Into the limelight: tax haven Ireland

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The political establishment are appealing against the EU Commission's ruling that Apple should pay €13 billion to Irish taxpayers - plus interest that will amount to between an extra €5 and €6 billion. They cite the 'reputational damage' that might follow acceptance of such a ruling. There was not, however, a similar level of concern when the UN found that Ireland's ban on abortion in the case of fatal foetal abnormality constituted 'cruel, inhuman and degrading' treatment.[1] The linking of the interest of the Irish state to those of a global corporation is only an accentuation of an already established pattern. The state has a long established pattern of handing over its natural resources to foreign multi-nationals. It scores remarkably well on the Heritage Foundation's, 'Freedom Index'. It comes in eighth place in the world's wish list for neoliberal wonderlands.[2]

How do we explain this subservience to multi-nationals? Or to put it differently, why is there such a gulf between the outlook of the 26 county political elite and the leaders of a rebellion they claim gave rise to their state?

Historically, the central project of the Irish state was promoting Griffith's notion of a Gaelic Manchester. The founder of Sinn Féin was a bigot and an opponent of militant trade unionism. He was a virulent opponent of British rule but his primary aim was to create an Irish capitalist republic. He argued that it was 'not capitalism but the abuse of capitalism that oppresses labour' [3] and this abuse came primarily from English influence. Griffith's 'Gaelic Manchester', however, never saw the light of day. Instead what emerged was a puny, weakened version of capitalism. Despite dramatic shifts in strategy, the Southern elite proved unable to develop a sustainable model of accumulation that was not punctuated by long crises. Instead, their society swung between debt fuelled booms and painful economic crashes. One indication of their relative failure was the manner in which Ireland became a storehouse for emigration. There was a decline in net outward migration in only one period before the Celtic Tiger, in the years between 1971-1979. This phase was, however, marked by a re-emergence of economic recessions in the global economy rather than any spectacular economic advance in Ireland. Since the economic crash of 2008, emigration has returned to very high levels with about 80,000 people leaving Ireland on annual basis. It is a testimony to the continuing weakness of Irish capitalism. Four main phases in the development of Irish capitalism can be described.

Phase 1: 1922- 1932 The Neo-Colonial Phase

The first strategy of the political elite who took control after the Civil War was to set Ireland up as a neo-colony of Britain. Although Cumann na nGaedheal originated from a Sinn Féin movement that had advocated protectionism, this policy was immediately dropped on assuming power. Instead Southern Ireland became a food producer for the UK market, mainly exporting primary produce. Britain took 92% of all Free State exports and these were overwhelming composed of live cattle exports. The tiny manufacturing sector was concentrated in areas of low added value and was naturally protected. Only 0.7% of the country's labour force was involved in manufacturing goods for exports. At this stage, Ireland was accurately described by De Valera as an 'outgarden' of Britain.[4] Only the larger farmers who were the main support base for Cumann na nGaedheal stood to benefit from the continuation of this agro-export model. But even this class had limited resources and never approached the power wielded by the

[1]'UN says Ireland's abortion ban 'cruel, inhuman or degrading" *Irish Times* 9 June 2016
[2]http://www.heritage.org/index/pdf/2016/press-releases/THF-2016-Index-Overview.pdf
[3]P. Yeates, *Lockout: Dublin 1913*, Dublin Gill and Macmillan 2000 p.354
[4]Dáil Debates, Vol 25, Col. 478, 12 July 1928

latifundia owners in Latin America.

Phase 2: 1932 -1958 The Protectionist Phase

The economic crash of 1929 and the arrival to governmental office of the Fianna Fáil radicals produced a major switch in strategy. Fianna Fáil wanted a return to Arthur Griffith's original model of building up Irish industry behind protectionist barriers. They moved quickly to increase tariffs on imported goods from 9% in 1931 to 35% by 1938. The Economic War with Britain that ensued put the big farmers at a considerable disadvantage but their social weakness meant that they could not mount a significant challenge to Fianna Fáil - although they gave considerable backing to the Blueshirt fascist movement. Sometimes Fianna Fáil's project has been presented as a return to romantic traditionalism - as an effort to turn Ireland into an island of 'comely maiden's dancing at the cross roads'. However, this misses the ambiguities of nationalism. Behind the use of a traditionalist rhetoric lay a determined effort to modernise Ireland and break from a neo-colonial model. Fianna Fáil's early base amongst workers arose from their success in pulling together a coalition of native capitalists and workers to challenge the agro-export model.

Initially, the strategy showed limited signs of success. Industrial employment rose from 170,000 in 1931 to 227,000 in 1951. The sectoral composition of manufacturing broadened to include clothing, footwear, metals and engineering - even if the size of workplaces remained relatively small. Industry was, however, almost totally geared to a small domestic market and by 1960 only 1.4% of the total labour force was employed in manufacturing exports.[5] The limited size of domestic market meant that the protectionist strategy eventually ran aground. One indicator of the failure was the fact that a total of 440,000 people left the country during the 1950s—one in seven of the entire population. Another change of direction was required.

Phase 3: 1958 -2001 Foreign Direct Investment for industry

The third phase may be characterised as using Foreign Direct Investment to build an industrial base. In 1958, the Irish state did an about turn and relaxed the requirement for majority Irish share ownership of companies. Two other landmarks followed to allow for a new orientation to export led development. In 1965, an Anglo-Ireland Free Trade Agreement area was concluded and in 1973 Ireland joined the European Economic Community. A range of incentives were put in place to attract foreign direct investment in order to build an industrial base. Multi-national companies were offered capital grants of up to two-thirds of the cost of fixed assets along with labour training grants and relief from corporation tax on profits derived from exports. It was thought that the influx of foreign investment would create a dynamic economy and so help expand indigenous Irish capital.

