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Jim Stewart
Associate Professor in Finance
School of Business
Trinity College
Dublin, 2



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Associate Professor in Finance
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Trinity College,
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**Associate Professor in Finance
School of Business,
Trinity College,
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Abstract

The view that Ireland is a tax haven has received widespread publicity following the Google appearance before the Public Accounts Committee in the U.K. and the report of the U.S. Senate Subcommittee on offshore profit shifting and Apple Computer.

The Irish Government responded to the U.S. Senate Report by stating that the Report was flawed in several respects. This paper summarises the U.S. Senate Subcommittee evidence that Ireland is a tax haven and considers in detail the response of the Irish Government. The paper presents evidence indicating that several companies claiming to be located for corporate tax purposes in another jurisdiction are in fact 'managed and controlled' in Ireland. The OECD currently does not classify any country as a tax haven and lists only one country with harmful tax practices, yet several countries have features of tax havens. In addition many countries (including Ireland) have introduced tax arrangements for dealing with large businesses which have been criticized as treating them more favorably than other tax payers.

The paper concludes that Ireland is not a tax haven but has features of a tax haven.

Key words: Senate Report and Apple, tax havens, corporation tax and Ireland.

Is Ireland a Tax Haven ?¹

1. Google, Apple and Ireland

The view that Ireland is a tax haven has received widespread publicity following the Google appearance before the Public Accounts Committee in the U.K. and the report of the U.S. Senate Subcommittee on offshore profit shifting and Apple Computer.

Evidence presented to the Public Accounts Committee showed that Google has substantial operations in the U.K., employing 1500 (Public Accounts Committee, 2012, Q461) and generated \$18 billion in sales (13% of global sales) in the period 2006-2011 (Q201, 2013). Yet just \$16 million was paid in corporation taxes in this period. The Public Accounts Committee concluded (2013, p. 5):-

“Google defends its tax position by claiming that its sales of advertising space to UK clients take place in Ireland—an argument which we find deeply unconvincing on the basis of evidence that, despite sales being billed from Ireland, most sales revenue is generated by staff in the UK. It is quite clear to us that sales to UK clients are the primary purpose, responsibility and result of its UK operation, and that the processing of sales through Google Ireland has no purpose other than to avoid UK corporation tax”.

A Google subsidiary in Ireland (Google Ireland Ltd.) accounts for 92% of Google sales outside the U.S. Google Ireland sales for 2011 amounted to €12.457 billion, but resulted in a pre-tax profit of €24 million, largely due to an unexplained payment referred to as “administrative expenses” of €9.02 billion. This is likely to be royalty payments paid to its parent, Google Ireland Holdings, which is registered in Ireland but “administered from Bermuda” (Public Accounts Committee, 2012, Q475)². Google operations in Ireland are central to Google’s non-U.S. operations and to its tax strategy.

Other countries such as France and Germany face similar issues in relation to Google (Fouquet and Mawed, 2012).

The U.S. Senate report on Apple computer (Permanent Subcommittee on Investigations, 2013a) found one subsidiary located in Ireland (Apple Sales International) had no employees, but had income of \$22 billion in 2011 and paid \$10 million in tax. This compares with income before tax for the group as a whole of \$108 billion for 2011 with tax payments shown in the profit and Loss account of \$14 billion. The U.S. Senate Report groups Ireland along with Bermuda and the Cayman Islands as a tax haven (p. 3) and states (p. 21) that

¹ This is a revised version of a paper given at the TASC/FEPs Conference “Reconstructing the European Economy” 14th June 2013. The author would like to thank all those who made comments at this conference. The author would also like to thank Mary Farrell for her tax expertise. The author is responsible for all errors and omissions.

² The Address of Google Ireland Holdings is given as c/o Google Bermuda Ltd. Clarendon House, 2 Church St. Bermuda (Source B1, 28th September, 2012).

“Ireland has essentially functioned as a tax haven for Apple, providing it with minimal income tax rates approaching zero”. This led to a letter from the Irish Ambassador to the U.S. Senate Permanent Subcommittee on Investigations, denying that Ireland was a tax haven (see appendix)³ .

