Corporate Tax Games: A Case Study of Ireland in the Global Politics of Tax

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List of Abbreviations

AIE	Automatic Information Exchange
ATAD	Anti-Tax Avoidance Directive
AOE	Apple Operations Europe
AmCham	American Chamber of Commerce in Ireland
APA	Advance Pricing Agreement
ASI	Apple Sales International
AFAT	African Tax Administration Forum
ATR	Advance Tax Ruling
BEAT	Base Erosion Anti-Abuse Tax
BEPS	Base Erosion and Profit Shifting
BTD	Book and Tax Differences
CBO	Congressional Budget Office
CCAB	Consultative Committee of Accountancy Bodies
CFC	Controlled Foreign Company
CIT	Corporate Income Tax
CSA	Cost Sharing Agreement
CSO	Central Statistics Office
DIRT	Deposit Interest Retention Tax
DIDS	Double Irish Dutch Sandwich
EEC	European Economic Community
EC	European Commission
ECJ	European Court of Justice
ESR	Export Sales Relief
ETR	Effective Tax Rate
EU	European Union
FATCA	Foreign Account Tax Compliance Act
FDI	Foreign Direct Investment
FDII	Foreign Derived Intangible Income
GAMF	Google, Apple, Microsoft, Facebook
GDP	Gross Domestic Product
GILTI	Global Intangible Low-Taxed Income
GNI*	Modified Gross National Income
GVA	Gross Value Added
GVC	Global Value Chain
GWC	Global Wealth Chains
HR	Human Resources
IBEC	Irish Business and Employers Confederation
IBFD	International Bureau of Fiscal Documentation
IC	Insurance Company
ICT	Information Communication and Technology
ICTU	Irish Congress of Trade Unions
IDA	Industrial Development Authority
IFS	International Financial Services
IFSC	International Financial Services Centre
IMF	International Monetary Fund
IP	Intellectual Property

IRNR	Irish registered, non-tax resident
IRS	Inland Revenue Service
IT	Information Technology
LIC	Low Income Countries
MEP	Member of Parliament
MNC	Multi-national Corporation
NERI	Nevin Economic Research Institute
NFC	Non-financial Corporation
NFI	Net Factor Income
NGO	Non-Governmental Organisation
OECD	Organisation of Economic Cooperation and Development
UNCTAD	United Nations Conference on Trade and Development
UN	United Nations
R&D	Research and Development
RTE	Radio Telefís Éireann
SARP	Special Assignee Relief Programme
SEC	Security and Exchange Commission
SPE	Special Purpose Entity
SPV	Special Purpose Vehicle
TALC	Tax Advisory Liaison Committee
TCJA	Tax Cuts and Jobs Act
TLO	Transnational legal order
TJN	Tax Justice Network
KDB	Knowledge Development Box

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Abstract

Optimistic observers have heralded the current, unprecedented global tax reforms as the beginning of the end of the tax haven system. Whether this is the case depends on the (already doubtful) robustness of the proposed reforms and the responses of multinational corporations and states that have an interest in sustaining international tax competition. Measuring change in this area is no easy task, not least given the ambiguous nature of corporate tax avoidance. Ireland is an ideal example of ambiguity in the world of corporate tax. This is because it has features of a tax haven, and yet, also has features that do not fit the classic description. The thesis studies a particular skill within Ireland's Foreign Direct Investment (FDI) skillset that is hidden. This is the skill of playing corporate tax games well. A theory of global tax games is developed, defined as institutionalised, reflexive modes of strategic interaction among states and corporations, constituted by the configuration of four fundamental dimensions of tax. These dimensions are the rate of taxation, the jurisdiction which makes the claim, the capital owner responsible for any payment, and the definition of the return upon which the tax is claimed. These dimensions are configured in different ways. Each game has a distinctive 'internal' mode of coordination where actors compete, mutually adjust, cooperate and contest over tax claims, over an uncertain period of time, using tax rules and other institutional mechanisms. This approach tracks the evolving and interacting state-corporate engagement across the tax dimensions as a form of 'infrastructural power' (Braun, 2020), represented by tax games. By bridging the 'state-centered' perspective of the 'classic' tax competition literature and the transnationally focused literature associated with corporate 'global wealth chains' (Seabrooke and Wigan, 2017), a firmer analytical basis is offered to explore potential change in global tax.

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Chapter 1: Introduction

1.1 Introduction to Tax Games

The Irish Minister for Finance announced that the cabinet had approved the introduction of a minimum tax of 15 per cent on large multi-national companies[1] as part of an ongoing global tax reform process. It was the seventh of October 2021, and business executives beamed into the camera for the national evening news broadcast. They indicated that this was great news for corporate tax certainty and for the future of foreign direct investment into Ireland. The journalist posed a question: '… that tax haven label that Ireland has got, do you think this is going to do anything to change that?' The corporate tax advisor being interviewed responded, 'you won't have Ireland to kick around under the tax haven heading. We never were [a tax haven], but we certainly aren't now'[2]. It was a classic Irish response, indicating both the ambiguity surrounding Ireland's relationship with corporate tax and a determination to be seen as a legitimate jurisdiction in the world of global tax.

Ireland is perhaps an ideal example of ambiguity in the world of corporate tax. This is because it has features of a tax haven, and yet, also has features that do not fit the classic description. Ireland does not have a zero per cent corporate tax rate, it attracts very significant employment from foreign direct investment (FDI) and collects high levels of corporate tax revenue. Yet, in contrast with this, the Irish economy has volatile and significant inflows and outflows of capital; has disproportionate levels of profits booked there by U.S. corporations; and the scale of its corporate tax receipts is

[1] Companies with business operations in at least one other country other than their home country. Throughout the thesis, multi-national companies (MNC), multi-national enterprises (MNE) and global corporations are phrases used interchangeably.
[2] RTE, 'Raising corporation tax rate the "right decision" – Donohoe' https://www.rte.ie/news/politics/2021/1007/1252382-corporation-tax/, accessed 1st October 2023

disproportionate by EU standards relative to the size of its economy. This ambiguity is of concern for two key reasons. Firstly, while there is a lack of international consensus on what a tax haven is, efforts toward a more just global corporate tax system generally focus on ending misalignment of profit from the economic activity that generates it. This misalignment is a key feature of the operation of corporate tax avoidance (OECD, 2015). Ireland shows clear signs of profit misalignment (Tørsløv, Wier, & Zucman, 2018). However, without clarity on the mechanisms underlying this misalignment, and the factors upholding these mechanisms, it is difficult to identify what precisely requires changing and how to make that change happen.

Secondly, while Ireland's significant misalignment indicates 'virtual' FDI (Dietsch and Rixen, 2016), it is not clear what its relation is to 'real' FDI. This is an important puzzle to solve regarding Ireland because if Ireland's FDI model were to change there would be implications for the many livelihoods that depend on the ways FDI currently works in Ireland. What implications would ending artificial FDI in Ireland have for its real FDI? While this is not definitively knowable, understanding the 'real-artificial' entanglement of FDI provides a better understanding of the nature of FDI in Ireland as a whole. As FDI is the major element of Ireland's industrial policy, a more complete understanding of its nature, in turn, provides a more accurate understanding of the successes and failures of Ireland's developmental state (Ó Riain, 2004).

While there is great difficulty in quantifying corporate tax avoidance - where corporations seek to minimise their tax payments within the boundaries of the law - it is an activity that is estimated to run into the hundreds of billions of euro per year in unpaid tax revenue (Cobham and Janksy, 2020)[3]. The practice also deepens already

[3] Individual tax avoidance and corporate tax evasion are also significant global problems but are not the subject of the thesis.

existing economic and social inequalities. Because the tax is charged on the profits of corporations before the distribution of dividends to shareholders, tax avoidance heightens inequalities between corporate shareholders and other people. The largest category of corporate shareholders are private institutional investors, who benefit from tax avoidance through receipt of higher dividend payments[4]. The result is the transfer of potential public revenues to the private ownership of already comparatively wealthy individuals. High concentrations of wealth in society mean that a higher after-tax capital share of income will increase inequality. This reinforces existing social divides by further embedding wealth inequality across class, race and gender lines (Dean and Warris, 2020; Lahey, 2009, Saez and Zucman, 2019).

Corporate tax avoidance also curtails the tax revenue collection options of states within the context of their overall tax systems[5]. Competitiveness between states to attract investment has intensified because multi-national companies can pick and choose from a menu of tax rates and regimes to lower their overall global tax bills (Pistor, 2019). In this highly competitive context, the corporate tax rates of states around the world have rapidly declined on average since the 1980s (Clausing, Saez and Zucman, 2021). In addition, tax incentives and reliefs are now widely offered by states to reduce their effective tax rates (OECD, 2021). Corporations disproportionately book their profits in low tax jurisdictions to secure these low effective rates. This disconnects profit - and the resulting right to tax it - from the economic activity that generated it. This is an age-old method of corporate tax

[4] The OECD (2019) examined the ownership of the largest 10,000 publicly listed corporations (out of a global total of 41,000). The shareholders included institutional investors, public sector owners, private corporations and strategic individual investors. The largest ownership category is institutional investors holding 41% of the global market capitalisation.

[5] This is true even for states, such as Ireland, which collects very high levels of corporate tax revenue due to disproportionate U.S. corporate profit shifting to Ireland. Ireland has developed a dependency within its tax system upon the corporate tax which allows it to delay reform of other elements of its tax system.

avoidance, not dissimilar from when colonial era owners of companies extracted profit from colonies and booked the profits in imperial centres of their original residence (Picciotto, 2007). Contemporary circumstances have, however, vastly changed the methods of corporate tax avoidance. These days, tax avoidance options are buttressed through new types of corporate practice. These practices include the fragmentation of global corporations (Phillips, Petersen and Palan (2021), the growth in corporate financialised activity and 'asset management strategies' (Morgan, 2016; Seabrooke & Wigan, 2017, 2022), and in some cases, a new mode of profit generation through the collection of user data among global digital corporations (Christensen and Hearson, 2019). These activities all widen the scope for profit generation but in a way that is disconnected from traditional value chains of production. As a result, the link between economic activity and profit, along with the right to tax those profits, has become one of the key battle lines in the global tax debate[6].

Global tax avoidance has given rise to notions of 'real' FDI, which is framed in contrast to 'artificial' FDI[7]. There is great complexity in tracing what might be viewed as 'real' and 'artificial' FDI, and the precise roles of states in hosting these activities. 'Real' economic activity is generally understood as generated by employment and 'artificial' FDI as investment driven by profit maximising, and financial accounting decisions disconnected from employment (e.g. Polyak, 2023; Tørsløv, Wier, & Zucman, 2018). Disentangling these categories is not at all straightforward because concentrations of corporate activity associated with low employment can occur for a range of reasons. These include tax avoidance (and evasion) but also regulatory

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[6] This is apparent in the negotiations around 'Pillar 1' of the OECD global corporate tax reforms, discussed further in Chapter 6.
[7] 'Fictitious' and 'phantom' FDI and 'paper profits' are also terms in use to describe 'artificial FDI' by corporations (Tørsløv, Wier, & Zucman, 2018).

motivations which can include the facilitation of, among other things, financialised activity and/or protection of data relating to financial transactions. Often advantages arising from both tax and regulatory rules can be found together in the same jurisdiction, increasing the difficulty of disentangling the motivations of corporate decision-making (Seabrooke and Wigan, 2022).

States play different roles within and are affected differently by the onshore-offshore world. The perceived villains of the story tend to be characterised as the 'classic' tax havens such as Bermuda and the Cayman Islands which host finance with little associated employment and have either no corporate tax or zero corporate tax rates. These are followed by 'low tax' jurisdictions such as Ireland, which have low corporate taxes and host a combination of real and artificial FDI. While 'higher tax' states, both in the Global North and Global South, have comparatively higher statutory corporate tax rates (averaging around 25 per cent), their effective rates can be much lower due to generous tax incentives and reliefs on offer[8]. These diverse features indicate very distinct political dynamics within states, the details of which are not always easily discernible to observers.

State strategies in tax competition are devised in response to the global dynamics of FDI. These dynamics bear the historic imprints of the global economic hegemons, the U.K. and the U.S. Perhaps the most extreme manifestations of this history are the initial pathways which formed the 'classic' tax havens. Many tax havens were externally shaped as part of a post-colonial onshore-offshore dynamic designed to preserve the wealth of an onshore elite (Ogle, 2017). This is an important and

[8] There is of course diversity among states in between these crude groupings, and there are unusual cases. For example, the U.S. traditionally had a high corporate tax rate of 35 per cent until 2017, but allowed significant offshore tax avoidance as U.S. corporations could defer tax payments on offshore profits. The U.S. tax rate on foreign profits was reduced to 21 per cent in 2018.

somewhat understated truth about the dynamics of the zero/low tax haven world, which is that it operates in symbiotic relationships with onshore private individual and corporate wealth (Palan, Murphy and Chavagneux, 2010). This onshore-offshore world is an uncoordinated 'development model' of sorts, operating globally, across varieties of political economies. The state-corporate dynamics of the model are highly varied and complex, but their collective results are the protection of the wealth of global corporations and their owners, while providing important resources (mostly) to zero and low tax states (Tørsløv, Wier, & Zucman, 2018). These resources have, in turn, become very important to the economic strategies of those zero/low tax states.

This thesis focuses on the case of Ireland within this complex onshore-offshore geography. Ireland's FDI base is almost entirely dominated by U.S. corporations. As we will see, the U.S. system of governance has historically sustained the legal tax avoidance options for 'its' home corporations and shareholders. This is highly contested in the domestic politics of the U.S. In turn, Ireland's response has been to continually adjust its approach which has resulted in two successful things. Firstly, the maintenance of the centrality of Ireland to the global tax avoidance network of U.S. corporations and, secondly, the maintenance of an (often tenuous) political legitimacy in the world of global tax. This legitimacy can be measured by the sustained (and increased) involvement in Ireland by U.S. corporations on both 'real' and 'artificial' FDI fronts, and by the comparatively privileged political treatment of Ireland by EU states[9] and by the U.S. Neither of these outcomes were ever guaranteed, however. They have come under serious pressure at different times since the inception of Ireland's

[9] The EU periodically produces lists of non-cooperative tax jurisdictions which never include EU members states (Dean and Warris, 2020).

FDI strategy and have in general, been highly 'managed' outcomes by the Irish state, though Irish control over the outcomes has not always been politically possible.

This thesis argues that this complex, multi-level activity can be understood best as 'tax games'. A tax game is defined in the thesis as an institutionalised, reflexive and strategic mode of interaction constituted by four dimensions of corporate tax. These four dimensions embody the fundamental distributional actions of corporate tax, and the multi-jurisdictions and corporate actors involved in coordinating corporate tax. The dimensions are the **rate** of taxation, the **jurisdiction** which makes the claim, the capital **owner** responsible for any payment, and the definition of the **return** upon which the tax is claimed.

These dimensions are configured in different ways and with different directions of influence in different games. Each tax game has a distinctive, internal mode of coordination where actors compete, mutually adjust, cooperate, and contest over tax claims, over uncertain periods of time, using the rules and other institutional mechanisms central to each particular game. In addition to being a distributional game over tax claims, the game is politically coordinated by states and corporations setting 'boundaries of legitimacy' in the game which relate to how far the game should extend, in terms of its scale and design. This boundary-setting process is power-laden and difficult to trace. To assist in tracing it, the thesis follows Braun (2020) and Pistor's (2023) interpretation of 'infrastructural power' as power operating at a distance, through every-day, public-private 'entanglements' in the market. While 'traditional' forms of state-business power (like lobbying and threat of exit) are at play in the tax games, the tax games are a form of 'infrastructural power'. Infrastructural power is defined as *state maintenance of, and dependence upon, elements of corporate organisational capacities and practice which reproduces business power.* The Irish tax

games are reproduced through everyday 'entanglements' between market participants and public sector actors, which make markets work in particular ways. Crucially, efforts to ensure the operation of everyday interactions in economic life reinforce the power imbalances that underpin these interactions. The operations of infrastructural power in the tax games are found to be rooted in the institutionalisation of the games, Ireland's tax rules, and their entanglement with other jurisdictions. In this sense, the tax games are infrastructural power in action. The tax games framework therefore makes it possible to answer the central question of the thesis: *how* did Ireland win the tax games?