At first the policy appeared to yield impressive results. 70% of additional employment created up to 1974 was in foreign firms. In 1960 exports of merchandise contributed to 27% of GDP but this figure rose to 75% in 2000. At its high point in 1980, manufacturing accounted for 248,600 jobs, nearly a quarter of the working population. From an Irish capitalist viewpoint, the drive to turn Ireland into a platform which US and British companies used for export was beneficial. It did not saturate the home market with cheaper goods or cause a crowding out of opportunities for Irish firms. Instead, new spaces were created for servicing an expanding economy and, to a much lesser extent, for some linkages with the multi-national sector.

However, by 1982, an official Telesis report warned that there was an over reliance on foreign industry as Irish capitalism was not expanding as quickly as they liked. They called for a reduction in the level of grants offered to foreign firms and greater support for indigenous industry. They pointed out that the foreign firms tended to operate branch plans with research and development being

[5] E. O Malley, *Industry and Economic Development*, Dublin: Gill and Macmillan, 1989 p.68

conducted elsewhere. They concluded that

> Foreign-owned industrial operations in Ireland with few exceptions do not embody the key competitive activities of the businesses in which they participate, do not employ significant numbers of skilled workers; and are not significantly integrated into traded and skilled sub-supply industries in Ireland[6]

This report was a harbinger of the problems ahead. The recessions of the 1980s led to a sharp reduction in foreign investment and a new wave of mass emigration begun. The IDA responded by offering even greater incentives to flagship companies such as Intel in the hope of creating new clusters of foreign capital. But even though this strategy, appeared to work for a period, the electronics industry - which was a particular IDA target- eventually began to migrate to Eastern Europe where even cheaper labour was available.

The Irish elite, however, got lucky due to developments at EU level over which they had little influence. In 1987, EU member states signed the Single European Act and the process of full integration was completed by 1992. This in turn put pressure on US companies who wanted a platform for entry into that market to find a location inside the EU. Ireland's offer of generous grants and tax incentives combined with a good supply of an educated, relatively cheap and an English speaking workforce made it a favoured destination. The structural weakness of using FDI to create an industrial base which was visible in the 1980s disappeared again from view. Instead a new spurt of US investment laid the basis for the first phase of the Celtic Tiger. By 1998, over 26 percent of all greenfield sites set up by US companies in the EU were located in Ireland. The amount of US capital deployed per worker was a staggering seven times the EU average.

However, this late spurt was an anomaly because the third phase of seeking to construct an Irish industrial base ended in failure. In 2001 there were 251,000 workers employed in manufacturing but today this has declined to 183,190, the lowest number in recent decades. A number of factors were involved here. There was a global shift of investment to developing countries. By 2015, for example, 55 percent of global FDI was going to developing economies whereas previously it represented less than a third.[7] Second, US investment decreased substantially after the 2001-2 downturn as corporations began to hoard cash or move towards financial speculation. Thirdly, the crash of 2008 further accelerated the flight of foreign capital from industry. Approximately 50,000 jobs were lost in the three years since the crash. Moreover despite fifty years of a strategy designed to stimulate indigenous industry, Irish industrial capital remained small, extremely weak and geared to the more naturally protected home markets. Only 3% of Irish SMEs (small and medium size firms with up to 249 employees) are active in manufacturing, whereas the equivalent figure for the EU is 10%. 83% of manufacturing enterprises employed less than 10 people and 95% employed less than 50 people. These were essentially the Irish firms.

Tax haven capitalism

Phase 4: 2001 - present, Tax Haven Capitalism

It might be suggested that the failure to build an industrial base did not matter because Ireland, like the rest of Europe, was becoming a service economy. In terms of its statistical profile, Ireland does not differ markedly from Britain or Denmark in having 11% of the workforce employed in manufacturing. However this ignores the specific character of the service economy that developed in Ireland.

At the core of this economy was a tax shelter for global corporations. In simple terms, the country was marketed as a centre for tax dodging. The key sectors of this economy relied on tax breaks and around these was built a low level service economy.

[6]NESC, *A Review of Industrial Policy* (Telesis Report) Dublin: NESC, 1982 p.115
[7]UNCTAD, *World Investment Report* 2015, Geneva, UN Publication, 2015 p.2

Despite much vaunted discussion on how Ireland was moving up the value chain, the services sector was mainly characterised by low productivity levels, small enterprises and was geared to a domestic economy. There are two main reasons why the Irish elite moved towards creating a tax haven.

First, the long history of weakness in Irish capitalism meant that the state was seen as a direct helper for individual businesses. Marx defined the capitalist state as the 'committee for managing the common affairs' of the rich and by this he meant that one of its functions was to forge a common strategy for competing elite actors. The Irish state performed this function but it was also viewed as a generous supporter for individual companies. The state could be prevailed upon to bend rules and to do special favours for particular business interests. The extraordinary links between the Goodman group of companies and the Irish political elite is one example. This company was picked as a winner by the Irish state and received huge amount of grants and preferential access to foreign markets. When it went bankrupt, the Dáil was re-called to help rescue it. The manner in which the state rescued the privately owned Allied Irish Bank after one of its subsidiaries, the Insurance Corporation of Ireland, lost €400 million is another example. In brief, the weakness of Irish capitalism helped to create a 'frictionless relationship' between the political and corporate elites.