This letter in turn led to a response from Senators Levin and McCain which stated that “most reasonable people would agree that negotiating special tax arrangements that allow companies to pay little or no income tax meets a common sense definition of a tax haven” (source:- <http://www.levin.senate.gov/newsroom/press/release/levin-mccain>).

The debate about whether Ireland is a tax haven and evidence presented by the Irish Government is of considerable interest from a public policy perspective and is the subject of this paper.

The response by the Irish government to the memorandum from the Permanent Subcommittee on Investigations, argued that Ireland is not a tax haven because:-

1. (a) “there is no possibility of individual special tax rates being negotiated for companies”.
- (b) The tax rates calculated refer to the companies entire profits “as if those companies are tax-resident in Ireland” and concludes “the tax rates attributed to Ireland are wrong and misleading”.
2. None of “the four indicators” developed by the OECD apply to Ireland. (“None of these criteria applies to Ireland”).

Both of these responses deserve careful analysis. A country that seeks economic success and a strong industrial base is unlikely to succeed by becoming a ‘tax-haven’ or developing several of the features of a tax haven. If Ireland is not a ‘tax haven’ or does not have tax haven type features, then being classified as a tax haven has resulted in severe ‘reputational’ and economic damage.

2. The U.S. Senate Subcommittee on Investigations Report and the “tax rate”

The Senate Subcommittee Report makes several references to the tax rate faced by Apple Sales International (ASI). The other subsidiary discussed in the Report, Apple Operations International “has no declared tax residency in the world” (Subcommittee Report, 2013, p, 4)⁴

³ This is available on the Department of Finance website at:-

<http://www.finance.gov.ie/documents/pressreleases/2013/mn226.pdf>

⁴ Pearson Ltd (Owner of the Financial Times) is an early example (1979) of a company which was not located in any tax jurisdiction. This was achieved by holding board meetings in constantly changing locations. Although challenged in the UK courts, this structure was found to be compatible with U.K. tax law (Brooks, 2013, p. 64).

In an opening statement Senator Levin (21/5/2013) states “Apple has quietly negotiated with the Irish government an income tax rate of less than 2 percent, well under the Irish statutory rate of 12 percent as well as the tax rates of other European countries and the United States”.

The Report makes the following comments on the tax rate of ASI:-

ASI “pays a corporate tax rate of 2% or less”; (p. 2);

“Apple has negotiated a special corporate tax rate of less than 2%” (p. 17);

“Ireland has provided Apple affiliates with a special tax rate that is substantially below its already low statutory rate of 12 percent” and cites information provided by Apple as follows:-

“Apple told the Subcommittee that, for the three year period from 2009 to 2011, ASI paid an Irish corporate income tax that was consistently far below 1%”.

The Report quotes Apple as stating:-

“Since the early 1990’s the Government of Ireland has calculated Apple’s taxable income in such a way as to produce an effective rate in the low single digits.... The rate has varied from year to year, but since 2003 has been 2% or less” (Report, p. 20).

While the Senate report refers to a “tax rate” and a “special tax rate”, it is clear from the quotation from the Apple submission that they are referring to the effective tax rate. This is made quite clear in the response by the Senate committee to the letter from the Irish ambassador where they state “Apple had a special arrangement with the Irish government that, since 2003, resulted in an effective tax rate of 2 percent or less”

In relation to the second point, the Irish Government’s position is that companies such as the Apple subsidiaries (referred to in the Senate Report) are not tax resident in Ireland. This position is supported by Apple who state in a submission to the Senate subcommittee that although both subsidiaries (AOI and ASI) are registered in Ireland they do “not meet the requirements for tax residency in Ireland” (Senate subcommittee Report, p. 24). The Revenue Commissioners treatment of these companies as being non tax resident in Ireland, has considerable policy implications (Stewart, 2013) but also has implications for Revenue statistics relating to corporate tax payments in Ireland and the size of the corporate tax base. These firms are however included in CSO data for example, in the census of Industrial Production, employment figures, and in IDA data relating for example to employment by FDI.

The status of being registered in Ireland and having operations in Ireland but not being tax resident is controversial. The Senate sub-committee described such arrangements as “an absurdity, one that we have not seen other companies use” (opening statement by Senator Levin). Elsewhere the Senate Report refers to the “alleged status as a non-tax resident”.

