of Ireland's tax regime as the items from the past, when the same rules didn't apply and when Ireland needed to establish itself as an attractive location for foreign direct investment in the face of poverty, high unemployment and emigration. However, Ireland remains in an economically precarious position. With a relatively small population, limited natural resources, uncertainty pending from Brexit and a massive reliance on the corporation tax take from a small number of multinationals, the government is wary of radical tax changes. They are balancing a difficult tightrope between full rehabilitation of its reputation and at least maintaining its current level of foreign direct investment.

A recent two-part report from Christian Aid highlighted a post-Double Irish tax avoidance structure utilizing Irish registered companies called the "Single Malt", under which an Irish registered company would be Maltese resident under the terms of the double taxation agreement with Ireland. Users of this structure include Microsoft. On release of the report, the Minister for Finance, Paschal Donohoe, immediately stated that his department would look into the matter[8]. This level of engagement with civil society is encouraging but experience has shown that any changes are unlikely to be speedy.

With thanks to Mary Cosgrove for her assistance.

Read more:

Christian Aid's Impossible Structures

Oxfam's Myths and Mantras

Seamus Coffey's Report on Ireland's Corporate Tax regime

Ireland's Spillover Analysis

Low tax Financial Centres and the Financial Crisis: The Case of the Irish Financial Services Centre[9], Prof. Jim Stewart, Trinity College Dublin, IIIS Discussion Paper No. 420, Jan 2013

Shadow Regulation and the Shadow Banking System: the role of the Dublin International Financial Services Centre[10], Tax Justice Focus, Vo. 4 Number 2, 2008. Jim Stewart's article provides a much shorter summary of his subsequent paper.

Corporation Tax: How Important is the 12.5 % Corporate Tax Rate in Ireland?[11] IIS discussion paper, September 2011

Why Ireland is an EU corporate tax haven[12], Progressive Tax Blog, Feb 23, 2011, available here (scroll down.)

The International Financial Services Centre: a National Development Dream[13], Padraic White, 2000. An uncritical yet informative chapter in the book **The Making of the Celtic Tiger: the inside story of Ireland's boom economy.**

PWC International Transfer Pricing - Ireland[14].

Endnotes:

1 The Irish Times, *Paradise Papers: US tech firm set up in this Dublin office block to halve its tax bill*, available from: https://www.irishtimes.com/business/paradise-papers-us-tech-firm-set-up-in-this-dublin-office-block-to-halve-tax-bill-1.3282905; 31/01/2018.
2 Sinn Fein news release, *Apple Raised Lifting The 80% Cap With Department Of Finance In 2014 – Pearse Doherty TD,* available from: http://www.publicnow.com/view/62B08E8D17F4965693DB06E01461CAC3BF38E5A0?2018-01-19-19:00:13+00:00-xxx3931; 31/01/2018.
3 http://www.ifsc.ie/page.aspx?idpage=6; 31/01/2018.
4 Irish Funds, *Industry Statistics October 2017,* available from: https://irishfunds-secure.s3.amazonaws.com/1513851920-amCharts-4-.pdf; 31/01/2018.
5 Oxfam Ireland, *Mantras and Myths: A true picture of the corporate tax system in Ireland,* available from: https://www.oxfamireland.org/sites/default/files/upload/pdfs/mantras-myths-final.pdf; 31/01/2018.
6 IBFD, Spillover Analysis Possible Effects of the Irish Tax System on Developing Economies, (Department of Finance, 2015) available from: http://www.budget.gov.ie/Budgets/2016/Documents/IBFD_Irish_Spillover_Analysis_Report_pub.pdf; 31/01/2018.
7 Seamus Coffey, Review of Ireland's Corporation Tax Code Presented to the Minister for Finance and Public Expenditure and Reform, available from: http://www.finance.gov.ie/wp-content/uploads/2017/09/170912-Review-of-Irelands-Corporation-Tax-Code.pdf; 31/01/2018.
8 The Journal, How often is the 'Single Malt' tax loophole used? The government is finding out, available from: http://www.thejournal.ie/single-malt-tax-evasion-3698512-Nov2017/; 31/01/2018.
9 http://www.tcd.ie/triss/; 31/01/2018.
10 http://www.taxjustice.net/cms/upload/pdf/TJF_4-2_AABA_-_Research.pdf; 31/01/2018.
11 http://www.tcd.ie/triss/; 31/01/2018.
12 http://treasureislands.org/progressive-tax-blog-reloaded/; 31/01/2018.
13 https://www.researchgate.net/publication/5018562_Book_Review_-_The_Making_of_the_Celtic_Tiger_-_The_Inside_Story_of_Ireland%27s_Boom_Econom_by_Ray_MacSharry_and_Padraic_White; 31/01/2018.
14 https://www.pwc.com/gx/en/international-transfer-pricing/assets/ireland.pdf; 31/01/2018.