Second, this relationship reached a new intensity under the leadership of Charles Haughey. Haughey's regime was characterised by blatant corruption connected to tax dodging. A cabal of business people contributed funds to support his extravagant lifestyle from an offshore tax account known as the Ansbacher account. Tax dodging was already common practice amongst the wealthy as this account was opened in 1971 and involved the 'great and good' of Irish society. The leading organiser of the account was Haughey's bagman, Des Traynor, who was the chairperson of Ireland largest company, CRH. The main reason wealthy people 'invested' in Haughey was to gain further tax favours from the state. The Dunne family, for example, contributed to the Haughey benevolent fund in the hope that the trust status of the firm - which was due for renewal - would stay in place.

By the mid 1980s, these practices led to a re-structuring of Irish capitalism around three main pillars which relied on tax dodging. These were financial services; the multinational export sector; the property speculation. The prospect of building an industrial base simply disappeared. A fourth pillar the food export industry grew out of the long established role that Ireland played in supplying primary produce. Let us look at the three centres of tax dodging in turn and defer consideration of the food industry to a later stage.

a) The IFSC

Given the historically close relationship between the corporate and political elite, it took no stretch of the imagination to extend the practice of tax dodging to the global corporate world. One of the most significant moves in this direction was the creation of the Irish Financial Services Centre. This arose from a proposal by the businessman, Dermot Desmond, to his friend, Charles Haughey. Desmond had previously commissioned a report from the accountancy firm PWC and it was immediately accepted by Haughey and the Fianna Fáil party. One senior civil servant described how the 'frictionless relationship between the corporate and political elite moved to a higher level,

> The IFSC was a success in my view primarily because of the excellent working arrangements between the private and the public sector. The IFSC product was clearly defined around the favourable taxation benefits and the capability of an educated workforce. These factors combined with the willingness of the authorities to meet and discuss the specific requirements of prospective corporations made for a competitive product offer-

ing.[8]

One of the ways the close relationship was maintained was through the creation of a committee which brought together bankers, financiers, the Revenue Commissioners and key civil servants to plan out a centre for light regulation and significant tax dodging.

The IFSC has expanded dramatically since then. Originally founded as a designated, low tax zone in Dublin's docklands, it now refers to a virtual space for the export of traded financial services. Total assets of the financial sector amounted to €3.6 trillion in 2012, or 2,147 per cent of Irish GDP. This puts Ireland just behind Luxemburg and Malta in its reliance on finance as a key motor of its economy. Since the economic crash of 2008, the IFSC's attraction for tax dodgers has grown dramatically. From 2008-2014, investment funds have increased fourfold and Ireland has also moved to the centre of global speculation by hedge funds. Currently, for example, 40 percent of the world's hedge funds are managed in Ireland.

The various forms of 'asset management' undertaken in the IFSC involve rich people putting money into investment funds that can be moved about the world to gain maximum advantage. It represents the purest form of capital, disconnected from any immediate tie to a local unit but, through its endless movement, creating a global rate of profit. These funds are typically organised through a three-fold division of labour: *promoters*, who advertise and guarantee that the money is not misused; *investment managers*, who decide where to put the money; *administrators*, who carry out the low-key clerical duties associated with caring for rich people's money. The investment managers are at the top of the food chain, charging a fee of 2 percent a year and taking a cut of 20 percent on the profits made. Typically, the investment managers sit in plush offices in Mayfair, London and use administrative companies to track the earnings and keep accounts for their clients.[9] Dublin's niche market lies in the lower level administrative companies and it functions essentially as the grunt worker for the speculative activity conducted in London and New York. However as well as performing administrative tasks, its main attraction is 'tax neutrality' and light touch regulation.

There are now 1,300 Financial Vehicles Corporations and Special Purpose Vehicles operating inside the IFSC. These are entities which have been established by banks or other financial institutions. A Financial Vehicle Corporation is normally established for the purpose of 'securitisation' - bundling together loans, mortgages or rents into a package which guarantees an income stream. There are 779 Financial Vehicle Corporations with assets totalling €415 billion in the IFSC, a wealth that is equivalent to twice the size of the Irish economy. There are nearly ten time as many FVCs and FVC assets in Ireland as there are Germany. Closely related to the FVCs are the Special Purpose Vehicles. These are entities set up for specific purposes -including securitisation - but, crucially, they do not have to be registered. There are 600 SPVs in the IFSC and they control €150 billion of assets.

The main reason why these entities are in the IFSC is to enjoy the tax neutral benefits of Section 110 of Tax Consolidated Acts 1997. A company has only to be officially resident in Ireland and to deal in 'qualifying assets' such as shares, bonds, money markets, commodity speculation, carbon emissions or leases. The market value of these assets must be at least €10 million to gain tax neutrality. Typically the shadow bank needs only to make contact with an Irish tax planner to ensure it claims its tax breaks. As Matheson explains, 'no special rules or authorisations are required in Ireland in order for an SPV to achieve tax neutral status'.[10] More broadly, the IFSC is regarded as a clean, safe tax haven that lies inside the

[8]'Memoirs of the IFSC' in *Finance Magazine* no date http://www.finance-magazine.com/display_article.php?i=2303&pi=142

[9]D. MacKenzie, 'An Address in Mayfair', *London Review of Books* Vol. 30, No. 23 December 2008, pp.9-12.