The tax strategy followed by Apple has been described in numerous media reports as the 'double Irish' (Drucker, 2010), and is often accompanied with elaborate diagrams (Drucker, 2013, Duhigg and Kocieniewski, D. 2012).

The nub of the tax strategy described in the Senate Report arise from differences between what the U.S. defines as tax resident and that is where the company is registered⁵, and the rules used in Ireland which use a 'management and control test'⁶. The country where a company is registered and incorporated is generally regarded as its legal home. A key part of the Revenue Commissioners case for these companies not being subject to Irish corporation tax is that although registered in Ireland, under Irish tax law, they are not 'managed and controlled' from Ireland, and hence are not tax resident in Ireland.

The Senate subcommittee Report quotes Apple (2013a, p. 23) as stating that AOI (Apple Operations International) although incorporated in Ireland since 1980 "has not declared a tax residency in Ireland or any other country". Similarly ASI (Apple Sales International "is incorporated in Ireland, is not a tax resident in the U.S., and does not meet the requirements for tax residency in Ireland" (Senate Subcommittee, 2013b p. 24). Hence it is of interest to examine other available evidence in relation to other subsidiaries that state that they are not located in Ireland for tax purposes.

Earlier research identified a number of companies that used a 'bi-location strategy. That is that the firm itself or its parent was 'bi-located' that is registered in Ireland, but located for corporate tax purposes in another country (Stewart, 2013, Table 10)⁷.

For example, one firm (Synopsys (Ireland) Ltd.), although showing some corporate tax payments in Ireland in its annual accounts, as in the case of Apple Sales International⁸, also states in the directors report that "the company operates from its business address, 2 Church St. Hamilton, Bermuda".

⁵ The US IRS defines a domestic corporation is one "that was created or organized in the United States or under the laws of the United States, any of its states, or the District of Columbia". A foreign corporation is defined as "one that does not fit the definition of a domestic corporation". See IRS "Foreign Persons", available at <http://www.irs.gov/Individuals/International-Taxpayers/Foreign-Persons>, as of 19th April, 2013. See also T. Tyson and G. Sack, "IRC – General Discussion", available at <http://www.irs.gov/pub/irs-tege/eotopici92.pdf>.

⁶ Irish tax law is likely to follow UK case law in deciding on location. The case law rule for determining the residence of a company follows the ruling in *De Beers Consolidated Mines Ltd v Howe*. The rule is as follows:- "A company resides ... where its real business is carried on ... and the real business is carried on where the central management and control actually abides". Source:- INTM120060 - Company residence: the case law rule - central management and control.

⁷ None of the countries where firms state they are located for corporation tax purposes have a double tax treaty with Ireland, see <http://www.revenue.ie/en/practitioner/law/tax-treaties.html#section9>.

⁸ The Senate Subcommittee (2013a, footnote 1010) cite information from Apple that "ASI is an operating company that files an Irish corporate tax return and pays Irish corporate income tax as required by Ireland". The subcommittee Report states that ASI paid \$10 million in tax in 2011, but it is not stated how much (if any) of this was paid in Ireland. The Senate Subcommittee (2013b, p. 24) stated that until 2012, ASI had no employees, but was assigned 250 employees in 2012. Expert testimony to the Senate subcommittee (Harvey, 2013, footnote 43) stated that after 2009 ASI does not "meet Irish residency requirements and therefore is only taxed on certain limited business activity".

The 'location' of Synopsys Ireland Limited



Source: Google Maps.

Table (1) shows some features of these subsidiaries who are bi-located⁹. The first point to note is that some of these companies pay other taxes in Ireland such as VAT. Some companies report employees in Ireland and hence pay employer's PRSI. Hence it is not correct to state that the "companies concerned are not tax-resident in Ireland" (See letter from Irish Ambassador to the U.S.). They are tax resident in Ireland for some tax purposes, but are not tax resident for corporate tax payments.