PART 2: IRELAND'S SECRECY SCORE

OWNERSHIP REGISTRATION

- 24% — 1. Banking Secrecy
- 38% — 2. Trust and Foundations Register
- 90% — 3. Recorded Company Ownership
- 50% — 4. Other Wealth Ownership
- 100% — 5. Limited Partnership Transparency

LEGAL ENTITY TRANSPARENCY

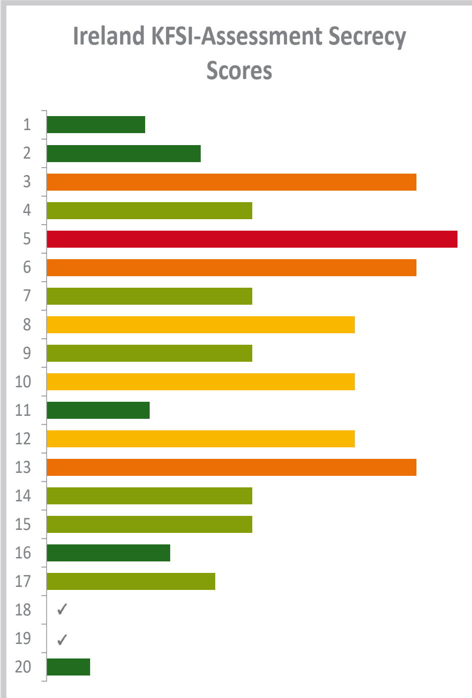
- 90% — 6. Public Company Ownership
- 50% — 7. Public Company Accounts
- 75% — 8. Country-by-Country Reporting
- 50% — 9. Corporate Tax Disclosure
- 75% — 10. Legal Entity Identifier

INTEGRITY OF TAX AND FINANCIAL REGULATION

- 25% — 11. Tax Administration Capacity
- 75% — 12. Consistent Personal Income Tax
- 90% — 13. Avoids Promoting Tax Evasion
- 50% — 14. Tax Court Secrecy
- 50% — 15. Harmful Structures
- 30% — 16. Public Statistics

INTERNATIONAL STANDARDS AND COOPERATION

- 41% — 17. Anti-Money Laundering
- 0% — 18. Automatic Information Exchange
- 0% — 19. Bilateral Treaties
- 11% — 20. International Legal Cooperation



Notes and Sources

The ranking is based on a combination of its secrecy score and scale weighting (click here to see our full methodology).

The secrecy score of 51 per cent has been computed as the average score of 20 Key Financial Secrecy Indicators (KFSI), listed on the left. Each KFSI is explained in more detail by clicking on the name of the indicator.

A grey tick indicates full compliance with the relevant indicator, meaning least secrecy; red indicates non-compliance (most secrecy); colours in between partial compliance.

This paper draws on data sources including regulatory reports, legislation, regulation and news available as of 30.09.2017.

Full data on Ireland is available here: http://www.financialsecrecyindex.com/database.

To find out more about the Financial Secrecy Index, please visit http://www.financialsecrecyindex.com.