1.2 Ireland: A critical case of entangled real-artificial FDI

Ireland is a critical case of entangled real-artificial FDI. Its enormous success as a location in attracting 'real' FDI is well documented (e.g. Ó Riain, 2004). The early success in attracting U.S. 'star firms' was due to foresight in the prioritisation of growing multi-national sectors, including Information and Communications Technologies (ICT)[10], chemicals, pharmaceuticals and finance and financial services, led by a key state agency, the Irish Industrial Authority (IDA). The IDA is a historically unusual institution in Ireland as it was given high levels of independence in carrying out its work, which included the freedom to carry out targeted, relationship-building over time with strategically identified, promising companies (Ó Riain, 2004, p.75-6). This resulted in Ireland attracting firms that would become globally significant (e.g. Pfizer in 1969, Digital, 1971, Apple in 1981). This success continued through the decades where the IDA monitored sectoral developments of interest closely e.g. by

[10] Throughout the thesis the terms 'ICT' and 'tech' are used interchangeably

identifying bio-pharma as an emerging market priority (Van Egeraat and Barry, 2013). This strategy has resulted in progressively increasing levels of FDI employment over time (see Table 1.1)

Table 1. 1: FDI Employment by Sector, 2018

	Employment (in thousands)	**% Change 2012-2018**
Manufacturing	93.7	20%
Retail	90.8	17%
Information and Communication	50.2	51%
Finance and Insurance Activities	44.3	22%
Scientific and Technical Activities	19.6	69%
Administrative and Support Services	39.7	31%

Source: CSO

The Irish mode of attracting FDI was, from the beginning, 'a highly statist project' (Ó Riain, 2014, p.27) and was given strategic significance as a national employment creation strategy. Tax related early initiatives included the creation of a tax-free export zone in the West of Ireland followed by low tax rates in manufacturing and financial services in the 1980s. Generous state grants along with capital allowances on tangible investment were part of the official package of attracting foreign firms. In addition to tax advantages, Ireland's position as a member of the European single market, it's stable political and legal system, and use of the English language were all attractive to U.S. firms.

On the manufacturing side, U.S. investment to Ireland was orientated toward export into the European single market with firms focused on turning imported intermediate inputs into goods ready for export. This role in low value production has been something of a trap from which Ireland (like other countries) has struggled to emerge. In attempts to compete for higher value investment, national education policy was 'highly interwoven' with Ireland's FDI-oriented policy' (Bailey and Lenihan, 2015,

p.55). For example, while Ireland had some of the lowest levels of engineers and systems analysts in the world in 1980, it had, by the early 1990s, moved to among the top five OECD countries in terms of percentage of university level graduates in science fields in the workforce (Ó Riain, 2004, p.75). Research funding became more centralised and targeted over time, although with mixed results (Ó Riain, 2013). R&D spending in Ireland is however among the lowest among Western European countries (NERI, 2023). Ireland had one of the fastest growing economies in the world in the 1990s, well-known as its 'Celtic Tiger period. As Ó Riain (2004 p.9) writes 'the industrial heart of the Celtic Tiger was its connection to the global information economy and the growth and boom in the ICT industries of the 1980s and 1990s, respectively'. FDI was central to the ICT industry in Ireland, but also state supported indigenous industry.

The global financial crash, in Ireland amplified by an ill governed and poorly regulated domestic banking system, brought a halt to Ireland's exceptional growth in 2008. In an extraordinary turnaround, Ireland returned to growth from 2013 onward. The FDI sector was an important contributor to this post-crash recovery. The FDI enclave could thrive because it was not reliant on the domestic economy and therefore insulated from the effects of domestic austerity. This time, levels of FDI were even higher than in the Celtic Tiger heyday in the 1990s (Gallagher et al, 2021). This was partially due to the acceleration of tax driven FDI strategies (Tørsløv, Wier, & Zucman, 2018) but also due to significantly increased employment.

The scale and type of FDI in Ireland has led to claims that Ireland has an 'FDI-led growth model'. This is defined by Bohle and Regan (2021, p.82) as resulting from countries engaging in processing components of a global value chain for export to bigger or more developed markets, rather than developing 'an industrial base from

their own resources'. The priority provided to FDI in Ireland has arguably hampered the achievement of a more broad-based industrial policy. For example, the emphasis on the low tax model has meant comparative underinvestment in public infrastructure and R&D. In the vacuum of a robust domestic industrial policy, Ireland is significantly dependent on the continued success of its FDI regime.

Interestingly, while Ireland's FDI strategy began as an employment creation strategy, the tax revenue rewards have become increasingly important. As Table 1.2 indicates corporation tax has increased more than ten-fold between 1995 and 2021. In contrast, income tax has increased only just over five-fold.

Table 1. 2: Corporate Tax Receipts, Selected Years

					€million	
Tax Name	**1995**	**2005**	**2015**	**2020**	**2021**	**1995-2021 ratio**
Income tax (includes heath and income levy and universal social charge for relevant years)	5,519	13,095	19,053	23,428	27,768	5.03
Corporation tax	1,458	5,503	6,872	11,953	15,323	10.51
Value Added taxes	3,736	12,373	11,831	12,753	16,604	4.44
Total: income taxes, corporation tax, capital gains, VAT	**7,038**	**20,581**	**26,599**	**36,333**	**44,737**	

The surge in corporate tax revenue played a major role in keeping the public finances on a sustainable trajectory (Gallagher et al, 2021). This enormous surge in tax revenues, particularly since 2015, was driven by an extraordinarily low number of firms, thought to be as few as ten foreign companies (Cronin, 2023). This surge in tax revenue was largely unforeseen. So, while (counter to the 'liberal state' narrative) Ireland has a very carefully managed state-led FDI strategy, its levels of control over the outcomes vary, indicating that 'managing' artificial FDI is highly complex where outcomes are not always foreseen.

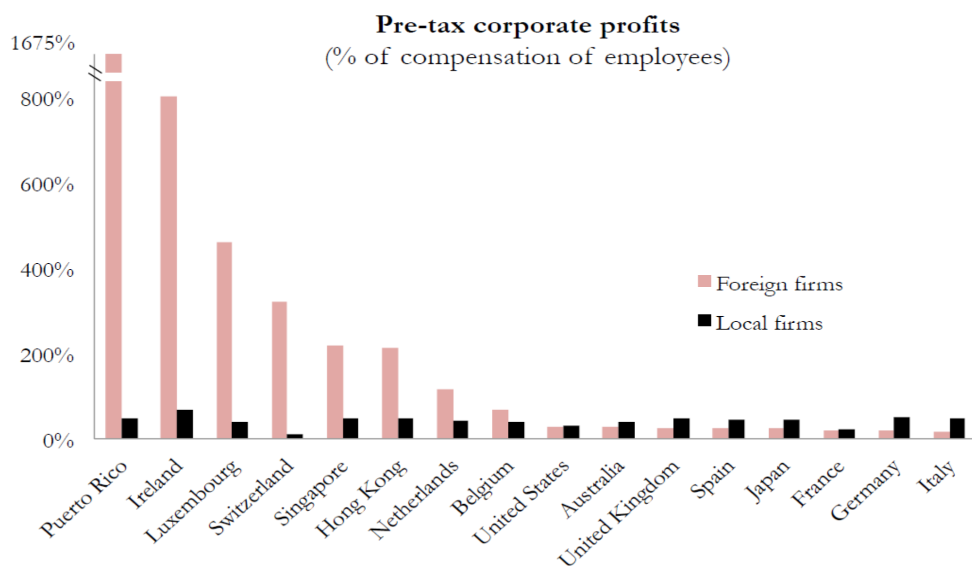
Ireland's FDI success has been accompanied by significant political pressures over its tax model, not least due to what became globally infamous tax schemes including the 'Double Irish Dutch Sandwich' and the unprecedented EC legal challenge to the tax treatment of Apple by the Irish Revenue authorities. The Irish Government response at the time was that this is a problem of the U.S. tax system (Noonan, 2012). This is partially true, however, the politics of these structures is in fact complex, rooted in the interaction of a range of inter-state tax rules. For example, while Ireland (mostly correctly) took the political heat for the Double Irish, it is less acknowledged that the effectiveness of the structure was extended by the interaction of U.S. and Irish rules with those of The Netherlands (Gallagher et al, 2021). Once the Double Irish was closed down, a similar structure replaced it for a time through the help of another EU jurisdiction, that of Malta (a structure termed the 'Single Malt'). This drives home the point that the politics of corporate tax is multi-lateral and international, its worst 'offenders' being among a selection of quite diverse states.

Understanding the workings of 'real-artificial' FDI entanglements is particularly important at this juncture in the politics of global tax. If, as some believe, 'zero tax' jurisdictions may have reached the 'end point' of their model (OECD, 2022), Ireland stands in clear contrast. Ireland has emerged as a significant beneficiary of the global reforms so far[11]. Does this mean that Ireland isn't a tax haven? Or that Ireland's particular model has a resistance to the global reforms? The political strategy of the Irish state has been to provide the impression of a country running a highly successful FDI strategy albeit with some problematic, tax driven elements on its fringe. This is a partially plausible position, given that Ireland does not meet the (albeit narrow and

[11] Ireland is currently experiencing significant additional investment in intangible assets, bonanza levels of corporate tax receipts, and continued strong FDI employment.

contested) OECD definition of a tax haven (Tobin and Walsh, 2013) and the genuine difficulty in interpreting macro-economic statistics relating to the Irish economy. In this analytical vacuum, three broad positions have emerged in the literature and in political commentary about Ireland's 'tax haven-ness'. The first strand includes analysis of Ireland's 'real' FDI strategy. This analysis provides important insights into Ireland's FDI state capabilities (e.g. Ó Riain, 2004). The second strand is comprised of important economic analyses seeking to quantify the 'artificial' financial flows through Ireland. While some of the reasons underpinning these flows are referred to as for 'tax or regulatory purposes', they are generally referred to as resulting from 'globalised effects' without significant further analysis as to how these effects come about (Galstyan, 2018). The purpose of this literature is to better measure domestic economic productivity in Ireland. This literature has been strengthened by the analyses of Tørsløv, Wier, & Zucman (2018) which links the large scale of profits in Ireland to U.S. corporate profit shifting for tax avoidance purposes (see Figure 1.1 showing profit to wage ratios in Ireland in 2015).

Figure 1. 1: Profit to wage ratios in Ireland



Source: Tørsløv, Wier, & Zucman (2018). Note: Data relates to profit to wage ratios in 2015

A third strand of work recognises the broad range of tax avoidance activity through Ireland (e.g. O' Boyle and Allen, 2021). Despite some important exceptions from this more critical strand of literature (e.g. Stewart (2018) and Killian (2013a)), this strand tends to describe tax avoidance through Ireland in disconnection with Ireland's wider FDI model[12]. Taken together, these literatures tend to either underplay or ignore the scale of artificial FDI or treat it as disconnected from Ireland's wider FDI strategy, which is in turn a central element of Ireland's development model. This has arguably led to an understatement of two very important things in the Irish political economy. Firstly, that 'real' and 'artificial' FDI in Ireland are both significant in Ireland and are partially entangled within the same sectors and firms. Secondly, that there are diverse levels of leverage and impacts across the onshore-offshore world in relation to tax avoidance and Ireland has developed a skilled political approach to navigating this. This high level of political investment by Ireland mirrors a high level of economic dependency on winning the tax games. The thesis takes the view that better understanding these dynamics is a route toward breaking this dependency.

1.3 Thesis Contribution

Chapter two of the thesis reviews the relevant literature and sets out the theoretical framework of tax games. Chapter Three outlines the key methodological decisions made in the thesis and the risks and trade-offs associated with them. Chapter Four, is

[12] O' Boyle and Allen (2021 p.212), while providing critically important examples of corporate tax avoidance in Ireland, incorrectly call for increased tax payments in Ireland by global corporations on the profits booked in Ireland. This reflects an important misconception common in Irish-produced public discourse on Ireland, which is that corporations do not pay enough tax in Ireland. This fails to appreciate that corporations pay too much tax in Ireland because they book too much profit in Ireland as part of their global tax strategies.

the first of three empirical chapters. It examines the relationship between four dimensions of corporate tax in Ireland, as well as the areas in the Irish economy which feature misalignment of corporate profit and disconnection with the domestic economy. The most tax driven aspects of these areas of the economy are then discussed through the framework of tax games. Chapter Five tracks three tax games centred around intellectual property (IP). The interacting tax rules upon which each game is built are examined along with their specific workings. Chapter Six explores the politics of the tax games in terms of Ireland's tax institutions, its politics of tax and how it is entangled with other jurisdictions. It also discusses three key counter movements against Ireland's tax games and how Ireland has responded. Each chapter is discussed briefly now in turn.

Chapter two reviews the literature on corporate tax avoidance and proposes a theory of 'tax games', which is the central theoretical contribution of the thesis. Exploring the literature on global tax avoidance requires an understanding of several complex things. Firstly, an understanding of the workings of corporate tax avoidance. Secondly, an understanding of their connection to tax havens and, third, an understanding of the implications of the proposed global reforms to end tax competition and tax havens. While there is a tremendous volume of research in these areas, uncertainty and ambiguity are a feature of all three. Chapter Two describes the nature of tax competition which has traditionally manifested itself through the competitive use of tax policy between states as a method of attracting FDI. This includes literature indicating the consistent trends among states of lowering their statutory corporate tax rates, in addition to lowering their effective rates through the provision of additional tax incentives and reliefs, not least relating to IP. The chapter also explores the uncertainty that characterises scholarly understandings of corporate profits and

estimates of tax losses due to a lack of unified and fully transparent approaches to data collection on the finances of global corporations. This chapter also examines the literature on the complex shift from inter-state tax competition around rates and reliefs to more complex avoidance channels. This research tracks these 'tax avoidance tools' (e.g. Milogolov, 2020) including, for example, complex arrangements built around corporate debt or profit shifting through multiple jurisdictions.

One literature that aims to make sense of these things is the research on 'global wealth chains' (Seabrooke and Wigan, 2017 p.2) defined as 'a transacted form of capital operating multi-jurisdictionally for the purposes of wealth creation and protection'. This literature offers a way in to examining the multi-actors, multi-jurisdictions and corporate structures involved in global wealth chain building. While wealth chains are differentiated and acknowledged as more hidden than the traditional global value chain, they are also acknowledged as entangled with them. This indicates the complexity of delineating the 'governance of global wealth chains' (Seabrooke and Wigan, 2017). The politics of global tax governance is also explored in Chapter Two. Its politics is rooted in a post-colonial evolution of on onshore-offshore system as a kind of hidden development model which deeply influences the national systems. This onshore-offshore world is not properly governed because the globalisation and financialisation of corporations has outpaced the now century old legal framework that governs it. The politics of addressing the global legal framework for tax is power laden, dominated by powerful states, and has, so far, failed to address the structural weaknesses in global tax.