[10]Matheson, Ireland: *The SPV Jurisdiction of Choice for Structured Finance Transactions* Dublin: Matheson, 2013, p.2

EU. Irish investment funds are virtually exempt from tax on their income and gains. There are no 'withholding taxes' when the income is distributed to non-resident shareholders. There is a network of tax treaties which allow tax advantages to be retained when the money is brought back to the investors' home country.

The IFSC presents an image of complying fully with EU regulations while providing enough 'flexibility' to avoid over-intrusive supervision. A Qualifying Investor Fund, for example, can be authorised within 24 hours on receipt of the paper work, provided the fund manager works through an Irish accredited administrator. There are very few restrictions so that investment managers can borrow heavily to gamble and invest their money in under- regulated but more risky funds. Once an investment fund is listed with the Irish Stock Exchange, it can be 'passported' throughout the EU, meaning it can attract investors from across the continent.

The other big advantage is that state policy is shaped by financial interests, with the state acting as both a lobbyist for these interests inside the EU and constantly introducing legislative changes to facilitate them. Irish policy on financial services is still effectively managed by the IFSC Clearing House Group, a body made up of top public servants and representatives of the financial services industry. It includes figures from Bank of America, Citibank, BNY Mellon, State Street and the Irish Bankers Federation.[11] The Clearing House Group is not a lobbying agency because it is officially embedded in the key Department of the Taoiseach. It helps devise government strategy and advises on tax changes that are incorporated into the annual Finance Bills. In addition, the chair of IFSC Ireland, the former Taoiseach, John Bruton promotes public lobbying for the IFSC. His position is funded by the industry but the IDA provides administrative support. The power of the IFSC Clearing House Group is indicated in this report from the *Financial Times* of a meeting held in November 2011,

> They met under the auspices of the 'Clearing House', a secretive group of financial industry executives, accountants and public servants formed in 1987 to promote Dublin as a financial hub. The participants thrashed out 21 separate taxation and legal incentives sought by the financial industry at the meeting which took place in room 308 in the prime minister's office...
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> The lobbying was done in secret behind closed doors, says Nessa Childers, an Irish member of the European parliament, who got minutes of the meeting using freedom of information laws last year. 'The bankers and hedge fund industry got virtually everything they asked for while the public got hit with a number of austerity measures.'[12]

The Irish state's collusion with financial interest was in evidence when the EU Commission suggested a small Financial Transactions Tax. The proposal was for a 0.1 percent tax levy on share and bond transactions and an even smaller 0.01 percent tax on derivatives. This tiny tax could have raised significant money for the hard pressed Irish exchequer. The EU estimated that €500 million could be garnered from this tax - the equivalent of what the government intended to raise with the property tax. Eleven countries in the EU - including France and Germany - agreed to go ahead with the tax but Ireland refused to. As soon as the EU proposal became known, the Department of Finance convened a meeting of the main corporations operating in the IFSC and asked them to make their case against it. No independent research was commissioned on the impact of such a tax on Ireland. Instead the state used material derived from a survey of financial corporations to come out vehemently against the proposal.

The reality about how the IFSC really works has been hidden behind a barrage of

[11] Written Answers, Department of the Taoiseach, 13 March 2012

[12] 'Great tax race: Ireland's policies aid business more than public' *Financial Times* May 1 2013

state propaganda that stresses its contribution to the Irish economy. Its supporters claim that it contributes up to 20% of Corporation Taxes but the official figure used by the Minister for Finance in response to a Dáil question was that €630 million was paid in 2010.[13] That was from a total corporate taxable income of €3.9 billion which in turn was only a fraction of the vast amount of wealth that flows through the IFSC. This tax, in fact, represented 16% of all corporate taxes or only 2% of total state revenue. Compared to the reported assets of €1,165 billion in domiciled funds that are invested in the IFSC, this is a miniscule figure. It indicates that the centres acts as a magnet for tax dodging.

b) The multi-national sector

Multi-national companies account for 90% of Ireland exports and are increasingly using Ireland primarily as a base for tax dodging rather than as a production centre. Goods and services are certainly made in Ireland but these activities are tied to, and dependent on, tax dodging. Employment in manufacturing is contracting and the multinationals only employ 80,000 manufacturing workers compared to 89,167 in 1991.The MNCs have shifted their focus to 'internationally traded services' as Table 1 indicates. This is a vague category that is used by the Central Statistics Office and includes such sectors as aircraft leasing which offers a particularly dramatic example of tax dodging.

Ireland has become the leading global centre for this business as Irish based multinationals own or manage 19 percent of the world's commercial aircraft. The biggest leaser is a subsidiary of General Electric - a company that has an unequalled record of tax dodging in the US. It made profits of $14 billion in 2010 but paid no US taxes. Its extraordinary success, according to the *New York Times*, is based on 'an aggressive strategy that mixes fierce lobbying for tax breaks and innovative accounting that enables it to concentrate profits offshore'.[14] Ireland plays a minor role in this aggressive strategy through one of its subsidiaries, GE Capital Aviation Funding. In 2011, the Shannon based aircraft leasing finance company recorded pre-tax profits of $765 million, making it one of the most profitable companies in Ireland. Yet it had no employees and only paid $379,000 in corporation profits tax to the Irish state. It used Irish tax laws to claim 'group relief' and so paid only 0.5 percent tax on its profits.[15] In 2014, the top aircraft leasing firms SMBC, Pembroke Capital, AWAS Capital, GECAS and Avolon, showed aggregate pre-tax profits of $650m (€572.9m) generated from revenues of $3.25bn. They paid just €23 million in tax or just 4% of their profits.

Table 1: Employment in foreign owned enterprises.