A second point is that in most cases secretarial services are provided where the company is located for corporate tax purposes, for example Bermuda. In a number of cases secretarial services are shown in company accounts as being provided by an independent firm. These are not employees of the firms for which those services are provided. Such corporate structure arrangements are often associated with 'brass plate' or 'letter-box companies'¹⁰. In other cases, such as Abbott Laboratories Vascular Enterprises, and Google Ireland Holdings, the company secretary is located in the U.S., and in other cases such as McAfee Ireland Holdings and Adobe Software Trading Company, the company secretary is located in Ireland.

This latter point is important because it is difficult to argue that the location of secretarial services offshore is the main criteria for deeming a firm to be "managed and controlled" offshore for corporate tax purposes.

⁹ Apple was excluded, because Apple does not disclose financial and other information for subsidiaries operating in Ireland.

¹⁰ The Senate subcommittee refer to these companies as "shell corporations" (p. 10).

A third point is that in all cases bar one, company records are not located where the company is deemed to be managed and controlled for corporation tax purposes. Company records are either held where the registered office is located or where the parent company is located.

Finally in all cases accounts were audited by a firm based in Ireland.

In conclusion the available evidence indicates that these firms are not 'managed and controlled' in another jurisdiction, but rather have the same level of management and control as other subsidiaries of MNC's in Ireland that are subject to Irish corporation tax.

Table (1)

Some Features of subsidiaries that are Bi-located companies¹

	Location	Location of Secretary	Location of accounting records	Other tax payments	Employees
Abbott Laboratories Vascular Enterprises	Bermuda	Illinois, U.S.	Abbot Park, Illinois, U.S.A.	Refers to VAT payments; Refers to social welfare costs	228
McAfee Ireland Holdings Ltd	Bermuda	Goodbody Secretarial, Dublin	Not stated	'Turnover excludes VAT'	
Synopsys Ireland Ltd.	Bermuda	Company accounts states it "operates from its Biness address Clarendon House, 2 Church St. Bermuda" ²	2, Church St. Hamilton Bermuda. 'Supplemental records' are kept at 800, East Middlefield Road, Mountain View California	Refers to 'social welfare costs.	not disclosed
Google Ireland Holdings	Bermuda	1395, Marinovitch Way, Los Altos, California	Not disclosed	No accounts published	not disclosed
BMC Software European Holdings	Cayman Islands	N. Gray, Cayman Islands	2101, City West Boulevard, Houston, Texas	Refers to social welfare costs for 2010	0
Overture Search Services Holco Ltd.	Cayman Islands	N. Gray, Cayman Islands, Intertrust Trustees, Cayman Islands ³ .	Pinacle 1, Block B8, East Point Business Park, Dublin, 3.		0
Linkedin Technology Ltd.	Isle of Man	Isle of Man	Gardner House, Wilton Place, Dublin,		0
Symantec Holdings Ltd	Jersey	Ogier Corporate Services (Jersey) Ltd ⁴ .	Company Hq, 350 Ellis St., Mountain View, California, 94043, U.S.A.		0
Adobe Software Trading Company Ltd.	Not disclosed ⁵	City West Business Campus. Accounts say "Adobe Software Trading Company is not subject to Irish Corporation Tax" ⁶ .	4-6 City Walk Business Campus, Dublin, 24.	Refers to Irish VAT Refers to social welfare costs	Employees in Ireland not disclosed
Novell Software International ⁷	Cayman Islands	Avalon Management Ltd, Grand Cayman, Cayman Islands	1800, South Noveil Place, Utah, U.S.		0

Notes

- (1). All companies are registered in Ireland. The data is the most recently filed at Companies Registration Office.
- (2). This is the address of Conyers, Dill and Pearman a law firm, who provide company administration and other services.
- (3). The web site of this firm states "Intertrust Cayman, the largest trust and corporate services provider in Cayman, offers a full range of corporate, fiduciary, fund administration and company secretarial services".
- (4). The web site of this firms states "The Ogier Group provides legal, trust, fund and corporate administration services across the world's major independent financial centres.
- (5) Adobe Software Trading company moved ts registered office from Barbados to Bermuda and then to Dublin in 2007.
- (6) In 2006 the registered office was given as Ram Re House, Hamilton, Bermuda. A footnote to the accounts (footnote, 7) states that the Adobe Software Trading Company is not subject to Irish corporate tax. According to filings at Companies Registration Office the new address from 16th June 2008 is Citywest Business Park.
- (7). This firm was not included in Stewart (2013) as it is privately owned and no parent company accounts are available, but was identified as bi-located in "Home and Away, Tax Affairs in Bermuda, Cayman Islands, and the Netherlands", Irish Times, May31st 2013.