In order to offer a framework to make sense of this complexity, Chapter Two sets out a theoretical lens of 'tax games'. 'Game playing' in tax is referred to by tax scholars to describe the pursuit of tax minimisation through 'creative compliance' with tax law

(Picciotto, 2007 p.14). A 'gaming' approach, treats legal rules governing tax as 'material to be worked on' (McBarnet, 2001 p.8). The skill in the tax game involves achieving tax avoidance through 'calculated ambiguity' (Sharman, 2010). This acknowledges a malleability of the boundaries of tax rules and a political and legal cleverness which harnesses this ambiguity to achieve a tax advantage. As outlined in the introduction to this chapter, the tax games have both a structural role through the operations of four dimensions of corporate tax and a political coordination role among a range of actors. Together, the games function as a from of infrastructural power which is the key to what holds them in place.

Chapter Three describes the research methodology of the thesis. The motivation underlying the methodology is to ascertain *why* Ireland has become such a crucial case in global tax. It explains the reasons for applying the tax games framework over other approaches, which is because the games framework offers an opportunity to study the process of change in the tax-driven elements of Ireland's tax model over time. It also allows a tracking of the internal and external modes of coordination within particular games. While acknowledging the truth in many other descriptions of Ireland's tax driven model (as a 'tax haven', a 'higher activity haven', a 'corporate tax haven' etc), this approach allows for an analytical flexibility focused on both the structure and coordination of global tax. Chapter Three outlines the reasons for undertaking a single case study approach. While comparative analyses of particular tax rules are useful, this thesis argues that it the combination of elements of the tax game which makes Ireland's tax driven model 'work'. While it would be very useful to undertake a comparison of tax games with different low tax states at their center, this was outside of the realistic scope of the thesis. Chapter Three also outlines the primary and secondary data utilized in the thesis. Primary data was collected through 26 'elite' interviews. These represent

highly productive research opportunities which provided technical support to the substance of the thesis and previously undocumented political insights. Secondary data is also used. This draws from a wide range of documentary material including, statistical documentation, tax promotional material about Ireland, material on tax rules and documentation recording the political positions of different actors. The risks in the treatment of these data is discussed. Research interviews have to be carefully negotiated in order to access interviewees and secure productive interviews, in addition to applying a critical approach to interpreting their content. Secondary data contained a lot of 'grey literature' which is quite politicized and so also had to be handled critically. The ethical considerations of a research project such as this needed to be handled with care. This related to firstly, ensuring that individuals and corporations are not incorrectly described. This risk was mitigated by focusing on the dominant practices of avoidance within the games, rather than on specific companies. The exception to this is the focus on Apple. However, this was viewed as justified due to the significance of Apple and the availability of a range of official and therefore more credible documentation in relation to its tax avoidance structures. The second ethical consideration related to protecting the anonymity of the interviewees. The steps taken are discussed at length in Chapter three which, for example, include specifically crafted approaches to referencing of interviewees and the use of paraphrasing.

Chapter Four describes six major corporate tax games that occur through Ireland. It begins by outlining the major changes over time in Ireland's corporate tax regime along each of the four dimensions of corporate tax. These changes indicate a story of an Irish state highly focused on the provision of uninterrupted tax advantages to U.S. firms. This involved adjustments and also strategic action by Ireland across the four dimensions of tax. The chapter also traces the areas in the Irish economy which feature

misalignment with profit and disconnection with the domestic economy. The most tax driven aspects of these areas of the economy are then discussed through the framework of six tax games. The six games include: Manufacturing for export (‘60s -’90s), Financial sector and services (‘80s-present) with a focus on aircraft leasing and insurance; Redomiciled firms (2008-circa 2017); the Double Irish-Dutch Sandwich /Single Malt structures (2003-2020); Apple Statelessness (‘90s-2015), and Onshoring (Apple example and others) (2015-present). The tracing of these six tax games indicate an, on the face of it, seamless continuation of tax games for the sectors involved. However, when the tax dimensions are examined, significant reconfiguration and changes to the importance of dimensions can be detected. This indicates a busy and highly managed world of tax games by corporations and the state. The adjustments to the games over time also reflect a greater complexity than the early games. Early games tended to focus on the special tax rates. Over time the focus moved from the tax rate to the interaction of the other three dimensions. This reflects the literature outlining a greater financialisaton and fragmentation of corporations which made playing the tax games easier for corporations to achieve.

Chapter Five outlines the rules and workings of three key tax games constructed around IP in the pharma and tech sectors. This chapter shows IP as a central tool in the tax games, supported by U.S. tax rules. The Irish state is shown as carefully managing the rules to ensure the seamless provision of tax avoidance opportunities. The Irish state also shows itself to be engaged in forward planning to ensure that the IP games are uninterrupted albeit requiring new configurations of dimensions to function. The Irish approach is one of balancing the desire to continue the games while seeking to maintain legitimacy in tax politics. The U.S is shown to be internally weak within its tax institutions in its ability to stop the Ireland-U.S. interaction in the tax games. While

the U.S. made what are likely unintentional errors in its tax rules, once rules were in use in the tax games, they were very difficult to reverse. This reflects the strength of U.S. corporations in the U.S. legal and political system. However, recent tax reforms through the Tax Cuts and Jobs Act (TCJA), coupled with the ending of the Double Irish game, and the normative effects of BEPS reforms, introduced a sudden challenge to the corporations, prompting the current onshoring game, which Ireland was ready to host. The TCJA should have resulted in an increased tax take for the U.S. but does not appear to have been successful in this, indicating how difficult it is politically to achieve robust tax reform. The menu of interacting options across the four dimensions of tax are likely providing enough options for corporations to ensure a continuation of the games.

Chapter Six examines the politics of Ireland's tax games. It outlines a close public-private coalition of institutions which work loosely and at a distance on both tax administration and tax policy formulation. The IDA looms large in both of these spheres. Over the period of the games, especially since the 1980s, a wider circle of private actors have joined this loose coalition sharing technical expertise and market intelligence. This has enabled a highly responsive approach by the Irish state to perceiving challenges to the games and being ready to adapt to rule-based changes. Chapter Six also explores Ireland's approach to its entanglements with other jurisdictions. It is found to have practiced a legally minimalistic approach to ensuring the games always worked within the law, but with little attention to the effects of its rules externally on other jurisdictions. This was centred around maximising its role in the tax games while also maintaining a certain level of tax legitimacy. This legitimacy was upheld by a lack of successful legal challenges to the Irish regime, for example through the rulings of the European Court of Justice (ECJ). The Irish state also

displayed a clear, if fragmented understanding of the importance of the three IP tax games and careful management of Irish tax law to ensure their continuation. Domestically, while there was some critique of the tax model, it did not impact on the tax dimensions. This was partially ensured through the maintenance of a fairly controlled intellectual environment around the theme of corporate tax (interview 25). Ireland's tax games did not go unchallenged. However, it is notable that the most impactful challenges emerged externally from the U.S. and EU. They arose from specific parts of their institutional structures (from the U.S. Senate and the EC). This indicates the contested nature of global tax whereby the US political system overall protects the tax avoidance of its corporations and the EU constitutional rules upholds the legal basis which facilitates tax avoidance.

1.4 Conclusion

These observations point to three realities of the complexities of the onshore-offshore world. Firstly, while global corporate tax reform indicates an inter-state acknowledgement that solutions are required across the geography of the onshore-offshore world, there is less acknowledgement of the diverse levels of political action among states over the problem. Second, as we will see, the methods of tax avoidance shift and adjust on an ongoing basis as states fine-tune their responses to the complexity of action across the onshore-offshore world. The reasons for these adjustments are diverse. In the case of Ireland, they are driven by changes in rules in its main 'onshore partner jurisdiction', the U.S., in addition to political pressures, usually arising from EU or U.S. sources. Despite the apparent robustness of the practice of tax avoidance, this indicates a certain instability underlying the practice of

tax avoidance which requires high levels of management by corporations and states. Third, economic dependency on this ‘hidden’ development model has evolved among offshore states that support tax avoidance. This means that if reforms to stop tax avoidance are weak, new forms of tax avoidance are likely to emerge due to a lack of ready economic alternatives among these states and strong incentives to maintain the tax avoidance model. In addition, if reforms *are* effective, new modes of profit maximisation by corporations are likely to be facilitated by at least some of those same states.

These realities present a twofold challenge for the future of corporate tax. Firstly, because tax avoidance activity is ever-changing and highly path dependent, global reforms will need to be as watertight as possible (something already in doubt). Secondly, barriers to reform are rooted in the interplay of complex national coalitions across onshore and offshore states. If corporate tax avoidance is to be challenged, haven-style states will need to seriously engage with strategies to break national dependencies upon artificial FDI. In turn, onshore ‘home’ states of corporations will need to halt the profiteering privilege awarded to ‘their’ corporations, something that is proving almost impossible in the current U.S. context for example.

This presents quite a political project. If it is to be undertaken, as I hope it will be, the contested terrain upon which corporate tax avoidance currently survives, will need to be better understood. This is because, alongside discomfort in ‘mainstream’ Ireland about its corporate tax regime (Irish Times, 14th Sept 2017) lies a concerned underlying question: would the multi-nationals have come to Ireland without the tax advantages? Many research participants, while acknowledging the importance of non-tax attractions offered by Ireland, believe that tax policy was crucial to Ireland’s development, especially in the early decades of the FDI strategy. This thesis indicates

that tax-based advantages, often achieved in complex ways, were indeed very significant over the period which makes it likely that Ireland’s attraction of real FDI would not have been as successful without it. Whether this is the case or not is unknown. What is clear is that the ambiguity of Ireland’s tax games has curbed an unfettered examination of them. In this partial vacuum, exploring the implications of a different Irish approach to corporate tax, both for Ireland and for the wider world, has a weak analytical basis. It is hoped that this thesis will improve the analytical basis upon which such a discussion might take place.

Chapter Two: Literature Review

2.1 Introduction

Fiscal sociology is a sub field of economic sociology that is specifically concerned with the study of public finance (Rona-Tas, 2020). The 'new fiscal sociology' is preoccupied with taxation, particularly the relationship between taxation and poverty and inequality (Martin and Prasad, 2014). There does not appear to be a specific 'fiscal sociology of corporate taxation', given much of the literature focuses on the taxation of individuals. However, economic and fiscal sociology offer significant insights to understanding corporate tax. These include the relationship between taxation and the state; the changing nature of the corporation; and the contested interests involved in the making of markets. This literature, strengthened by inter-disciplinary research on corporate tax avoidance and the offshore world, offer a rich basis to expand upon the original fiscal sociology concept of 'the tax state'.

Taxation is integral to the emergence of the modern state. In his classic essay 'The crisis of the Tax State' (1918, p.108), fiscal sociologist, Joseph Schumpeter argued 'Taxes not only helped to create the state. They helped to form it' (1918, p.108). Writing at the end of World War I, the Austrian economy was in crisis, deeply indebted from the war. Schumpeter believed that Austria's leaders faced an enormous public challenge to show how taxation could act as a source of additional revenue to pay debts until Austria's currency recovered to its pre-war value. He observed,

> Here, we come to the sociologically important vista which the fiscal position opens before us, and which is our main concern. What does 'failure of the tax state' mean? What is the nature of the tax state? How did it come about? Must it now disappear and why? What are the social processes which are behind the superficial facts of the budget figures? (1918, p.100).

Schumpeter was inquiring into a question which has preoccupied sociologists ever since. What social processes sustain, or undermine, the tax state? Much sociological literature focuses on the relationship between tax collection and the 'quasi-voluntary consent' of citizens (Levi, 1988). This consent is essential, because while fiscal systems depend on a range of sources for revenue, including tax, debt and aid, these sources are all ultimately dependent on tax collection from current, future and, at times, in the case of aid, foreign, taxpayers (Campbell, 2009). As Tilly (1980) points out, the history of state expansion can be viewed as a history of struggles over tax. This is because the largest intervention of states in private life is through taxation. For Tilly, the lifeblood of the fiscal state is tax. For Schumpeter, he believed that saving the Austrian economy would require additional taxes, the scale of which could only be achieved through trust by the people in 'a strong government on the broadest possible base, impressing the public with real power and leadership' (1918 p.122-23). Tilly argues that tracing tax exposes the nature of political regimes and the level of consent within a nation state. This is why fiscal sociology ultimately focuses on what is happening at the meeting point of states and citizens (Mumford, 2019). The structure of the tax system also reveals who has power within a society and who influences the discourse and the decisions. For example, the absence or presence of a tax and the level of the rates reveals power relations. In addition, whether and how there are tax privileges (tax expenditures) reveals power dynamics.

Schumpeter's essay focused on the importance of taxation in the emergence of constitutional governments in early modern Europe. Today, corporate taxation, perhaps above any other tax, raises new challenges for fiscal sociologists in interpreting the tax state. This is due to changes in the behaviour of corporations in the global economy. Desai (2011) for example, views global corporations as operating in

a post-national form. Not only that, but as a result of financialisation, some non-financial corporations now defy this traditional categorisation, having become significantly financialised in how they fund themselves (Davis, 2016). This, we know, has given rise to opportunities for corporate tax avoidance. The scale of these changes has led to arguments for the creation of a transnational social contract on corporate taxation (Mumford, 2019). This raises a set of basic questions about the relationship between the tax state and corporate tax. Is corporate tax a good tax? And on what criteria should that assessment be based (economic, distributional, sustainable, environmental)? What is the relationship between corporate taxpayers and other taxpayers? How does corporate tax shape the relation between low and high tax states? And is cooperation between states on corporate taxation better than competition? These are all important questions which are addressed by the tax competition and fiscal sociology literatures.

In corporate tax avoidance, there is a world of action which occurs in the space between states and corporate taxpayers. This busy world includes state-corporate interaction, along with intermediaries as well as inter-state negotiation. It includes bargaining among these actors in a competitive context. However, the practice of global tax, underpinned by an outdated legal framework, offers a range of avoidance opportunities to corporations. The corporate decisions associated with tax avoidance can also overlap with other decision-making drivers relating to other parts of global business planning. This signals a complex 'entanglement' between productive and artificial investment (Seabrooke and Stausholm, 2023), or between corporate 'value chains' and 'wealth chains' (Seabrooke and Wigan, 2017). States respond to corporate tax avoidance in different ways, sometimes acting to curb it or facilitate it. However,

the substance of these actions and the power of states and corporations to exert control over this world is far from clear.

In order to disentangle this opaque and busy world, a ‘tax games’ framework is proposed. The framework extends the literature outlined above by combining analysis of the distributional and political coordination actions involved in tax driven global wealth chains, among a range of actors, in multi-jurisdictions. A tax games framework traces:

- the evolution of mechanisms of corporate tax avoidance over time and the reasons for that evolution, alongside the inter-jurisdictional rules involved,
- the components of the ‘asset management strategies’ (Seabrooke and Wigan, 2022) in play, and the state-corporate /inter-state action within these strategies,
- the institutional politics unpinning the strategies which are shaped directly and indirectly by a range of actors, at multi-levels of politics.

This approach recognises the dual aspects of corporate tax, which are both distributive and involve coordination. It traces these distributive and coordination aspects across the mechanisms of corporate tax, all of which are governed by states, but which have varying levels of corporate/state control. It recognises that inter-state engagement is not clear cut but rather operates in an evolving onshore-offshore dynamic. And finally, it enables a tracing of change in global tax in the context of these multi-level mechanisms and relations.