	1991	2010
Foreign owned manufacturing	89,167	80,089
Foreign owned internationally traded services	7,398	59,110

Source: F. Barry Eveolution of FDI Intensity `www.cso.ie/en/media/csoie/newsevents/documents/seminars/FDIintensity.ppt`

The manner in which the multi-nationals use Ireland as a base for tax dodging was illustrated in the extraordinary claim that the Irish economy had grown by 26% on an annual basis in 2016. One reason for this statistical miracle was a practice known as inversion whereby a US company takes over a small Irish company as its headquarters for tax purposes. The National Treasury Management Agency recently stated that,

> The reclassification of several large companies as Irish resident expanded the capital stock in 2015 by €300bn or c.40%. The goods produced by the additional capital were mainly exported. ...Net exports grew by 102.4% in 2015. Complicating matters, the goods were produced through 'contract manu-

[13] Dáil Eireann, Written Answers – Financial Regulation, 15 December 2011, 40673/11

[14] 'GE's Strategies Let it Avoid Taxes Altogether' *New York Times* 24 March 2011.

[15] 'Pre-tax Profits of €606 million for aviation leasing firm' *Irish Times* 20 June 2012.

> facturing'. The result of contract manufacturing is this goods export is recorded in the Irish Balance of Payments even though it was never produced in Ireland. There is little or no employment effect in Ireland from this contract manufacturing.[16]

More broadly, the multi-national companies - and large Irish companies - manage to dodge taxes through a variety of mechanisms. There is an official rate of 12.5% corporation tax which is the lowest rate in the OECD. Ireland's rate is rivalled in Europe only by countries like Cyprus and Bulgaria. This tax rate, however, only acts as a headline invitation to multi-nationals. When they delve deeper into matters, they discover - thanks to the help of Ireland's vast tax planning network - that actual taxation is much lower than 12.5%. Table 2 illustrates how the effective rate is far lower by looking at the returns for 2008.

Table 2: Corporation Tax for Accounting Period ending 2012 in €million.

Profits	72,533
Minus allowances for losses, plant machinery, charges, industrial buildings and plus rental income	-11,017
Total Income and Gains (before deduction)	61,516
Further Deductions of Taxable Income	3,673
Gross Tax Due after 12.5% standard rate	5.273
Further Reliefs	775.8
Tax Payable	4,173
Effective Rate of Tax on declared profits	5.7%

Source: Revenue Commissioners Statistical Report 2012 Corporation Tax Distribution Statistics, p 5

In 2012, €73 billion was declared in profits but just over €4 billion was paid in tax. That amounts to an effective tax rate of 6 percent - which is half the official rate. The table also gives some indication for how this reduction is achieved. The four main categories used to reduce tax on profit are allowances, losses, deductions and reliefs. When a company suffers losses - as many did with the crash - they can be stored up and used to claim tax relief. Losses in one part of company can also be used to reduce taxes in other subsidiary entities. Only a small proportion of the losses that were written off for tax purposes were used in this accounting period and so far more can be used in the future. There is also a host of other deductions and reliefs and this is where Ireland's vast army of 'tax planners' come into play. Ireland's many tax attractions are made available to both the multinationals and Irish business by planners who charge substantial fees.

There are very limited rules concerning transfer pricing. These refer to a practice whereby multi-nationals manipulate their internal pricing structure to make it appear that extra profits were made in countries that have low tax rates. Until 2009, Ireland simply had no rules and corporations could artificially reduce prices of components used in Irish subsidiaries so that larger profits appeared to be made there. Limited legislation was introduced in the Finance Act of 2010 but it was designed to give legal cover to the existing lax practice. As Deloitte put it in their tax planning pitch to companies, 'the presence of a formal transfer pricing regime should provide additional credibility for Revenue when dealing with (foreign tax jurisdiction) cases' but would not impose a 'significant additional burden' on multinational corporations.[17] The new law is based on an OECD concept of 'arms length' transactions, which suggests that internal company prices should appear as if they were transacted between independent bodies. But as Michael Durst, a US treasury official, put it there are no 'uncontrolled comparables' to check if a corporation is manipulating internal prices.[18] It is even more difficult to apply 'arms length principles' to 'intangible' items such as patents and royal-

[16] NTMA, *The Irish Economy and Public Finances*, `http://www.ntma.ie/business-areas/funding-and-debt-management/irish-economy/`

[17] Deloitte, *Transfer Pricing Legislation in Ireland - A New reality*, Dublin: Deloitte, 2010, p.48.

[18] Quoted in D. Spencer, 'Transfer Pricing: When will the OECD adjust to Reality' *Tax Justice Network* 24 May 2012.

ties which Ireland specialises in supporting. The Tax Justice Network claims that the only effect of new legislative changes is to give a boost to 'auditing firms and law firms and economic consulting firms which derive substantial income from advising and consulting about those (OECD) Guidelines'.[19]

Ireland has no 'thin capitalisation' rules. Companies may be funded through a variety of mechanisms, typically selling shares or through borrowing. A company which borrows heavily will pay a large amount of interest but one advantage is that this can be written off for tax purposes. Companies, therefore, often want to fund their operations through debt in order to reduce their tax bill. However, many countries have rules to prevent this type of tax avoidance - known as thin capitalisation rules - but in Ireland there are none. As a result, a holding company with nominal share capital is in a position to fund its operations by virtually unlimited borrowings and interest on these borrowings can be deducted for tax. Meanwhile, the directors can laugh all the way to the bank.