3. The OECD Criteria for Tax Havens

The OECD was requested in 1996 to develop measures to counter “the distorting effects of harmful tax competition”. The OECD produced a report in 1998 (OECD 1998), and listed four factors used to identify tax havens (OECD, 1998, p. 23). These are:-

- (a) No or only nominal taxes;
- (b) Lack of effective exchange of information;
- (c) Lack of transparency;
- (d) No substantial activities

These are the four criteria referred to in the letter from the Irish Ambassador to the U.S. Senate Permanent Subcommittee on Investigations, that would identify a country as a tax haven.

A Report issued by the OECD (2000) identified 35 ‘jurisdictions’ which met the tax haven criteria (p. 17). Some countries were omitted because they made an “advance commitment” to eliminate harmful tax practices. Tax havens were subsequently classified by the OECD into cooperative tax havens that agree to remove harmful tax practices (35 countries) and uncooperative tax havens (3 countries). No tax haven is currently regarded as uncooperative¹¹.

In its most recent Progress Report the OECD (2012) state that all countries have “substantially implementes the internationally agreed tax standard”, with one exception (Nairu) which has agreed to implement the standrd but have not yet done so.

For these reasons a country such as Bermuda in commenting on a UK based tax treaty negotiated with crown dependencies (“multilateral convention on mutual assistance”), prior to the G8 summit meeting in June 2013, can state “we are already there on transparency. Our regulation is second to none”. “We are not a tax haven”¹²

The OECD has also listed key factors in identifying ‘harmful tax regimes’ (OECD, 1998, p. 27). These are:-

- (a) No or low effective tax rates;
- (b) “Ring fencing” of regimes;
- (c) Lack of transparency;
- (d) Lack of effective exchange of information.

The OECD (2000, p. 12-14) identified a number of preferential tax regimes as potentially being harmful’. A Progress Report (OECD, 2004, p. 9) stated that of 47 potentially harmful

¹¹ See OECD list of Unco-operative Tax Havens, <http://www.oecd.org/countries/monaco/lisrofunco-operativetaxhavens.htm>

¹² Vanessa Holder, George Parker and Robin Harding, “Bermuda deals blow to tax pact”, Financial Times, June 13, 2013.

regimes identified, 18 regimes have been or are in the process of being abolished, 14 have been amended to remove harmful tax practices and 13 have been found not to be harmful (OECD, 2004, p. 9). 'Holding company regimes' were not identified as potentially harmful in the 2004 Report because "further analysis" was needed (OECD, 2004, p. 5). The OECD however concluded that holding company regimes were not harmful with the possible exception of Luxembourg (OECD, 2004, par. 15). The OECD concluded in a 2006 report that of the 47 potentially harmful regimes identified in 2000, the Luxembourg holding company regime was the only one that was harmful (OECD, 2006, par. 14).

It is interesting to note that Luxembourg criticised the section of the OECD Report on harmful tax competition because the Report deliberately limited itself to "financial activities, excluding industrial and commercial activities" (OECD, 1998, p. 74).

Hence there is no country that meets the four OECD criteria of being a tax haven, and only one country that the OECD consider to have a harmful tax practice. This is at variance with other research. The U.S. Government Accounting Office, (2008, pp. 12-13) lists 50 countries including Ireland, Luxembourg and Switzerland, as tax havens, and more recently the report by the U.S. Senate Permanent Subcommittee on Investigations (2013, p. 3) groups Ireland, with Bermuda and the Cayman Islands as tax havens. Some lists are quite extensive because many countries have some tax haven tax type features¹³. The Netherlands for example has low or zero rates of corporate tax on holding companies, and the UK exempts certain residents (referred to as 'non-domiciled') from tax on their foreign income. On this basis Ireland is not a 'pure' tax haven in the classic sense but has many of the features of a tax haven.