2.2. Literature on Corporate Taxation

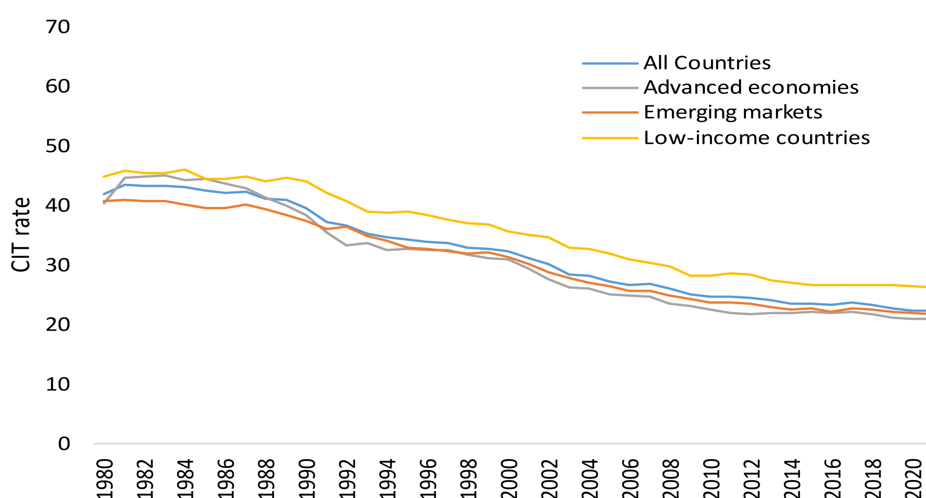
Tax competition occurs between states competing for the mobile investment of corporations and tax revenues. Peter Dietsch (2016, p.232-3) describes tax

competition as ‘interactive tax-setting by independent governments in a non-cooperative, strategic way’. This section discusses ‘tax-setting’, firstly, in relation to inter-state competition on rates and ambiguous data on profits and, secondly, in relation to legal rules and jurisdictions. The politics of global tax & the ‘tax state’ is then discussed.

2.2.1 The Nature of Tax Competition between Jurisdictions: The Form of the Problem

Before we investigate the processes shaping corporate taxation we need to understand the empirical trends in taxation. Important trends relate to the consistent reduction in corporate tax rates among states, especially since the 1980s. Average global corporate tax rates have reduced from close to 50 per cent in 1980 to the low 20s in 2020 (IMF, 2022, see Figure 2.1). Alongside this trend, and notwithstanding significant difficulties with data, there is evidence that global corporate tax avoidance has increased, in particular since the 1990s (Tørsløv, Wier, & Zucman, 2018).

Figure 2. 1: National Corporate Income Tax Rate by Income Group, 1980-2020



Source: IMF Fiscal Monitor, April 2022

National corporate tax rates are perhaps the most visible element of 'tax setting'. Out of 109 jurisdictions studied by the OECD, about two-thirds had corporate tax rates of over 30 per cent in the year 2000, compared to less than one fifth by 2020 (OECD, 2021). While there is considerable variation among states, the downward movement in this period shows the majority of jurisdictions in this dataset have rates between 10-30 per cent. The average corporate tax rate in 2020 is 20 per cent (as opposed to 28 per cent in 2000). This spectrum is bookended by states with zero to low percentage rates, including 12 tax jurisdictions with zero per cent rates, along with Barbados (at 5.5 per cent), and jurisdictions with high rates, like India, showing the highest rate at 48 per cent.

Despite the decline in headline tax rates, corporate tax revenue collected by states as a percentage of GDP has slightly increased over time[13]. Palan, Murphy & Chavagneux (2010) point to the widening of the tax base as a potential, and partial, explanation of this puzzle i.e. that there are a larger number of companies paying tax, albeit at lower rates. This growth, coupled with the increased profitability of certain firms, may partially explain the stability in corporate tax revenues[14].

How corporations record profit is not straightforward. Serious ambiguity is indicated in a survey of how various data sources record foreign profit of U.S. corporations (2016-2020). At worst, there is a variance of almost US$400 billion in 2018 between different estimates. For example, for the year 2018 the S&P 500 Index indicate US$519 billion in U.S. foreign corporate profits, but country-by-country reporting

[13] Of course, if the wealth to GDP ratio changes over time, then that economy's capital share of GDP will also change. This will in turn effect the corporate tax to GDP ratio.
[14] Genschel (2005) also argues that another potential cause of the stability may relate to the introduction of greater anti-avoidance measures by states which is improving state capacity to catch certain, previously undetectable transactions. Berkhout (2018) also points out the counter-factual situation, which is had statutory rates not reduced so drastically, presumably far greater levels of tax revenue may have been collected by states.

data to the IRS indicates US$917 billion in foreign corporate profits for the same year (Sullivan, 2023). This lack of certainty presents a serious challenge to research which begins at the basic level of the documentation of corporate profit. Scholars tracking this data highlight two problems - the lack of certainty in corporate financial records, and the lack of full records of the global structures of global corporations (Garcia-Bernardo and Jansky, 2022). The ambiguity around financial records relates to divergences between 'book income' and 'tax income' recorded by corporations. Book income is recorded by corporations in their financial accounts which are used to report to their shareholders and communicate to potential investors. Tax income is communicated to national tax authorities. Green and Plesko (2016, p.765) explain the differences between the two (called 'book and tax differences' (BTD)). They write,

> BTDs occur when the amount of income reported to shareholders differs from taxable income as calculated on the tax return and may be either, temporary (because of timing differences in income/expense recognition in the two systems), or permanent (owing to differences in what is considered income/expense).

Garcia-Bernando, Janský and Tørsløv (2021, p.12) explain further,

> it is important to distinguish between data on taxes paid according to financial or tax accounting, as they differ e.g. with respect to how they deal with carry-losses, deductions or depreciations.

Desai (2005 p.171) sums up the danger. He writes, 'the distinction between book and tax profits allows managers the ability to mischaracterise tax savings to capital markets and to mischaracterise profits to tax authorities'.

This ambiguity also extends to gaps in data about the corporate structures of global firms. Databases such as Orbis and Compustat rely on financial accounting of corporations and omit company data from tax havens 'thus missing the vast majority of the problem' according to Clausing (2020b, p.2). 'Country-by-country reporting'

by corporations, introduced since 2016, is more reliable (and has improved in quality since 2016). Discussing data released by the U.S. Internal Revenue Service (IRS) relating to US corporations, Garcia-Bernardo, Janksy & Zucman (2022 p.7) indicate that this data 'may more closely reflect how US firms allocate profits for tax purposes than other data sources'. This is because the data includes additional important jurisdictions (such as Puerto Rico) and profit-making affiliates are separated out from loss making affiliates, making effective tax rate (ETR) estimates more reliable. However, it still is not fully reliable because profits recorded may be incorrectly inflated[15].

Without fully reliable data on corporate profit, estimating tax revenue foregone by states as a result of tax avoidance lies in the realm of 'guesstimates' (Binder, 2023), albeit careful ones. In addition to the lack of a certain baseline on profits, strong assumptions are required on what the counterfactual may be, absent the avoidance (i.e. what amount of tax should have been paid on profit in order to identify how much tax has been foregone). Reidel (2018) has questioned many of the assumptions made by researchers because they assume that legally tax-deductible expenses should not be deducted despite being legal state policy. Simply ignoring these factors also seems unsatisfactory though, as these tax incentives often function as a feature among others in aggressive tax avoidance structures.

Cobham and Janksy (2020) outline the methodological approaches in a set of influential studies which have a geographically wide scope and that focus on estimating the scale of avoidance and the potential lost tax revenue (summarised in Table 2.1). However, notwithstanding some studies which estimate low levels of profit

[15] Garcia-Bernardo, Janksy & Zucman (2022 p.8) write 'When intra-group dividends are included, profits can be counted multiple times when they flow through chains of holding companies'.

shifting[16], a large range of notable studies find that profit-shifting, and the related lost tax revenue, is extremely large. Estimates come in at around the US$ 200 billion mark globally per year. Some other estimates are multiples of that amount (see Table 2.1).

Table 2. 1: Scale of Tax Avoidance, estimates

Study	Tax losses / Profit shifting estimate	Method of examination
IMF's Crivelli et al. (2016), Cobham & Janský (2018)	Long run losses of US$400bn OECD; US$200bn LICs	BEPs related to tax havens: examining counterfactual if haven tax rates were not lower than other states
UNCTAD (2015), Janský & Palanský (2019)	US$200bn globally 2012 & US$90bn LICs	Losses exploiting direct investment relationship on basis of lower reported rate of return for investment from offshore hubs
OECD (2015b), Johansson et al. (2017)	US$100-240bn globally in 2014	BEPS related to tax rate differentials and differences in average effective tax rates for large affiliates of MNEs and domestic companies.
Clausing (2016)	US$77-111bn lost to US government 2012	Profit shifting due to tax rate differentials derived from semi-elasticities
Cobham & Janksy (2019)	Up to ¼ of US MNC profit shifted artificially (US$660bn in 2012)	Misalignment between location of US MNC economic activity Vs location of profits using economic indicators of activity
Keen et al (2014)	5% of CIT in OECD & ~13% in non-0ECD 2012	Differences in CIT efficiency ratio relative to average ratios
Tørsløv, Wier, & Zucman (2018)	40% of MNCs profits shifted to havens; US$200bn loss to US/yr	Compensation of employees in relation to profits

Source: summary by author of table 4.2, in Cobham & Janksy (2020 p.96 & 97)

Notes: BEPS is Base Erosion and Profit Shifting; MNE/MNC is multi-national enterprise and CIT is corporate income tax and LIC is Low Income Country

Which sectors and firms are most involved in tax avoidance? And how big, and where, is the problem? Notwithstanding the serious data-based difficulties, researchers have developed novel approaches to tracking sectoral behaviour in this regard. In a network analysis of 24 industry sectors in the global economy, Sigler, Martinus, Iacopini and Derudder (2019) find that tax havens and offshore centres feature prominently in the

[16] For example, Blouin and Robinson (2020) argue that calculations of profit shifting are overstated due to the inadvertent inclusion of double-counted data or due to the misallocation of profits in the use of US Bureau of Economic Data (BEA). Clausing (2020b, p.2-3) however responds that while double-counting is a problem in one BEA series on foreign income, it is not in two other BEA data series. She also puzzles over Blouin's estimates in their adjusted data series and wonders whether they have excluded foreign-to-foreign profit shifting. This gives a sense of the very particular specificities of the data.

networks of pharmaceuticals, biotechnology, and semiconductors. In addition, they are least significant in industrial activities such as automobiles and consumer durables, and 'place-bound' activities such as real estate and retailing. This makes sense. Place bound activities such as real estate activity are not competing internationally. For similar reasons property tax and land taxes do not create competitive issues. IP assets are at the other extreme because they can be easily moved across borders. State taxation of these assets is therefore constrained and highly competitive. For example, the EC (2018) finds that the large digital companies pay on average, only 9.5 percent ETR compared with 23.2 percent for traditional business models. Intellectual property (IP) intensive activity is not the only problematic area of activity, however. Hager and Baines (2020) find that tax advantages are widespread across large firms even when major tech companies such as Facebook, Amazon, Apple, Netflix and Google are taken out of their dataset. They find a persistent tax advantage among large U.S. firms in recent decades which is a reversal of trends from previous decades. They find that,

> in the 1970s the worldwide [Effective Tax Rate] ETR of the top 10 percent [of firms] was consistently higher than that of the bottom 90 percent. By the early 1980s, the ETR of large and smaller corporations had equalized at 29 percent. But from the mid-1980s onward, large corporations consistently have faced lower worldwide ETRs relative to their smaller counterparts. The gap is particularly pronounced in recent years, with the top 10 percent registering a worldwide ETR of 28 percent and the bottom 90 percent a worldwide ETR of 41 percent (2020, p.278).

Large firms are generally noted as active in tax avoidance networks. Martin, Parenti & Toubal (2020) find that tax avoidance has increased across all sectors in the U.S. but with a greater intensity among big firms than among smaller firms. They also highlight a lessening probability of the IRS auditing large firms (despite audit rates

remaining relatively constant for the smallest firms)[17]. Besada, Lisk & Martin (2015) find, in relation to non-financial corporations in Global South states, that tax losses resulting from the extractive industries are of serious concern. Tørsløv, Wier, and Zucman (2018) find that the problem is globally widespread among firms but that U.S. firms are more aggressive than EU firms. Country based studies are important here too. For example, Fuest, Hugger and Neumeier (2022) are more cautious about Tørsløv, Wier, and Zucman (2018) estimates of profit shifting in a study focused on Germany. A study by the Tax Justice UK (2019) of cash tax paid on booked profits of the 6 largest tech firms using U.S. Security and Exchange Commission (SEC) financial report filings for 2010-17 finds their rates come in around the 16% mark, when the U.S. headline rate at the time was 35%. Qualitative literature also points to potential avoidance in the captive insurance sector (Palan, Murphy and Chavagneux, 2010). (There is also a literature on banks which are not referenced here as they are outside of the scope of the study).

Which states benefit and lose out from tax competition? Generally, small states benefit from tax competition at the expense of larger states (Slemrod and Wilson, 2009; Genschel and Seelkopf, 2016). However, some scholars argue that high and low tax jurisdictions operate in a productive, mutually beneficial relationship (Hong & Smart, 2010). In the case of Ireland, there may be some truth to this in relation to the U.S. but in the case of France, there is little obvious advantage to France arising from Ireland's behaviour. Indeed, France has consistently attempted to push back against low tax

[17] Recent increases in funding of the IRS in the US may change this in future Sharin, N (17th August 2023) *5 ways the IRS funding boost is paying off*, Washington Post, https://www.washingtonpost.com/opinions/2023/08/17/irs-funding-tax-season-wait-times/ accessed 13/10/23

haven-like jurisdictions. Clausing (2016) notes that despite its many drawbacks, tax competition may, to an extent, take the pressure off states in competition with each other for real capital which is less likely to move. Low Income Countries (LICs) are generally shown to suffer the most intense losses in terms of estimates of share of tax revenue lost. One estimate of losses to LICs is US$ 200 billion per year (Cobham & Janksy, 2018). This is significant because LICs are more reliant on corporate tax as a share of their overall tax revenues. For example, in 2017, corporate tax, as a share of overall tax revenues for Africa, was 18.6 per cent, for Latin America 15.5 per cent, followed by OECD states at 9.3 per cent in 2017 (OECD, 2021, p.4). In real terms, Tørsløv, Wier, and Zucman (2018) estimate that the most tax losses occur in the U.S., followed by European states, followed by Global South states. However, they also find that the intensity is higher for Global South states.

In summary, pharma and tech sectors are notable and digital corporations also feature strongly with low effective rates in the literature. This points to the centrality of IP in tax avoidance. However, large corporations across a wide range of sectors are involved. U.S. corporations are particularly notable, simply because they have the opportunity to be more aggressive (see Chapter Five) than the also participating EU corporations. While there may be some economic benefits to competition related to states working to their comparative advantages, overall tax competition has negative effects, especially on the poorest states in terms of intensity whereas comparatively, the most revenue losses occur in the U.S. and in European states.

The focus on corporate tax rates only show a partial picture of state '*tax-setting'* activity. Competitive tax and regulatory exercises involve many additional features that can effectively reduce the statutory rate. The OECD distinguishes between

legitimate and harmful tax competition. The OECD indicates that 'harmful tax practices' should not occur meaning that,

> mobile business income cannot be parked in a zero tax jurisdiction without the core business functions having been undertaken by the same business entity, or in the same location (OECD, 2013).

However, the OECD also recognises that such profit shifting activities occur beyond zero rate tax jurisdictions. These include jurisdictions offering preferential regimes for specific sectors and transactions, which reduce effective rates. Preferential regimes have become a core feature of many national corporate tax systems, notably in the areas of research and development (R&D) and IP. For example, R&D reliefs have become more prevalent. 30 out of 39 OECD jurisdictions apply them, compared to 19 twenty years ago. This represents a shift from direct state subsidies toward tax relief to promote R&D activity. IP regimes are notably present, including through the creation of low tax 'patent boxes' which allow income from certain IP assets to be taxed at a lower rate, or through tax relief on capital expenditure. Patent boxes have been viewed by the OECD as an area of particular scope for harmful tax competition and so, as a result of the recent Base Erosion and Profit Shifting (BEPs) reforms, states have agreed to comply with indicators to ensure R&D is genuinely occurring in the country where the tax deduction occurs.