There are also no 'Controlled Foreign Company' regulations that designate income from subsidiaries of Irish registered companies as taxable in Ireland. In other countries, CFC rules demand that tax be paid on profits of a foreign subsidiary, even if they are not distributed as dividends. The absence of CFC rules is marketed heavily by the Industrial Development Authority when Ireland is pushed as a venue for holding companies. Subsidiaries of these holding companies tend to be located throughout Europe, the Middle East and Africa. The big advantage is that no tax is imposed on the profits, dividends or capital gains that flow in.

Ireland offers extraordinarily generous support for wealthy people who want to take their money out of Ireland. A corporation can be formally incorporated in Jersey, - where even more lax provisions prevail - and resident in Ireland for tax purposes. It can then receive streams of income from its subsidiaries across the world and pay out huge dividends on the profits. But these dividends will not be taxed if the person or company receiving them is resident in another EU state or one of the many countries Ireland has a tax treaty with.

Up to recently, Ireland allowed companies to be incorporated in Ireland but not tax resident. They merely had to show that they were effectively controlled from elsewhere. They could do this by having their board of directors meet regularly in another country and have regular conference calls with directors based in Ireland. This loophole was abolished after the US senate began to investigate the 'double Irish scam' whereby US companies were using this to dodge taxes. However, even though it is officially abolished there is a 'grandfather clause' to allow companies who originally enjoyed this provision before the date of its abolition to continue to benefit from it until 2020.

Ireland offers special tax breaks for companies involved in Research and Development. These began in 2004 when a special tax credit of 25% was available for expenditure on R and D but this was then extended in the 2015 budget when a special rate of 6.25%, known as a 'Knowledge Development Box' rate for intellectual property, was introduced. The official explanation for this strategy was that it aimed to create an information society. In reality, however, the R and D tax reliefs are tailor made for the pharmaceutical industry and, with slightly more onerous paper work, for the software industry. These can claim that much of their products are based on 'intangible' knowledge, which is patent protected by showing that some research and development has been carried out in Ireland. The US parent company will conduct most of the research in its home country and then - at the final stage- transfer some additional research work to Ireland. It can then licence the Intellectual Property rights to an Irish subsidiary and gain tax free income from it because the Irish government has written its tax laws to help this type of activity. However, the scope for manipulation is massive. Two hundred special audits were carried out in 2013 and it was found 'several multinational firms have been found to be aggres-

[19] Tax Justice Network, Statement on Transfer Pricing, 21 March 2012

sively and improperly claiming tax credits for research and development to lower their corporation tax bills'.[20]

The Apple case has exposed how major corporations also benefit from individual tax rulings from the Revenue Commissioners. When a multi-national is establishing in Ireland or plans to expand its operations, its representatives typically meet with the Revenue Commissioners to get 'Advanced Price Agreements'. These are essentially understandings of how transfer pricing will work and what will be considered to be taxable income. In the case of an Apple subsidiary, a ruling meant that it paid less than 1% of its income on tax from 2003 onwards and this declined even further to 0.005% in 2014. In defence of these arrangements, the Irish government admitted that, 'Ireland does not have a statutorily binding tax ruling system'.[21] In other words, there are many more cases of such rulings being made. In reply to a Dáil question, Finance Minister Noonan stated that 99 rulings were given to companies in 2010, 128 in 2011 and 108 in 2012.[22] This information was only made available because it was requested by the EU Commission. In general, the Irish state refuses to divulge any details of such rulings, citing confidentiality. However, it may be assumed that other companies benefit from such arrangements as the Irish government is appealing the EU Commission ruling on the basis that Apple received no special treatment.

These measures have helped to establish Ireland as one of the premier tax havens in the world. There is now overwhelming evidence that corporations are artificially declaring greater business activity and profits in Ireland purely for tax purposes. The table below from Martin O'Sullivan was presented as testimony to a US hearing on tax havens. It illustrates how profits per Irish worker are exceptionally high and comparable to that of other tax havens, with the exception of Bermuda and Barbados. Despite the attraction of the latter, however, more profits are declared in Ireland because it has the semblance of real economic activity and an aura of greater respectability.

Table 3: Profits and Profitability of US Multinationals in 2008.

	Before Tax Profits ($m)	Effe- ctive Tax Rate	Profit as a % of sales	Profit as a % of assets	Profit as a % of worker compen- sation	• • Profit per worker
Ireland	$46,337	7.3%	18.6%	117%	708%	$520,640
Switzerland	$16,352	11.5%	5.9%	141%	189%	$200,638
Bermuda	$8,354	4.8%	14.3%	132%	2,234%	$2,610,625
Barbados	$44,263	6.9%	38.0%	251%	11,218%	$4,263,000
Singapore	$12,255	8.1%	4.3%	84%	227%	$103,157
Five Tax Havens Total	$87,561	7.9%	10.0%	119%	417%	$298,334
World Wide Total	$408,720	35.2%	7.9%	42%	93%	$40,372

Source: Martin O' Sullivan Testimony to Committee on Ways and Means, US House of Representatives, January 20, 2011. Based on data from Bureau of Economic Analysis of the US Department of Commerce, Data do not include banks.

c) Property

Construction and property have traditionally been highly attractive for Irish capitalists. The building industry is a better-protected sector than others as it is more difficult to import cement and bulky materials than, say, washing machines or computers. Irish capitalists who invested in construction were, therefore, sheltered from the full rigors of competition on the global markets. The property market is also more easily influenced by state intervention. The capital-spending programmes of the state or its taxation policy can quickly expand the market. The state is also a major landlord and where it decides to rent can have a major impact on individual property values. At a local level, decisions on land re-zoning can bring about major speculative gains. Political relations are, therefore, a necessary part of business in this sector and the Irish wealthy are more than adept at establishing these connections.