These features are:-

- a. Low corporation tax rates;
- b. Ease of incorporation;
- c. Relatively light touch regulation;
- d. Tax and other legislation that is very responsive to the needs of multinational corporations.

4. The Role of Enhanced Cooperation with Large Businesses

Ireland in common to revenue authorities in many other OECD members, developed what has been described as an "enhanced relationship" with large tax payers and their tax

¹³ In 1987 the Tax Justice Network identified 82 tax havens and offshore financial centers (Tax Justice Network, 2007).

intermediaries. The intention was to reduce “aggressive tax planning”, by developing a relationship based on “cooperation and trust” (OECD, 2013a, p. 13). The OECD report that in Ireland the “cooperative compliance approach” has proved to be “very successful” (OECD, 2013a, p. 80), and that “the ongoing interaction between large business and the Large Case Division provides a channel for constructive dialogue within an environment of trust where issues can be resolved in a professional manner” (OECD, 2013a, p. 80)¹⁴. The Report also states that this approach “has helped Irish Revenue to gain a better understanding of the needs and behavior of large business”.

In Ireland a recent example of the resolution of issues and needs of large business, is a change in the tax treatment of royalty payments in Ireland via a “statement of practice”¹⁵. This change enabled Google to adapt a less complex tax (though more opaque) tax strategy so that payments were no longer routed to Bermuda via a Netherlands subsidiary, but could be remitted directly from Ireland¹⁶.

In the UK the revenue authorities (HMRC) introduced “an enhanced cooperative regime” in 2006 dealing with the 800 largest businesses in the UK but with a staff of only 1200, and stated that it is “committed to taking the business perspective into consideration in implementing policy decisions and designing systems and processes, through more consistent consultation” (OECD, 2013a, p. 18). However there has been considerable criticism of the operation of the tax regime for large business in the U.K.. The U.K. Public Accounts Committee states that (2013, p. 13):-

“We have long been concerned that, despite HMRC having customer relationship managers for large businesses to understand these organisations, and its overriding duty to collect all tax due, it has not done enough to tackle corporate tax avoidance. In the case of Google, we could not understand how a few journalists, whistleblowers and MPs have uncovered what the Department had not”.

An earlier report by the U.K. Public Accounts Committee expressed “serious concerns that large companies are treated more favourably by [HMRC] than other taxpayers” and that large companies in particular “appear to receive preferential treatment compared to small businesses and individuals” (Public Accounts Committee, 2011, p. 4).

¹⁴ The OECD Report also notes that uniquely in Ireland, it was also necessary to invest in “social skills” for revenue officials in the Large Case Division (OECD, 2013, p. 69). It is also of interest in judging the success or otherwise of this program, that it was not possible to identify any large company or IDA sponsored firm in the list of revenue defaulters, available at <http://www.revenue.ie/en/press/defaulters/archive/#section12>.

¹⁵ In a comment a law firm (Mason, Hayes and Curran (2011) state “The Irish tax authorities have issued a practice statement as part of a suite of incentive measures to increase Ireland's attractiveness as a location for intellectual property. The practice statement, which takes effect from 26th July 2010, allows patent royalties to be paid by an Irish tax resident company to a foreign company, including an entity that is resident in a non-treaty jurisdiction, without Irish withholding tax, ie patent royalties can be paid to Cayman/ Bermuda Companies free of withholding tax. It should no longer be necessary to use back to back conduit structures by using locations such as Luxemburg or Malta”. Although Google stated to the UK Public Accounts Committee that they do not have any payments from Ireland that they “would describe as royalties” Public Accounts Committee (2012), Q 566, p. 52.

¹⁶ See Public Accounts Committee (2012), Q 542, p. 49.

Apart from issues of equity and possible conflicting policy objectives, a key concern in developing “enhanced cooperation” between revenue authorities and large corporations is the imbalance in the level of expertise and resources available to revenue authorities and large firms.

5. Conclusion

Ireland is not and cannot be a pure tax haven. Personal income taxes are similar to the OECD average as a per cent of total tax (7.4% for Ireland versus an OECD average of 8.7%) and taxes on consumption are higher than the OECD average (34.5% compared with 31.3%)¹⁷. Tax revenue is needed to fund vital public expenditure on for example schools and hospitals.