Dietsch (2014, p.234) describe engagement with legitimate tax competition as the act of 'luring' FDI by states. By contrast, they argue that the attraction of 'paper' or 'virtual' profits involves the 'poaching' of FDI from the jurisdictions where the profit should rightfully be booked. The effects of 'poaching' are changing the character of states. Palan (2002) argues that the growth of offshore has resulted in the 'commercialisation of state sovereignty'. By this he means that sovereign rights have been converted into 'marketable products'. Tax havens decide which aspect of their

'reality' they are prepared to reveal depending on the interests at stake. Taking the example of Switzerland, Palan argues that the Swiss state extended its sovereign power through providing bank secrecy to foreign actors. This entailed legislating that people can be separated from their money, that foreign actors can be protected by their local laws and that they can protect foreign actors from their respective governments (Palan, 2002 p.170).

How have states acted to protect themselves from tax competition? Scholars such as Fairfield (2015) argue that the internal dynamics of state decision-making is largely overlooked in the tax competition literature. She studies state level dynamics on tax policy choices in Latin America. Through hundreds of interviews she finds that the structure of national economies, levels of social stability, and levels of cohesion and political connections among economic elites, are key factors in shaping state tax systems. These resulted in very diverse responses to tax competition in Argentina (which has an emphasis on progressive taxation), Chile (where there are low business taxes) and Bolivia (where there has been tax increases on foreign capital but not on national elites).

These literatures on tax avoidance trends and inter-state competition, outline the trends in the scale of the problem and state responses. While useful, they are not explanations of corporate tax avoidance. The tax competition literature indicates that corporate taxation is embedded within trade-offs in national systems and has long been understood through the lens of largely separate national taxation systems. Corporate tax is viewed as historically a national policy competence, albeit involving international negotiation.

More recent research has shown that tax competition is, in practice, organised through transnational relations, including tax agreements between countries, but also through global wealth chains within corporations (Seabrooke and Wigan, 2017). These chains are organised to combine features of different tax systems. They indicate a variety of ways that state strategies, corporate structures and key actors, such as large accountancy firms, structure tax claims and liabilities. The multi-layered action among diverse actors involved in corporate taxation occurs through a range of mechanisms and interactions. This area of action is under-documented, not least because corporate tax avoidance is highly untransparent and ambiguous. What is interesting about this ambiguity is that it is intended, and therefore socially organised. It is a feature, not a bug. It involves what Sharman (2010, p.1-2) describes as 'calculated ambiguity'. This begs further questions of what guides the decision-making in making these 'calculations'?

Katharina Pistor (2019) argues that legal 'coding' underpins these sorts of ambiguous actions. Pistor focuses on private lawyers and their power to 'code capital' via the law in order to create and sustain wealth for elites. In her important work, 'The Code of Capital', Pistor (2019) argues that the role of the law in creating wealth has been understated. She argues that while an asset, such as land, may have use value, it is only constituted as capital once it is coded in law. This legal coding allows holders of capital to gain comparative advantage in protecting and growing their wealth. Pistor identifies the important role of legal property rights in the global economy and the power that the holders of knowledge of the law have to influence the governance and application of those rights. Pistor, therefore, effectively foregrounds the underexplored power of private lawyers and accountants, the 'masters of the code', in constructing and applying the laws of property. Pistor argues that holders of capital, with the help of

private lawyers, can 'pick and choose' the most advantageous laws governing capital from a global menu of legal jurisdictions. In this way, the privileged holders of capital, are bestowed with further advantages, what Pistor calls 'legal steroids' (2019) to grow and maintain their wealth. They achieve this through accessing sophisticated legal advice and through their advantage of global mobility. Pistor lays out the unevenness in the use of the institutions of the law. Individuals and firms cannot access the rules of the law equally. Pistor calls legal rules 'the fountain of wealth'. The privileged owners of capital who have the capabilities to 'pick and choose' the rules, expect a uniform, less flexible, set of rules to apply to others.[18] This differentiation is what gives holders of capital their advantage, in addition to the tools to sustain that advantage relative to others. Pistor proposes that the legal coding of capital provides 'attributes'. These attributes relate to the ranking of competing claims to property (priority), extending claims over time (durability), extending the 'priority' and 'durability' rights 'against all', rather than only the specific parties in the transaction (universality) and providing the option of converting private credit claims into state money (convertibility).

Pistor notes that legal advisors (the 'masters of the code') work these attributes into their coding advice. This advice both allows their clients to profit and influences states in the construction of their tax laws in the context of tax competition. The key contribution of Pistor, is to demonstrate how exceptionally the results of this type of legal knowledge and influence has favoured the holders of capital, making the power of the law and those that understand it a power in maintaining enduring wealth.

[18] Pistor emphasised this point in a discussion '*Oxford-Virginia Legal Dialog: Tax Meets Non-Tax with Katharina Pistor*' March 29 2021: https://www.youtube.com/watch?v=rD0UVRhGpcc (last accessed 6th April 2021)

2.2.2 Tax Competition Strategies: From Tax Channels to Global Wealth Chains

As the discussion above indicates, competitive 'tax-setting' includes more than decision-making on tax rates. A further set of literature confirms this by digging into mechanisms within the tax and regulatory fiscal environment that are activated for tax avoidance purposes. This literature identifies channels of tax avoidance that are constructed through the interaction of legal tax rules (Beer, De Mooij and Liu, 2020). The background to these channels is the international legal tax regime, now over a century old and designed for a very different economic era. This legal regime is structured around an understanding of two 'types' of states: residence states (where the company originates and where the parent company is) and source states (where investments are made by the corporate group). The company's residence state may tax all of the worldwide income of a resident company but under international practice exempts activities already taxed in source states. These principles form the template for the majority of the world's now approximately 3,500 bi-lateral tax treaties (Hearson, 2021).

Tax avoidance was not seen as a major issue at in the 1920s when these tax rules were designed.[19] Rather, the treaty system sought to address the problem of double taxation.[20] Inter-state negotiations on tax rules from the 1920s onward were power laden. It is worth summarising their formation as the power imbalances in global tax rules remain today (Christensen, Hearson and Randriamanalina, 2020). Genschel and

[19] Early tax havens, like Switzerland for example, did not begin orienting their core economic strategies towards financial secrecy until the 1930s.
[20] Double taxation refers to a tax principle whereby taxes are paid twice on the same source of income. Post World War I, double taxation was increasingly viewed as unfair to taxpayers. There was also an increasing awareness of the mobility of corporate assets and that managing cross border trade effectively represented a potential route to peace (Genschel and Rixen, 2015 p.158).

Rixen (2015) describe the process of formation of a tax order as a process of ‘settling and unsettling the transnational legal order (TLO) on international taxation’. The initial tax TLO was ‘settled’ via a non-legally binding Model Convention in 1928[21]. The Convention represented a soft law ‘template’ of a set of rules and principles which remain central to the international tax regime today. Principles of ‘source’ and ‘residence’ (as discussed above) were established. In addition, passive returns on investment (such as interest and dividends) were to be taxed mainly in the country of the investor. It is interesting that the OECD model for treaty negotiations embedded the capacity for tax avoidance through weakening the rights of source countries to impose withholding or other relevant taxes (Hearson, 2021). As Picciotto writes,

> this allowed the host country to tax the business profits of the local subsidiary of a TNC, or of the branch of it, if it met the threshold for taxable presence, defined as “permanent establishment’” (Picciotto, 2018 p.30).

It was clear, even in the 1920s, that it is challenging to identify where a “taxable presence” of an MNC is located. Picciotto (2018) identifies four broad approaches that were applied by nation states in dealing with profit allocation of MNCs over time. They include: the use of regulatory powers by states to adjust MNC accounts (1915-1968); a focus on adjustment of transaction prices, also relating to ‘joint factors of production’ previously defined as ‘overheads’ (1968-1988); the emergence of OECD transfer pricing guidelines (TPGs) (1988-1994); and the entrenchment of the OECD TPGs and the ‘separate entity’ principle of MNC accounting (1995-2015).[22]

[21] An updated version of the convention was subsequently published in 1963 (the OECD Model Convention).
[22] For a useful table of specific examples of national and international policies and legislation relating to each phase, see Picciotto, 2018 p.32-33

Scholars believe the OECD convention was made possible due to the capture of the process early on by technical tax experts, thus minimising political interference (Genschel & Rixen, 2015, Picciotto, 2018). However, reaching the final agreement was a contested process. Key tensions were between 'source' and 'residence' countries of the time within the Global North (Italy, France and Germany (capital importers) Vs Netherlands, U.S. and U.K. (capital exporters)). Global South states also tried to achieve a more 'source' based agreement[23]. These all failed to gain support at the OECD Fiscal Affairs Committee (comprised of only 8, and later 9, powerful states), as committee members refused to sign tax bi-treaties using their proposals.

In 1980, the U.N. published a Model Treaty that aimed to increase the taxing rights of Global South states. This U.N. Model Convention is especially important today in strengthening Global South powers to impose withholding taxes on royalty payments to Global North corporate affiliates (Killian, 2011 p.17). While Global North states, such as Ireland, claim to use a mix of both templates, the OECD Model, along with its regularly updated legal commentary, became the established guide for double taxation treaties (Killian, 2011; Genschel & Rixen, 2015). The 'unsettling', or reinterpretation, of what Genschel and Rixen describe as the "Double Tax Relief TLO" became necessary because the TLO itself gave rise to increased tax competition through the manipulation by corporations of the contested principles contained in it as a route to avoid taxes. Crucially, by treating corporate affiliates within a global group as separate entities, the OECD model sought to curb double taxation, but in so doing, enabled tax arbitrage by corporations through manipulation of the jurisdictional interplay of tax codes.

[23] They did this via the Commonwealth Chambers of Commerce in the 1960s and the Latin American Free Trade Association in the 1970s.

In recognition of the risks of tax avoidance, the U.S. took action in the 1960s to curb its rise. It unilaterally introduced anti-tax avoidance legislation relating to a range of avoidance practices.[24] The US actions were viewed as illegal and counter to the OECD convention by many states, prompting a political clash on the matter of state sovereignty and tax. The OECD-US conflict crystallises what Genschel and Rixen call 'the trilemma' of tax competition for nation states. The trilemma, as they see it, is that states simply cannot solve the "twin problems" of double taxation and tax competition and preserve tax sovereignty at the same time. A pooling of sovereignty (through multi-lateral forms of tax cooperation) is necessary to address both. They point out, 'one of the three goals has to give' (Genschel and Rixen, 2015 p.157).

International tax rules are therefore about resolving 'the issue of whether, and to what extent, a country has the right to tax an individual or a company (Oats, 2021, p.24). This is not a straight-forward exercise because, as outlined above, global corporations are treated as a collection of independent entities. They engage in increasing complex transactions and manipulate mismatches among states in their legal treatment of these transactions. The outmoded tax legal order coupled with the rising complexity and opacity of global corporate actions has moved 'tax competition' far beyond competition over tax rates to competition over the positioning of states among the tax legal frameworks of other states.

How does this complexity occur? As discussed, while affiliated firms trading at arms-length is the accepted principle, in practice, it is a 'fiction' (Picciotto, 2018). Related

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[24] These included rules on transfer pricing, controlled foreign companies (CFCs) and thin capitalisation rules. The US approach was ultimately incorporated into the OECD Model Convention commentary in 2005. This meant that tax treaties did not require re-negotiation in the view of the OECD when anti-avoidance legislation was introduced by states. In any case, many member states had already unilaterally introduced anti-avoidance legislation.

companies operate as part of an overall strategy of the corporate group, enabling centralised tax planning (Carruthers and Ariovich, 2004). As Sharman (2010) points out, affiliated companies interact strategically across a set of diverse domestic legal rules that, in combination, can create tax minimizing results. This can support 'the ability [of the capital holder] to give diametrically opposed but legally valid answers to the same question from different quarters'. So, as discussed in the previous section, firms can simultaneously report high and low profits through declaring 'tax profits' and 'book profits' which provides investors and tax authorities with different financial information. This is what Sharman (2010, p.1-2) describes as firms engaging in 'calculated ambiguity'.

These opportunities have arisen because the designers of the international corporate tax system, developed over 100 years ago, did not anticipate that the majority of global trade of the future would occur between affiliated companies within the same corporate group. In the modern-day economy, the concern centres less around the tackling of double taxation to the complete non-taxation of certain transactions of global corporations (Genschel and Rixen, 2015). The 'channels' that support tax avoidance structures are described in different ways in the literature. At their core, they involve delinking MNC profits from the economic activity that produced them through tax planning. This has been described as the evolution of a disconnect between 'real' and 'virtual' FDI (Dietsch, 2016). This outcome is delivered via complex structures, utilising multi-jurisdictions which in turn make them more difficult to track. Picciotto (2021) describes these as 'stepping-stone structures', which, taken as a whole, comprise a tax avoidance structure. The main channels used to create such structures are summarised here (see e.g. Beer, Mooij & Liu, 2018, Milogolov 2020).

Profit shifting, via transfer mis-pricing: This relates to the idea that firms should set the 'transfer price' of a product or a service at the same level that hypothetically unrelated firms would when trading with each other. However, the lack of transparency over intra-firm transactions creates opportunities for setting prices in a way to reduce tax payments. This is called 'transfer mispricing' and it is illegal. However, because of the lack of transparency in financial reporting, transfer mispricing is difficult and costly to discover and prove. It is also genuinely ambiguous because deciding upon an appropriate transfer price requires judgement and access to market data on similar transactions. This is increasingly difficult due to the growth in intangible products and services, which are often unique, without any comparable products in the open market. These trades can result in large amounts of profits being booked in tax jurisdictions which charge low effective rates of tax. In turn, low amounts of profit, or losses, are booked in higher tax jurisdictions to avoid higher tax payments (see e.g. Davies, martin, Parenti and Toubal, 2018)

Strategic location of assets and debt: such as intangible assets and intellectual property. This is supported by 'cost sharing agreements' (CSA) which share the costs within the corporate group of R&D, and also the resulting income. Corporate inversions (changing the resident headquarters of the corporation to a low tax location) are also a way of moving assets to low tax jurisdiction in addition to other forms of debt shifting (Cobham & Janksy; IMF, 2009; Dharmapala, 2014; Sorbe, Johansson and Skeie, 2016). These strategies can be supported through the use of tax neutral entities such as Special Purpose Entities (SPEs).

Tax treaty shopping: Because tax treaties are mostly bi-lateral, corporations can engage in 'tax treaty shopping' in order to identify the most tax-optimal locations to

place their affiliates. This involves the MNC optimising their use of tax rates and tax and regulatory incentives in different jurisdictions (see e.g. Hohmann, Merlo & Riedel, 2023).

Mismatches: MNCs exploit so-called 'mismatches' in legal definitions which can occur between tax codes. For example, mismatches can enable the exploitation of tax residency rules whereby corporations exploit the regulatory gaps between different jurisdictions in order to be 'stateless' and not tax resident anywhere (Kleinbard,2011).

Hybrid transfers: Mismatches can also enable 'hybrid transfers' whereby the same asset is treated as debt (with tax deductible interest) in one jurisdiction, and equity (non-taxable income) in another, resulting in no taxation in either jurisdiction (OECD, 2015)

Tax deferral: This is the right to defer tax payments, used to a high degree by U.S. corporations until 2017 when it became unavailable. For example, US corporations could argue that tax due from 'stateless entities' was simply deferred tax which would eventually be paid (Avi-Yonah, 2019).

Special rates, regimes and exemptions: including provision by source states of special tax rates, exemptions, reliefs, accelerated depreciation, treatment of losses regimes (OECD, 2013). Additional certainty can be provided via the issuing of Advance Tax Rulings.