Property speculation creates the possibility of short-term profits and this is typically the time frame that a weaker form of capitalism prefers. Large loans can be taken from banks and can be re-paid quickly if the market is booming. Simon Kelly, son of the

[20]'Multi-nationals 'exaggerated' research activity to lower tax bills' *Irish Times*, 3 September 2015
[21]'State to 'vigorously defend' position as EC probes Apple's tax deal' *Irish Independent* 12/06/2014
[22]Dáil Debates, Vol.883 no 1 Written Answers 82-91

property developer Paddy Kelly, summed up the mentality, 'when the market heated up, buying meant winning: every time you bought land, you made money. It seemed as easy as that'.[23] Irish capitalists, therefore, saw property as nearly risk free with little capital tied up in machinery over an extended period. The mania for property was most evident during the Celtic Tiger years. In 1999, a third of all lending to Irish capitalists went to property and construction but, by 2007, this had jumped to three quarters. Ireland was constructing more housing units per head of population than anywhere else in Europe.

And then, of course, the bubble burst. The Irish rich stood to lose billions but, fortunately for them the state was there to lend a helping hand - even if it led to a housing crisis.

In order to salvage as much of their fortunes, as they could, FG led governments adopted a number of measures to boost the property market. They cut back on social housing and introduced a number of schemes to subsidise private landlords who housed those in need. In addition, they resorted once more to the tactics of facilitating tax dodging to attract in US 'vulture funds' to buy up distressed Irish property and thus help re-start a property boom. Tax relief - in the form of Section 23 tax breaks, the Seaside Resort Scheme, and a student accommodation relief scheme - had traditionally been used by Fianna Fáil to stimulate property speculation prior to the Celtic Tiger collapse. Fine Gael, however, moved to even more dramatic reliefs to turn a property bust into a recovery. Their strategy was to bring foreign capital into Ireland's distressed property market and state official and senior politicians actively engaged with the lords of finance. The Department of Finance met with investment fund managers on 65 occasions between 2013 and 2014, and Enda Kenny personally held a private meeting with Blackstone in late 2011. The Minister for Finance, Michael Noonan, met with Lone Star capital three times and with Apollo capital twice in 2013 and 2014. The government also put in place, a number of specific measures to help these funds avoid tax.

At an early stage they introduced a limited 'Capital Gains Tax holiday' which exempted any gain realised on the sale of real estate purchased between 7 December 2011 and 31 December 2014 and held for at least seven years from Capital Gains Tax. Non-resident investor funds could also limit their tax liability to 20% of rental income, in addition to enjoying the CGT holiday. Wealthy investors in property were also encouraged to form Qualifying Investor Alternative Investment Funds (QIAIF). These were simply funds that were regulated and registered with the authorities. A host of helpful Irish tax planners from legal and accountancy firms were on hand to do the necessary paper work. Once the QIAIFs were registered, rich people could enjoy a tax exempt vehicle for property speculation. They did not have to pay tax on rental income or pay capital gains tax on the profits they might make from resale. The only condition was that they were not Irish resident. There were no withholding or exit taxes applying on income distributions or redemption payments made by an Irish QIAIF to non-Irish resident investors. In the word of PWC, 'the Irish QIAIF is an exceptionally efficient real estate holding vehicle.'[24]

As if this were not enough, wealthy people could also invoke the Section 110 provision to write off tax by balancing their liabilities against apparent loans - often from parent companies. They could also use a strategy of 'orphan' charitable trusts to buy up property and reduce their tax liability even further.

The chief economist with the Central Bank has estimated that the vulture funds have bought up €300 billion of Irish assets but only a small fraction of these are liable for tax.[25] The largest purchasers of Irish loan books have been Goldman Sachs,

[23]S. Kelly, *Breakfast with Anglo*, Dublin: Penguin Ireland, 2010, p.36.

[24]PWC, *Irish Real Estate Investment Structures*, Dublin: PWC, 2016 p.4

[25]'€300 billion of assets in Irish vulture funds' `http://www.todayfm.com/300-billion-assets-in-Irish-vulture-funds`

Cerberus, Deutsche Bank, Lone Star, CarVal and Apollo. These companies often hire Irish front men - often from among the very builders and bankers who helped trigger the 2008 crash - and tax planners from lucrative accountancy and legal firms. Apollo Management, for example, is a particularly interesting case. It is owned by the former Drexel Burnham Lamber banker Leon Black – one of the richest men on Wall Street but it is fronted up by Brian Goggin, the former CEO of Bank of Ireland who retired on a pension package of €626,000 a year.

The vulture funds have made fortunes buying up Irish distressed assets but have paid virtually no tax. Goldman Sachs subsidiary Beltany generated income of €44 million in 2014 - but paid just €250 in corporation tax. Cerberus generated more than €140 million of revenue on its Irish assets, but paid less than €2,500 in tax. Cayman-linked Mars Capital generated revenue of €14 million in 2014 but also paid just €250. So too did Launceston Property Finance, a spin off from the Luxembourg-registered CarVal which generated €16 million.

Unstable

Ireland's role as the respectable Atlantic tax haven is detrimental for Irish society in a host of ways. It helps to create an extremely unequal society where the poorest sections are deprived of proper public services. The strategy of boosting the property market, for example, has had a major impact on those who pay exorbitant rents or who have been rendered homeless.