Tax incentives erode the tax base in a number of ways (1) through direct tax loss which may or may not result in higher tax revenues; (2) through the use of tax incentives in unanticipated ways. This may be further exacerbated by lobbying by affected groups; (3) As a result tax incentives tend to diffuse both to other sectors and geographically. The net result is that the burden of taxation shifts to activities and individuals that are unable to avoid tax¹⁸.

The main influence on investment decision making is the possibility of making a profit. A primary focus on tax strategy is a distraction, and according to survey and other evidence is not a major determinant of investment¹⁹

A tax based industrial policy will not result in an innovative, research led economy. A tax based industrial policy leads to an emphasis on tax reduction. Those skilled in knowledge of the tax system become senior management. In turn their skills require constant updating and they become dependent on tax advisors. The dominance of accounting/taxation specialists in senior managerial positions is at the expense of those skilled in new product development, production expertise, logistics, and marketing. The tax avoidance industry and those firms skilled in understanding the tax system and selling tax services become large and powerful and may exert considerable influence in formulating tax policy and legislation.

Long run economic success will not follow from countries introducing tax haven type features of which a low corporate tax rate is an essential feature.

¹⁷ OECD Revenue Statistics 2012, Tables 10 and 26.

¹⁸ This phenomenon is sometimes summarized as “only the little people pay taxes”.

¹⁹ Shaxson and O’Hagen (2013) cite Warren Buffet and Paul O’Neill to the effect that tax rates and tax incentives have minimal effect on their investment decision making.

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Appendix

AMBASÁID NA HÉIREANN
TELEPHONE: (202) 462-3939
FAX: (202) 232-5993



EMBASSY OF IRELAND
2234 MASSACHUSETTS AVE., N.W.
WASHINGTON, D.C. 20008

29 May 2013

The Honorable Carl Levin, Chairman
The Honorable John McCain, Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington DC 20510

Dear Senators Levin and McCain,

I am writing to you in relation to the hearing of the Permanent Subcommittee on Investigations entitled '*Offshore Profit Shifting and the US Tax Code - Part 2 (Apple Inc.)*' on 21 May 2013 and certain references to Ireland that were based on the related *Memorandum* to the Permanent Subcommittee.

I fully recognise that the purpose of the hearing was to examine the options for reform of the US tax code, in which Ireland has no role. It is important, nevertheless, to address two points particularly that arose at the hearing and that relate specifically to the Irish tax system.

First, Ireland's tax system is set out in statute - so there is no possibility of individual special tax rates being negotiated for companies. All tax resident companies in Ireland are liable to corporation tax on their chargeable income at the rate of 12.5% on trading income and at 25% on non-trading income. The tax rates attributed to Ireland in the Memorandum appear to be calculated by reference to the companies' entire profits, as if those companies are tax-resident in Ireland. This is despite the fact that the Memorandum clearly states that the companies concerned are *not* tax-resident in Ireland. The tax rates attributed to Ireland are wrong and misleading.

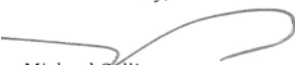
Second, building on this analysis, the Memorandum refers to Ireland as a 'tax haven'. As you will be aware, the OECD has identified four key indicators of a tax haven. None of these criteria applies to Ireland.

Ireland is committed to working closely with the United States through the operation of our Double Taxation Agreement and, most recently, in becoming one of the first countries in the world to sign an *Agreement with the United States to Improve International Tax Compliance and to Implement FATCA* (Foreign Account Tax Compliance Act).

We are, furthermore, fully supportive of international efforts to address aggressive tax planning and we are an active participant, together with the United States, in the OECD project addressing Base Erosion and Profit Shifting (BEPS). We are also committed to playing a leading role within the European Union during our Presidency in securing progress on a number of key files in the area of tax evasion and tax fraud.

I hope this information will be of assistance to you in your ongoing work. I am copying this letter to the other members of the Permanent Subcommittee on Investigations for their information.

Yours sincerely,



Michael Collins
Ambassador of Ireland



Institute for International Integration Studies

The Sutherland Centre, Trinity College Dublin, Dublin 2, Ireland