Of course, global corporations do not operate unopposed in this endeavour. Milogolov (2020) differentiates between states that work to protect their tax base (often higher tax states) while others (often lower tax states) work to undercut those higher tax regimes. Milogolov's (2020) describes 'offensive' and 'defensive' tax tools whereby

corporations can seek to avoid taxes in source states where they operate by applying certain 'offensive tax tools' (e.g. such as transfer mis-pricing). Source states can then buttress this by introducing rules that enable other offensive strategies as outlined above. Residence states can employ 'defensive tax tools' which act as a 'backstop' to collect taxes on profits through what are called Controlled Foreign Company (CFC) rules. CFC rules enable states to tax profits which they believe have been shifted artificially out of their jurisdiction. In turn, corporations in resident states can employ offensive measures (also mentioned above) against these, such as tax deferral (the non-repatriation of taxable profit, sometimes indefinitely) and corporate redomiciling (or inversions which involves changing residence to avoid certain tax collection rules in the original resident state). Global reform efforts, initiated by the G20 after the financial crisis and formalised from 2014 through the OECD Base Erosion and Profit Shifting (BEPS) reforms[25] have sought to close down ‘offensive’ tax tools and strengthen ‘defensive tools’. While, these reforms are recent, there are serious questions about their efficacy.

Descriptions of these eclectic tax channels are important inventories of mechanisms and strategies of tax avoidance. They do not tell us much about the multi-layered dynamics and configurations involved in the ‘calculated ambiguity’ of tax avoidance. A more explanatory approach in examining the implications of the trans-nationalisation of tax is the work relating to the concept of ‘global wealth chains’ (GWCs) introduced by Seabrooke and Wigan (2017). They define (2017, p.2) a ‘global wealth chain’ as a ‘transacted form of capital operating multi-jurisdictionally for the

[25] Base erosion refers to the reduction of the scope of profits which a jurisdiction can tax. Profit shifting refers to MNCs attributing greater amounts of profits in low tax jurisdictions to lower their global tax payments (Oats, 2021 p.44).

purposes of wealth creation and protection'. Seabrooke and Wigan contrast the global wealth chain with the more traditionally understood and well documented global value chain of the MNC. They argue, that the more visible, global value chain is based on the common interest of the actors in the chain who engage largely transparently with each other and in a coordinated fashion. The global wealth chain, on the other hand, is not transparent, it is opaque.

The authors propose five 'types' of global wealth chain governance[26]. These types represent different forms of interaction between firms, suppliers (of financial products or regulatory/tax advice), and regulators. They reflect regulatory situations ranging from the establishment of shell companies to 'stateless' companies. In this way, Seabrooke & Wigan move beyond the descriptions in the tax competition literature focused on 'bi-furcated' / 'real' and 'virtual' or 'artificial' FDI, to describing the geographically spread corporate structures that underpin a global wealth chain. At the same time, by tracing a global wealth chain, the bi-furcated nature of FDI can be observed, as the wealth chain shows a different formation than the global value chain of the same firm.

In more recent work, Seabrooke & Wigan (2022) expand on their theory by describing global wealth chains as 'asset management strategies'. They argue (2022 p.279) 'an asset can be considered a legal affordance that provides differential claims on wealth'. They indicate that this 'affordance' is generally held in the form of paper or digital documentation 'that entitles the account holder or bearer to discrete rights'. The

[26] The 'governance types' outlined by Seabrooke and Wigan include: Market (e.g. 'off the shelf shell companies), Modular (bespoke services and products in well-established legal environments), Relational (exchange of 'complex, tacit' information, requiring high levels of explicit coordination), Captive (where lead suppliers 'dominate smaller suppliers by dominating the legal apparatus and financial technology'), and Hierarchy (vertically integrated, highly controlled by senior management) (Seabrooke and Wigan p. 10-11)

financial and legal worth of the asset, and the rights surrounding ‘who can access it, know about it, monetize it, or destroy it’, are protected by an ‘interpretative community of professionals’ (lawyers, accountants, entrepreneurs, regulators, and other professionals). They emphasise that asset strategies ‘harness’ legal affordances across multi-jurisdictions which helps sustain them. They argue (2022 p.279), ‘it is the sustained articulation of legal affordances across jurisdictions that gives stability to GWCs, allowing firms, elites, and professionals to plan their use and maintenance’.

Seabrooke and Wigan (2022, p.6) argue against the ‘conflation’ in a lot of the literature of what they call ‘the firm’ and the ‘corporation’. Drawing on the work of Robé (2011), they argue that the firm and the corporation are different. The corporate form is a ‘product of actors seeking to meet the requirements established by fiduciary duties and normative principles within the given legal structure’. They argue, ‘agency belongs in the firm’ (‘an organized economic activity’) and ‘structure, to the corporation’ (‘a legal entity and personality that provides the firm with a legal structure’). For Seabrooke & Wigan this conceptual distinction is essential in understanding the nature of ‘actorness’ in relation to the corporate form.

Other scholars have sought to map these corporate structures. For example, Reurnik and Garcia-Bernardo (2020) provide an insight into the entanglements between global value chains and wealth chains by mapping types of investment along with types of entities within international corporate ownership structures. The authors draw upon business and management literature to identify five ‘types of capital’ and their associated corporate structures, such as holding companies, which EU states compete to attract.

Phillips, Petersen and Palan (2021) also map types of corporate networks which highlight what they call 'in-betweener' companies often used as conduit companies in low tax jurisdictions. Schwarz (2022) charts three 'tiers' of global firms focused respectively on design, production and assembly. This is linked to literature analysing global production processes such as those outsourced to 'contract manufacturing' companies, in so doing separating production from ownership of materials, assets and profits from sales. Hearson (2022) indicates that corporate 'hubs' have become an important corporate form to achieve efficiencies while also reducing tax liabilities via tax treaty networks. In the midst of these corporate networks, Seabrooke and Wigan (2022) indicate that the wealth chain and the value chain can become entangled. Disentangling these processes analytically requires research at macro- meso- and micro- levels.

These literatures help to crack open the array of multi-levelled action involved in global wealth chain building. They helpfully focus on key issues which disentangle the interconnected areas of action. This can be seen, for example, in the differentiating between legal functions of corporations in ownership chains and global corporate strategy (Seabrooke and Wigan, 2022) and in the mapping of 'capitals' linked to corporate structures, functions of entities within ownership chains (Reurnik and Garcia-Bernardo, 2021). This approach allows global wealth chains to be examined by identifying their elements and functions in addition to examining the effects of the chain as a whole.

2.2.3 The Politics of Global Tax

These contemporary, complex and evolving methods of tax competition among states can be understood as occurring in the shadow of power. They are a partial outcome of

politically fraught pathways to economic under/development which have given rise to a particular form of tax politics. Today's form of tax politics cultivates dependencies offshore, and while simultaneously undermining possibilities of alternative pathways for states overall. This politics works at multi-levels and is centred around tax expertise and legal rules which operate in the shadow of state-corporate and inter-state power.

National tax policies develop in this context. Seelkopf and Lierse (2016) argue that diverse tax choices occur in states, alongside 'locked-in' positions in tax competition. For example, they indicate that while Britain and Ireland both adopted low corporate tax models, their approaches to tackling market inequalities via the tax system are quite different. Indeed, as noted in the introduction to this chapter, tax goes to the heart of *what the state is*. The state therefore depends on maintaining consent in taxation. Levi (1988) described this relationship between state and citizen as contingent - one that is 'quasi-voluntary'. This 'quasi-voluntarism' is achieved through very varied tax systems globally, most successfully in Nordic states. Steinmo (2018) argues that successful states have strong administrative capacities, fair taxation, and deliver tangible public services. How tax competition affects the delivery of this complex ideal is less clear.

It should also be noted that opinion is divided in the literature on whether the corporate tax is a good tax due to the difficulties with evaluating where its incidence lies within the overall tax system i.e. who ultimately pays it. Unlike direct taxes which are passed on to an identified individual, the cost of the corporate tax could fall on shareholders, workers or consumers. As Avi-Yonah (2020, p.653) argues, it is likely that all these actors pay the corporation tax to varying degrees at different times, depending on prevailing economic circumstances. Nevertheless, there are strong arguments in

favour of the corporate tax, but for three different reasons. Firstly, the corporate tax is an essential 'backstop' to the personal income tax. Without a corporate tax, wealthy individuals would simply re-organise their tax status into the form of a corporation (Clausing, 2016)[27]. Secondly, the corporate tax is important to Global South states many of which are not in a position to rapidly expand their tax revenue from personal income taxes or consumption taxes (Cobham, Faccio and Fitzgerald, 2019). And finally, the corporate tax is a major policy tool for states. As Avi-Yonah (2020, p.654) writes, the reasons the corporate tax was introduced in the US in 1909 still stand - to provide states with the freedom to limit the power, and regulate the behaviour, of corporations. Of course, corporations can be regulated through non-tax measures e.g. such as through anti-trust legislations and restraints on their activities, but the corporation tax is a further tool.

Distinct levels of corporate tax collection indicate varying levels of dependence of states on FDI, reflecting a politics of the 'tax state' shaped by a range of historical factors. As noted, the 'tax state' is a phrase coined over a century ago by fiscal sociologist, Joseph Schumpeter (1918). For Schumpeter, taxes were fundamental to the creation of the modern state and a public realm.[28] State formations are embedded in the history of how states were inserted into the global economy and in colonially inherited tax systems (Hearson, 2021). This resulted in the development of onshore-offshore relationships which resulted on strong dependencies, particularly among tax havens and low tax jurisdictions. These dependencies have shaped the development of those states. In turn, the dominant 'tax state', the U.S., has cultivated the offshoring

[27] Of course, there are other ways to tax wealthy individuals such as net wealth taxes, inheritance taxes, property taxes and capital gains taxes.

[28] Schumpeter outlines the practices of European princes of the fourteenth and fifteenth centuries, of taxing their subjects to finance their military wars. In so doing, he argued that a public financial realm came into being, separate from the private wealth of feudal rulers.

of profits by its own corporations, through consistent political support toward its 'own' corporations. This has contributed to intensely undermining the U.S. political system in terms of its privileging of such large U.S. taxpayers (Saez and Zucman, 2019). In light of this, corporate tax avoidance can ultimately be viewed as an attack on both onshore and offshore states by creating dependencies and unfairness among taxpayers within them.

It is notable that many low tax jurisdictions are part of the history of British colonial rule with inherited common law traditions. They include ex-British colonies (e.g. Ireland or Mauritius) or jurisdictions that are still legally dependent on Britain (e.g. Jersey or Cayman Islands) or are specific locations within a larger jurisdiction linked to this history (e.g the Cities of London and New York, or Delaware in the U.S.). There is no doubt that the offshore world emerged largely to serve the personal and business interests at play in the large powers in Europe, most importantly in the U.K., and in the U.S. This is not surprising. Liberal trading regimes are often established by the hegemons of their era (Ó Riain, 2014). For example, Rome and the U.K., amongst others, established such trading regimes in their own interests and often following colonialism or other imperial dominations. This is true for tax policy where tax legal systems are inherited in the legal tradition of the coloniser (Hearson, 2021). It should be noted though, that the many facts of tax history at a jurisdictional level challenge a linear narrative. For example, British India, introduced a corporate tax (in 1888) long before Britain did (in 1965) (Limberg and Seelkopf, 2021).

While these histories require further comparative documentation, it is clear that the emergence of 'offshore' was driven by dominant economic centres because it was beneficial to them in a post-colonial world. The growth of offshore within the British

Empire during 1945-75 was driven by desires of wealthy citizens of the Empire to avoid increases in corporate taxes associated with increases in incomes in Europe and in the U.S. (Ogle, 2017). Ogle notes a 'symbiotic' set of business interests between successive governments in London, which passed tax haven legislation in the personal financial interests of politicians in London and administrators in the dependencies. Over time, this resulted in a growing sense of 'development lock-in', due to belief in London that dependencies had little other options than offshore activity to support economic development. There is an identifiable trend of jurisdictions specialising in particular sets of services as part of a deliberate development strategy over time (Hampton, Abbott & Abbott, 1999). Perhaps the most well-known include Switzerland's historic focus on banking secrecy and the Cayman Islands focus on hosting hedge funds (Picciotto, 2011).

As the offshore system embedded itself, Picciotto (1992a) argues that a certain amount of tax evasion and avoidance was tolerated in London and in New York, in exchange for benefits to their financial centres. Tax avoidance activity was viewed as preferable when happening within their jurisdictional influence rather than elsewhere and out of their control. And the benefits were significant. Of particular significance is the growth in the Euromarket (where banks deal in currencies that are not their own), in Eurodollars and Eurobonds, which functioned as an important unregulated, extraterritorial financing for growing MNCs (Ogle, 2017). The tax advantage to borrowers was supplied by the City of London and New York by allowing no withholding tax on payment of interest on deposits and loans such as Eurobonds, on condition the 'qualified intermediary' is certified as non-resident (Picciotto, 2011, p.240).

The politics of tax in the US has also had a very influential role in the shaping of tax policy globally. The U.S. 1986 Tax Reform Act looms large here, as a 'lynchpin' of contemporary tax policy globally (Swank, 2006). The Act reversed progressive individual and corporate taxation in the US, a defining re-orientation in US tax policy from then until now. As Saez and Zucman argue (2019, p.xi), 'the wealthy have seen their taxes rolled back to levels last seen in the 1910s, when the government was only a quarter of the size it is today. It is as if a century of fiscal history has been erased'. Post 1986, top statutory corporate rates were reduced over a period of years from 46 to 34 per cent (Swank, 2006, p.854). Studying the tax rates of 16 nation-states from 1981-98, Swank (2006) finds that the changes in U.S. tax policy influenced subsequent capital related tax reforms in those countries as a result of competitive concerns and predominantly among 'market-oriented' states.

Christensen and Hearson (2019) outline six major multi-lateral reform processes on tax cooperation since the mid-1990s to present.[29] The current multi-lateral process relates to a new formula for sharing taxing rights globally ('Pillar One') and a global minimum tax ('Pillar Two') and has potentially radical implications for pooling of sovereignty through the reallocation of tax base distribution among states (though Pillar One appears unlikely at time of writing as of October 2023[30]). However, it is notable that up until this process, the reforms that have significantly impacted upon state tax sovereignty have stemmed from unilateral action in the U.S. for example, through the introduction of United States Foreign Account Tax Compliance Act

[29] 1994-95: OECD transfer pricing guidelines; 1997-2003: EU-OECD-G7 Harmful Tax Practices; 1998-2002: OECD+ Distribution of Tax Base Digital I; 2009-14: G20+ (100 countries): Common Reporting Standard; 2013-17: G20+ (100 countries) BEPS; 2013-present: 100+ countries: Distribution of Tax Base Digital II [now termed BEPS One and Two] (Christensen and Hearson, 2019: 13)

[30] The implementation of Pillar One depends on the support of the U.S. in the voting scheme. Support for Pillar One is heavily opposed in the U.S. Congress at time of writing.

(FATCA) in 2010. The global influence of the U.S. was both ideational and resulting from its vast market power. In 2010, the U.S. introduced the Foreign Account Tax Compliance Act (FATCA) which greatly weakened international banking secrecy.[31] This change in turn kickstarted the tax information sharing process at the OECD and EU via the introduction of the OECD Common Reporting Standard for Automatic Information Exchange (AEI) on all types of capital income earned by non-residents.[32] Both of these reforms have arguably changed the tax sovereignty of states. Though, importantly, not that of the U.S. The former agreement was non-reciprocal for the U.S., and the U.S. has not signed the latter agreement (Hakelberg 2016). The OECD-EU-US dynamic crystallises what Genschel and Rixen (2015, p.157) call 'the trilemma' of tax competition for nation states. The trilemma, as they see it, is that states simply cannot solve the 'twin problems' of double taxation and tax competition and preserve tax sovereignty at the same time. A pooling of sovereignty (through multi-lateral forms of tax cooperation) is necessary to address both. This issue of pooling tax sovereignty is taken up again in the next section (in Section 2.3.3).