Sometimes, however, the issue is posed as: 'do we want better public services OR reduced taxes'. The Nevin Institute, for example, point to Ireland's relatively overall low tax take as a proportion of GDP and suggest that it is better to retain taxes such as the USC because it is 'progressive' and will help fund public services.[26] But this framing assumes that there is a mythical 'taxpayer' who has been cast adrift from any class position or social relations. It accepts the parameters set by Irish state and focuses on how revenue from income, indirect taxes and excise can be divided up. However the tax loopholes for corporate sector and the absence of a wealth tax means that Irish workers are paying more tax just to maintain basic services. This has become particularly apparent since the Celtic Tiger crash when the state's strategy was to offload the burden of paying for the crash on to the mass of the population. These were hit with extra taxes to bail out banks and to protect the existing tax haven.

Workers on average income pay an extra €800 a year due to changes in tax bands. The PAYE sector as a whole is contributing €4 billion more in a Universal Social Charge, with half of that coming from those with incomes less than 440,000. This is on top of extra user fees for water and a tax on the family home. Instead of accepting a parameter of more income tax cuts versus spending on public services - which is the dominant framing in the political discourse - it would be more appropriate to examine ways in which corporations and the wealthy could pay more tax in order to cut taxes on workers and improve public services.

Tax dodging has other less obvious detrimental effects on Irish society, some of which are captured in the concept of a 'financial curse' developed by Nicholas Shaxson and John Christensen.[27] It leads to an oversupply of credit which causes the type of severe distortions evident in the Irish property market during the late Celtic Tiger era. Vast amounts of mobile finance in search of 'tax neutrality' can also crowd out other forms of investment by raising property prices. Moreover by generating high salaries for a few they can distort education and training. A culture of tax dodging reduces political discourse to a debate about how best to 'attract' foreign investment. Every item from environmental controls to the regulation of labour standards is viewed through

[26] Nevin Institute Opening Statement to Select Committee on Budgetary Oversight, 6 September 2016 `http://www.nerinstitute.net/blog/2016/09/13/opening-statement-to-the-budgetary-oversight-commi/`

[27] N. Shaxson and J. Christensen, *The Finance Curse: How oversized financial centres attack democracy and corrupt economies*, London: Tax Justice Network 2013

the prism of how it might attract or repel foreign investment. The local advocates for the tax dodgers - the large accountancy and legal firms - assume greater dominance over political debate. Typically, they shift from finding tax loopholes to acting as research consultants who win tenders from government departments to draw up reports which restrict parameters for debate. Inside the machinery of the state, the principal advocate for foreign investment - the Industrial Development Authority- gains more influence and even freedom to issue pronouncements on behalf of its clients.

The overall economy is increasingly at the mercy of volatile capital flows. When there is an abundance of distressed assets for sale, there is an influx of capital seeking quick profit and tax neutrality. But in a jittery world market when corporations require a 'flight to safety', emerging economies suffer from severe dislocations due to the outflows of capital. In Ireland's case there is already a significant growth in income outflow in the form of royalties and dividend payments as Table 4 illustrates.

Table 4: Net Factor income to the rest of the world (000s).

Year	Net Factor Income to the rest of World
1995	-5,948
2000	-15,327
2005	-24,819
2010	-28,457
2015	-53,173

Source: CSO National Income and Expenditure Series.

In the longer term there is an even deeper threat to the Irish tax haven.

Global capitalism has entered a period of instability and stagnation. In response to the crash of 2008, many of the advanced economies engaged in 'quantitative easing' to stimulate demand and investment. This in turn has produced a new fiscal crisis for many states as governments run up large debts. According to McKinsey Global Institute, global government debt more than doubled from $22 trillion in 2000 to $58 trillion in 2014 (figures are in constant 2013 exchange rate).[28] This represents an increase in the global debt to GDP ratio from 246% to 286%. Significantly, these large increases are accompanied by rising household and corporate debt. Much of this debt has been undertaken by the most advanced economies as these have been particularly worried by the continuing slowdown of their economies.[29] These in turn have the power to exert pressure on other states that are deemed to be depriving them of tax revenue.

This is the background to a new discourse about 'cracking down on tax havens'. The OECD has developed an agenda of demanding transparency and country by country reporting of profit and income. The attack on tax havens is by no means a determined one and in the short term Ireland has continued to attract tax dodging investment. But in the longer term, the mere fact that it has begun to be named as a tax haven represents a threat to its continued existence.

The other major problem which Ireland faces arises from Brexit. The centrepiece of the current tax dodging strategy is to offer investors a location within the EU that has the appearance of compliance with wider EU directives but which contains enough loopholes for tax reduction. Behind the appearances lay a practice that amounted to a game of 'beggar thy neighbour'. Ireland took advantage of EU membership to attract footloose investment but sought to skive off revenue from its larger neighbours by allowing corporations to funnel profits made in Germany, France or Italy through Ireland. As long as it was seen as a minor player on the edge of Europe, it was able to sail below the radar and not attract too much attention. But in the new era after the EU Commission's Apple judgement, it will no longer be able to do this. Moreover, it has lost a major ally in the City of London and by extension, the British government, who afforded it some protection from these continental pressures.

Both these developments mean that an economic strategy that relies on tax dodging is inherently unstable. Ireland is set to become a weak link in European capitalism.

[28] McKinsey Global Institute, *Debt and (not Much) Global DeLeveraging*, McKinsey and Company 2015 p.11

[29] *ibid.* p.26