The power politics of global tax competition, not only shapes the corporate tax policies of states, but also domestic tax systems. When capital is taxed less, tax systems become less progressive as income earners are not taxed equally. These tensions exist in the real world and are mediated by various actors. A network of actors sustain global wealth chains. An interpretative community of professionals, engaged in the technical

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[31] FACTA requires non-US financial institutions active in the US market to share information about US account holders with the IRS. The US achieved this due to the threat of a 30 per cent withholding tax on non-compliant foreign financial institutions (Hakelberg and Schaub, 2017).

[32] Given significant information sharing was happening with the US as a result of FATCA, it "unlocked a path for similar multilateral systems at the European Union and OECD-levels, expanding the automatic exchange of tax information to cover almost 150 countries" (Christensen & Hearson, 2019 p.9). It was introduced in 2014 under the auspices of the OECD with support from the G20. The standard makes it much more difficult for individuals to hide income from their home tax authorities.

micro-politics of tax is critical (Seabrooke and Wigan, 2022). Of particular importance are ‘professional service firms’ including the ‘Big Four’ accounting firms which hold a ‘threefold position’. This includes advising their clients on tax planning, lobbying and advising governments on tax policy, and auditing companies to ensure taxes are paid (Killian, O’Regan, Lynch, Laheen and Karavidas, 2022). This has established such firms in an influential and contradictory position of shaping tax policy and practice in both the public and private realms while assisting MNCs engage in arbitrage. The knowledge and expertise involved in global tax is highly technical in character. Christensen (2021) indicates that these professionals use their technical expertise to achieve imbalanced levels of power in political processes shaping legal rules. In a case study of the opposition of the ‘Big Four’ accounting firms to the EU proposed Financial Transaction Tax (FTT), Kalaitzake (2019 p.297) demonstrates that these firms operate in substantive policy alignment with each other and the wider accounting sector. In the case of the FTT, their strategies included ‘disseminating key oppositional claims against the FTT proposal, developing tax mitigation and relocation strategies, preparing negative impact assessments, and advising on lobbying tactics’. Accounting firms and especially the ‘Big Four’ among them are also concentrated in global cities’ (such as London and New York) or cities in certain financial centres (such as Dublin) indicating a hosting role of those jurisdictions for this kind of professional understanding and influence (Murphy & Stausholm, 2017).

The concept of ‘infrastructural power’ is useful in tracing the levels of complex politics in corporate tax operating at the levels of state (macro), corporations (meso) and also at the micro level of day-today state-corporate interactions (Seabrooke and Wigan, 2022). Infrastructural power was originally conceptually developed by Michael Mann (1984) and was extended by Benjamin Braun in relation to power in

the European monetary system (2020). Braun's (2020, p.401) approach to understanding infrastructural power focuses on the apparatus of policy making and the scope and reach of the political power of finance. The power of financial firms is entangled with the power of the state in an opaque 'two-way street'. Braun (2020, p.396-7) challenges the traditional 'regulatory view' of state–finance interactions as 'regulation and governance through rule making and rule enforcement'. Braun instead proposes a 'hybridity view' of market-based state agency. He writes, 'state actors appear not just as regulators but also as participants in financial markets'. Braun's central argument is that 'when state actors transact in financial markets for governance [..] they create infrastructural entanglements, which constitute a distinct source of financial-sector power'. This distinctive power via 'infrastructural entanglement' reveals no 'smoking guns' to facilitate tracing of state-corporate negotiation. This kind of entanglement also muddies the view of regulatory reform and compliance. Commenting on their research findings, Braun and Gabor (2020) note that

> this research has focused on state-finance interactions that take place on the turf and according to the rules of the political rule-making process. What this literature tends to overlook is a crucial set of interactions between private financial actors and public agencies that take place "beneath open and immediate political conflict", on the turf and according to the rules of financial markets.

Braun & Koddenbrock (2023, p.14) further extend this take on infrastructural power by developing a theory of 'capital claim-making' They write 'specific financial actors exercise infrastructural power vis-a-vis state actors that depend on specific financial markets for governance purposes'.

These literatures are primarily focused on monetary relations and the financial sector. This poses a challenge to applying the theory of infrastructural power to the action of

non-financial corporations. Can we say that the corporate taxation field is a system in the way that monetary relations are? Clearly there are differences. Money is an everyday medium of economic exchange. Taxation is a network of relations of claims on other parties, especially by the state. Commenting on Braun and Koddenbrock's framework, Pistor (2023) argues that she understands infrastructural power as working to 'insulate large-scale financial systems from state control even as it deepens the dependence on backstopping the state'[33]. This resonates with global tax which is a 'system', a recognised transnational legal order, although it is ambiguous and fragmented in nature. The system of global tax can be understood as insulated from state action in the sense that it is very difficult to end global tax avoidance. However, it is upheld and governed by states. In this situation, low tax states, like Ireland, are highly dependent on corporations maintaining the system of tax avoidance. This echoes Braun's view of infrastructural power which recognises that states depend on the organisational practices and private financial actors and instruments to manage the financial system. In the case of low tax states, they develop a symbiotic dependence on their facilitation of tax avoidance structures in order to sustain their tax revenues. These states may act in the interests of other, powerful actors simply through their efforts to maintain the infrastructure of everyday economic life. This presents a double challenge to such states. Firstly, they have a strong interest in maintaining their part in the 'two-way street' of the infrastructural power in global tax. Secondly, in order to

[33] Pistor (2023, p.260) also offers an interpretation of two other forms of financial claim-making power offered by Braun and Koddenbrock (2023), 'leverage power' and 'enforcement power'. Pistor interprets leverage power as an activity that 'transforms private legal power in a put on the state'. She argues that 'enforcement power is reconfigured in the logic of finance even as state agents continue to implement it'.

maintain their part, they must sustain their legitimacy domestically and internationally in relation to the global rules of tax.

For infrastructural power to become embedded, other forms of business power are also at work, including instrumental and structural business power. These forms of power operate in various 'noisy' and 'quiet' ways. Noisy and quiet politics are described by Culpepper (2021) as politics of high and low salience respectively with voters. The concepts have a close relationship with the idea of politics of the visible or hidden politics (Binder, 2023). Instrumental power involves lobbying and representational work by corporations (noisy politics) but also expert consultation on technical issues (quiet politics). Structural business power in tax carries with it the (often publicly made) threats of capital flight (noisy politics) but also works in 'quiet' ways through perceived aligned interests between state elites and corporations. Infrastructural power is inherently 'quiet' and occurs through the micro-politics of the organisation of daily state-corporate routines. In turn, states come to depend on the maintenance and reproduction of these corporate practices.

As discussed, the politics of global tax has emerged from the historic pathways of global economic dependencies. These power relations are reproduced in contemporary onshore-offshore relations. The complexity of global tax today, based on opaque tax channels, has given rise to a particular form of tax politics. This site of politics privileges tax-related expertise and the actors that wield expertise. It is also a site of contestation whereby inter-state power looms large and which in turn shapes and limits inter-state tax reforms. These contemporary forms of onshore-offshore state-corporate relations filter down to the national politics of tax. National tax politics functions along different modes of quiet and noisy politics. In light of the multi-level importance of expertise and actors, routines of power have emerged. These include commonly

understood forms of state-business power relations (instrumental and structural), but also that of infrastructural power. Infrastructural power involves state maintenance of, and dependence upon, elements of corporate organisational capacities and practice which in turn reproduces business power.

2.3 Tax Games

'Gaming' or 'game playing' in tax literature is a concept used to refer to aggressive tax avoidance practices by taxpayers. Kamin, et al (2019, p.1442) refer to 'tax gaming'. They use the term to refer to 'both legal tax avoidance and illegal tax evasion, as well as to the large grey area of tax planning transactions that are neither clearly legal nor clearly illegal'. Similarly, 'gaming' is described by Picciotto (2007 p.14) as the pursuit of tax minimisation through 'creative compliance' with tax law. Picciotto explains that this means 'complying with the letter while avoiding the spirit or policy of the law,' resulting in 'contrived complexity' in corporate tax practice. McBarnet (2001) argues that creative compliance 'does not arise deterministically from the nature of the law. It also requires a particular *attitude to* the law', an attitude which, she argues is,

> far from seeing the law as an authoritative and legitimate policy to be implemented, sees it as a *material to be worked on* (McBarnet, 1984), to be tailored, regardless of the policy behind it, to one's own or one's client's interests. And it requires *active legal work.*

McBarnet argues that creative compliance involves taxpayers and/or tax advisors seeking out,

> *gaps*: facilitating the "where does it say I can't do that?" argument; *the 'ex-files of law'* [which are] express exemptions, exceptions, exclusions, with practices then restructured to fit within them; and *rules:* the more prescriptive and rigid the definitions and thresholds involved, the better, with legal forms adopted to fit inside or outside their literal ambit – a practice of *working to rule*.

These usages of gaming reflect a double meaning of games – that of strategic interaction with legal rules, and unfair play. Taking into account the discussion on the literature above, tax games are defined here as institutionalised, reflexive modes of strategic interaction constituted by the configuration of four dimensions of taxation. These four dimensions are – the rate of taxation, the jurisdiction which makes the claim, the owner responsible for any payment, and the definition of the return upon which the tax is claimed. Rixen (2011 p.197) indicates that tax avoidance is 'a coordination game with a distributive conflict'. Tax games have a distribution function through these four dimensions of tax (which makes tax avoidance possible) and a political, coordination function (which sets the outer limits of the action). These are discussed further in the following sections.

2.3.1 Dimensions of Corporate Taxation

Each tax dimension is subject to negotiation in different ways. Pistor's 'coding of capital' is extended here to the coding of tax. Pistor focuses on the conditions of the existence of capital and how its value is mobilized and extended through the law. However, a focus on taxation, allows an exploration of the relationship between state claims to capital in cooperation and/or contestation with capital holders. The coding of tax is different from the coding of capital because it is carried out by states and the coding of tax also depends on the coding of capital. We explore the coding of tax through each of the four dimensions of taxation (Table 2.2).

Table 2. 2: The terrain of the Tax Games

Tax Game Dimension	Function of dimension	Sample areas of negotiation
Rate	The scope of the state claim	- Setting of corporate tax rate - Advance tax rulings - Special rate regimes
Jurisdiction	Rules that link a taxpayer or an item of income to claims made by a certain tax jurisdiction	- Residency rules - Tax treaty shopping
Owner	Entity responsible for paying the tax claim	- Rules governing corporate forms (eg Special Purpose Entities, relocating HQs) - Rules governing ownership relations between entities (eg Cost Sharing Agreements)
Return	The taxable asset or stream of income	- Provision of tax credits, reliefs, exemptions and allowances, treatment of losses - Accounting choices (i.e. transfer mispricing, booking of assets and debt, tax deferral)

Rate

The tax rate is the upper boundary of what the state can claim on the stream of income to which it relates. The rate is a guarantee to MNCs of a specified tax ceiling in a jurisdiction. This provides a level of certainty to companies, while the strategic choice of a low rate contributes toward MNCs achieving a lower global effective tax rate overall.

Jurisdiction

The jurisdiction dimension relates to the rules that link a taxpayer or an item of income to claims made by a tax jurisdiction. While part of the aim of global wealth chains is to reduce corporate tax liabilities, the strategy applied must be legal in each jurisdiction where taxes are paid (as per Sharman, 2010). To build the wealth chain,

corporations combine mismatching legal interactions via 'stepping-stone' arrangements (Picciotto, 2021) among different locations to minimise tax liability.

Owner

The dimension of 'owner' describes the entity responsible for paying the tax claim. Corporate entities have increased in number and in the complexity of their functions (Reurink and Garcia-Bernardo, 2021). As noted, there is also opacity in their registration and regulation, making it difficult to decipher their part in global structures. Corporate entities can have many different functions. Pistor (2019) argues that an important purpose of segmenting the corporation into many different entities is for the purpose of asset shielding. She writes,

> the corporate form is used to partition assets of the same firm into select asset pools, including receivables for certain types of claims that are shielded from the rest of its operations, with the result that a single firm may comprise dozens if not hundreds of legal shells (2019, p.52).

This concept of 'asset shielding' can apply to tax driven corporate forms. These include the establishment of SPEs which hold assets with low or no tax liability. In addition, the parties that are members of Cost Sharing Agreements relating to the funding of IP development (CSAs) within a corporate group are part of a process of strategically partitioning the location of costs in different tax jurisdictions to maximise profits in low or no tax jurisdictions. The legal form of the company also matters, for example in terms of where it is registered and/or incorporated. This affects whether it is viewed as tax resident in a jurisdiction. The form of owner offers other advantages beyond tax. SPEs are bankruptcy remote so offer users protection against certain creditors for example.

Return

The return dimension describes the asset or stream of income that is taxable. For example, corporations engage in debt shifting within their groups which enables the reduction of tax liabilities by placing debt in high tax jurisdictions. Jurisdictions can also provide tax deductions to particular financial transactions in an effort to gain an advantage in a particular field, through the manipulation of interest payments for example. Inter-temporal aspects relating to the treatment of investments is also important. For example, the timeframes and scope of schemes covering the writing down of depreciating capital investments against profit matters to MNCs investing in valuable assets, from aircraft to IP. The possibility of carrying forward losses, or unused tax credits, is also a feature of this dimension. The linking of the distribution of costs and benefits of IP to strategic placement of subsidiaries in certain tax jurisdictions is at the heart of global corporate plans regarding of asset shielding and asset ownership. The option of tax deferral, which has historically been of particular importance to US MNCs up until 2017, removes foreign income from the scope of tax claims in the US. This enabled MNCs achieve the ultimate durable low tax payments – by the removal of foreign income from the US tax net in perpetuity.

2.3.2 Tax Games, Rules and Interactions

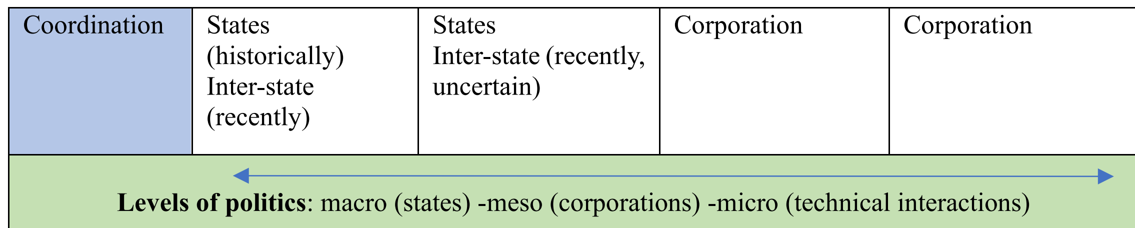
As discussed, Milogolov (2020) outlines ‘offensive’ and ‘defensive’ tax tools. However, these tools often work in combination and are based on legal interpretation. While the law is ‘limiting’ in character, Picciotto and McBarnet highlight how malleable the use of the law can be depending on how it is wielded or ‘worked upon’. Seabrooke and Wigan (2022, p.20) also emphasise responsiveness in global wealth chains (GWCs) to their external environment. They argue, ‘GWCs will mutate under

pressure of regulatory intervention'. This responsiveness and search for stability (through 'tax certainty') is at the heart of 'gaming' in tax. The nature of these GWCs can be changed, to differing degrees, by counter movements of state action and/or when 'the politics of invisibility' (Binder, 2023) of corporate tax is punctured. A 'politics of invisibility' is understood as a form of opaque politics that can lend protection and power to state-corporate avoidance networks.

The tax games have both distributional and coordination functions (Rixen, 2011) (Table 2.3). The distribution function makes the game possible i.e. it incentivises and structures the game but is malleable, through the four dimensions. The coordination function is the political activity of the game setting the outer limits of the game i.e it creates the set of choices available to each of the actors. While the tax dimensions are ultimately governed by law enacted by states, their coordination is shared between states and corporations. The coordination of the dimensions has changed as the politics of global tax has changed, notably regarding the dimensions of rate and jurisdiction through the current global reforms (focused on a global minimum tax rate and sharing of taxing rights among jurisdictions). The dimensions of rate and jurisdiction are generally coordinated by states, and those of owner and return by corporations. The games operate at macro levels (national tax policy and inter-state policy negotiation) and at meso levels (tax planning in corporate sectors). The politics of tax games occurs at those levels of negotiation but also through the 'micro-politics' of day-to-day negotiation on the technicalities of tax.

Table 2. 3: Tax games – functions, dimensions, levels of politics

Functions	**Tax dimensions**			
	Rate	*Jurisdiction*	*Owner*	*Return*
Distributional	Scope of tax claim	The right to tax	Ownership	Securing current and future wealth



Coordination	States (historically) Inter-state (recently)	States Inter-state (recently, uncertain)	Corporation	Corporation
Levels of politics: macro (states) -meso (corporations) -micro (technical interactions)				

We have seen that global tax is rules based, but that rules can be gamed in strategic and limited ways. Erving Goffman's work (1983) on strategic interaction orders, while focused on face-to-face interaction, is helpful in exploring the dynamics of *implicit* rules which hold legitimacy in place. The concept of 'interaction orders' is useful in tracing the distributional and coordination functions of the games. Goffman describes an 'order' as 'contained elements [which] fit together more closely than with elements beyond the order'. Goffman views legitimised interaction as quite 'orderly', as it has a 'large base of shared cognitive presuppositions, if not normative ones, and self-sustained restraints'. 'Orderliness' results from the institutionalization and routinization of certain interactions. 'Workings of the interaction order can easily be viewed as the consequences of systems of enabling conventions, in the sense of the ground rules for a game' (Goffman, 1983). Goffman describes interaction orders as having a wide scope or 'a traffic of use', a 'diversity of projects and intents [..] realized through unthinking recourse to procedural forms'. He also acknowledges the possibility of a more 'disruptive', from within and without social structures, power which, when effective, indicates the vulnerabilities of the interaction order. Goffman views interaction orders as a form of required, detailed analysis – 'a substantive domain in its own right' which should be isolated analytically in efforts to interpret it. Goffman argues the evidence of a relationship 'is the relationship [..] this evidence is the stuff of interaction'.

Interaction among the key players in the tax games are primarily rules-based with implicit rules, power dynamics and norms also relevant. Indeed, abiding by the rules in each jurisdiction of operation is a requirement to make a tax game work. But rules in tax are highly ambiguous resources. They are complex, and require expertise to interpret and deploy them. This makes rules in tax games highly political, which is discussed next.

2.3.3 Politics of Tax Games

In his study of Ireland and FDI, Ó Riain (2004) outlines the evolution of Ireland's skillset in becoming a global success in FDI attraction. However, the 'hidden' skill involved in playing the tax games is underexplored. In his wider study of Ireland's liberal boom and bust journey, however, Ó Riain (2014), provides three important clues to identifying the building blocks underlying Ireland's skill in the tax games. Firstly, Ó Riain, points out that liberal states are present in different ways alongside private enterprise, even if they do not appear to be. For example, Ó Riain's analysis of Ireland in the 1990s shows that 'market-led' initiatives in fact involved significant state institutional action. In the case of FDI into Ireland, Ó Riain shows that the mode of attracting FDI was 'a highly statist project, as well as a liberal policy' (2014, p.27; 2004). This echoes the view of Vogel (1996) who argues that, contrary to much of the literature on neoliberalism which claims that there is a 'rolling back' of the state, less regulation in markets can involve greater, not lesser, levels of rule-making by states. *Secondly*, in his analysis of the factors leading to Ireland's banking crisis, in addition to bringing the role of the state into view, Ó Riain shows that market institutions also make rules. And thirdly, Ó Riain highlights the importance of a state-promoted 'liberal

creed' which sought to normalise the centrality of market forces through 'market talk'. He describes 'market talk' as

> rationalities and justifications of action that actors draw upon in making and interpreting conditions and decisions. In a liberal market system, these rationalities rely heavily on market talk – justifications that give a central position to the autonomous effects of market processes' (2014, p.112).

These three areas of action – state engagement in market action, rule-making by markets in tandem with the state, and active public political management - reflect the capabilities involved in Ireland's tax games.

Tax games operate as a form of infrastructural power. The games are the infrastructure of everyday tax affairs. States come to depend on the maintenance and reproduction of these corporate practices through the coordination of four dimensions of tax. In this sense *infrastructural power is the tax games*. This power operates in an onshore-offshore dynamic, within a set of wider state hierarchies. The games framework allows for a tracing of these political and economic interactions and evolving dependencies. This provides a more explicit tracing of inter-state power relations than binary descriptions of 'low tax-high tax' descriptions. The games framework also helps tracing 'actorness' (Seabrooke and Wigan, 2022) in global wealth chains, as actors wield different levels of control in different tax dimensions at different times. Tracing the evolution of the games also reveals changing and interrupted levels of control among the actors. The games framework therefore reveals action and actors in tax avoidance in a more concrete way. This in turn supports identification of the multi-challenges involved in any reformed treatment of them. For example, if a pooling of tax sovereignty were to be the goal of new treatment (Genshel and Rixen, 2015) the relations between the tax dimensions would be radically changed. Understanding how

they have been engaged with up to now, both legally and politically, assists in considering potential reform challenges ahead.

In summary, in formulating the framework of tax games, the relationship between coordination and distributional tax politics is reconceptualized. Tax games emerge as institutionalized orders of strategic interaction around the four tax dimensions. The games framework support the provision of an account of corporate-state relations that complements and extends recent research on global wealth chains (Seabrooke and Wigan, 2022), patterns of foreign investment (Reurnik and Garcia-Bernardo (2020)) and modes of tax avoidance Milogolov, (2020).

2.4 Conclusion

The discussion of the 'classic' tax competition literature highlights that global corporate tax is a large-scale activity, affecting states in diverse ways. It is also a highly ambiguous activity. It involves an opaque engagement between states and corporations underpinned by the interaction and interpretation of legal and quasi-legal rules. This interpretation occurs within state-state and state-corporate power relations which are quite path dependent but also uncertain. 'Tax states', in particular those where their corporate tax regime forms a specialised 'niche' within the global tax geography, are highly dependent upon and politically attached to their corporate tax regimes.

The socio-legal literature on tax presents the useful concept of 'global wealth chains' which provides a theoretical approach to deal with the diverse structures of global corporations, and their interactions between regulators and advisors skilled in tax interpretation and application. The multi-levels of action and actors involved in building global wealth chains are brought more clearly into view, alongside the

specific asset management strategies at play. Pistor's presentation of legal attributes applied to financial transactions by legal advisors also foregrounds both the malleability, but also fundamental power of legal rules.

The evolving literature on stability and change in the world of transnational tax reveals the enormous challenge in designing and securing a re-ordered global tax regime which cannot be undermined or subverted. There is distributional unfairness and dependencies involved, making a search for robust alternatives that have inter-state equity in their design very important, prompting a need for greater attention to the core underlying principles which sustain tax avoidance.

The framework of tax games advances understanding of corporate tax avoidance in three main ways. Firstly, it extends Pistor's analysis of coded legal 'attributes' to four dimensions of tax competition which become the foundation for the identification of different tax games. This supports the analytical project of 'disentangling' aspects of business competition from tax avoidance. Second, there is an understanding in the literature on global wealth chains that tax competition is dynamic, with actors developing strategies in relation to one another (including through competition, cooperation, collusion, adjustment, and other negotiations). The theoretical framework of the thesis advances this literature by providing the concept of tax games to understand in more concrete detail what happens within these wealth chains, especially in terms of what sustains and changes them.

Three critical elements are introduced through the games concept. Firstly, four dimensions of tax competition configured into a variety of distinctive games. Second, the critical role of informal and formal rules that are formulated at multi-levels of the political economy. These are understood as resources for action by the players in the

game. Third, the dynamic processes of interaction in each game, where the actors learn the rules and strategise within and around them. This allows study of levels of stability of the 'social orders' in the games that can themselves be undermined or challenged.

Finally, the games operate in political conditions, both in terms of rules ('law') and of legitimacy ('politics'). This extends the literature on the socio-legal contract of taxation (Mumford, 2019), and historical and post-colonial studies of the politics of taxation (Ogle, 2017). The games framework advances these through the analysis of taxation politics in three ways. Firstly, the concept of the 'tax state' is added to understandings of the 'developmental state'. Second, the games framework facilitates attention to both domestic institutions and politics and also international boundaries and transnational institutions. Third, the framework extends the literature on business power to the arena of tax and the concept of infrastructural power. And fourth, the games are understood as reflexive. This allows an engagement with taxation as a contested process, with movements and counter-movements in domestic and transnational arenas.

The structure of the empirical chapters of the thesis reflects these contributions (Table 2.4). Chapter Four outlines the four dimensions of corporate tax in Ireland, mis-alignment and disconnection in the Irish economy relating to U.S. corporations, and a classification of Ireland's tax games and their evolution over time. Chapter Five outlines the productive-tax driven entanglement of tax games built around IP in Ireland and the dynamics of three IP tax games played through domestic and inter-state rules. Chapter six focuses on the politics of Ireland's tax games by tracing national tax institutions in the Irish developmental state, Ireland's international entanglements in tax politics, and movements and counter-movements in Ireland's tax games.

Table 2. 4: Structure of empirical chapters

Literature section	Relation to tax games	Advances the Literature	Empirical chapter
Nature of Tax Comp	Dimensions	Extends Pistor (2019) and translates her concept of coding to a tax context Advances work on global wealth chains through tracing 'productive – artificial entanglement', and process of change / evolution in wealth chains	Chapter 4: Tax dimensions; mis-alignment and disconnection; classification of Ireland's tax games
Tax Competition Strategies	Tax Games, Rules and Interactions	Advances global wealth chains literature through tracing the role of rules in strategic interactions	Chapter 5: The productive-tax driven entanglement of IP tax games in Ireland; the dynamics of three IP tax games played through rules
Politics of Global Tax	Politics of Tax Games	Advances macro histories into concrete political foundations of tax, by focusing on the conditions of games and how political dynamics shape them Extends Mumford (2019) and historical tax haven accounts (Ogle, 2017) through multi-level analysis Extends business power literature (Culpepper, 2021, Braun, 2018) through a focus on institutions and politics of the tax state – domestic and transnational	Chapter 6: The politics of Ireland's tax games: tax institutions and the developmental state, international entanglements of tax politics; and movements and counter-movements in the games

Chapter 3: Methodology

3.1 Introduction

A study of Ireland and corporate tax avoidance involved a myriad of methodological challenges. This chapter discusses two main areas of decision-making in relation to the thesis. The first of these relates to the decision to choose Ireland as a single case study. The focus on Ireland was justified because Ireland is such a notable jurisdiction and outlier in the macroeconomic data relating to corporate tax avoidance. Despite its significance, the literature relating to Ireland is partial and fragmented. A need for a 'unified' study of the Irish case was therefore identified as filling a significant gap in the literature both in terms of Ireland's developmental model and the global workings of corporate tax avoidance. A single case was also viewed as important because there is little documented study of *why* Ireland has become such a significant player in the corporate tax avoidance story. In addition, because Ireland is often understood as a key node within the global tax avoidance architecture, a singular focus on Ireland was viewed as important in understanding the workings of this wider global phenomenon.

The second key decision was to approach the study through the framework of tax games. Ireland is described in a range of connected but differentiated ways in relation to tax and regulatory issues, including as a 'tax haven', a 'higher activity haven', a 'corporate tax haven', and an 'investment hub', among others. This shows that there is complexity involved in Ireland's position. Analytical flexibility was needed in order to properly investigate the veracity of the framings in which these various descriptions of Ireland are rooted. Finally, a framework which clarified the dimensions of the tax

driven elements of these wide-ranging descriptions was also needed. This chapter discusses these two central methodological decisions, in addition to discussing the serious challenges involved with dealing with the data and the ethical considerations arising from the research.

3.2 A Case study of the politics of global tax

The thesis provides a single country case study in the global politics of tax. Single cases are a potentially rich terrain of study, allowing for in-depth analysis, though they are not without methodological risks. Christians (2010) advises that clarity regarding the purpose of single case studies is important. This thesis focuses on Ireland as a single, exploratory case for three key reasons. First, as noted, Ireland is identified as a key node in the global network of corporate tax avoidance (Clausing, 2020a). Yet available analysis on the role that Ireland plays in this global network is partial in nature and fragmented across a range of disciplines. A literature review showed the need for a 'unified case' which responds to the available, if fragmented, material, in order to clarify *how* tax avoidance happens over time in Ireland. This required detailed description. Gerring (2012, p.722) argues that a descriptive argument,

> describes some aspect of the world. In doing so, it aims to answer *what* questions (e.g., *when, whom, out of what, in what manner*) about a phenomenon or a set of phenomena. Descriptive arguments are about what is/was.

The provision of a description of how tax avoidance happens in Ireland was one of the goals of the thesis.

The second reason for the singular case study is that there is no sociological study on Ireland's corporate tax model which clarifies *why* Ireland has become such an apparently crucial case. Answering the 'why' aspect of the thesis is not straightforward. Gerring (2011, p. 232) further argues,

> The confirmationist asks whether a theory is (a) true or (b) false. The explorationist asks under what circumstances, or to what extent, a theory is true or false. Truth, for the explorationist, is a matter of degrees. The falsificationist looks to theory to provide a sturdy framework for knowledge; the explorationist looks to the empirical world.

In order to answer the question of why Ireland is such a crucial case, in the context of partial literature, it was clear that a deeper exploratory approach to a single case would be required.

Thirdly, the literature reveals Ireland as important within the global practice of corporate tax avoidance. Understanding the roles played by such a key jurisdiction, advances understanding of Ireland's role and helps clarify the workings of the larger phenomenon of global corporate tax avoidance. Strong single cases in the social sciences are often viewed as requiring a generalizable feature, albeit with clear limits. Gerring (2004) argues that crucial cases are chosen to deepen our understanding of a concept or a broader body of theory. Tax haven literature does indeed, grapple with the formulation of generalizable definitions and features. However, this is not necessarily the right approach to tax haven studies. Byrne (2013) argues that individual cases involve 'complex systems'. He argues that the trajectories of complex systems depend on all of the parts of the whole - on their interactions internally and with other complex systems among which they are situated or intersect. The thesis adopts this approach of viewing corporate tax avoidance in Ireland as part of a wider set of complex inter relations. It seeks to clarify the internal dynamics and external conditions of Ireland's tax games i.e. the nature and role of Ireland as a 'node', or jurisdiction, within the global activity of corporate tax avoidance.

Positioning the study in this wider context involved examining the role of Ireland specifically, and the linkages between the boundaries of Ireland's tax rules, and the

politics of its rules, and the rules and politics of other jurisdictions. The study therefore adopts a multi-level scope. In fact, in order to understand the dynamics and conditions of the games, a deep multi-level study was required. The multi-level approach is apparent across the empirical chapters. The first empirical chapter, Chapter Four, clarifies the scope of the Irish sectors of interest and their relationships to corporate tax avoidance. The tax avoidance that appears the most significant by non-financial firms is then focused upon in Chapter Five, the 'Intellectual Property Tax Games'. This chapter examines the rules shaping this tax avoidance from a multi-jurisdictional perspective ranging from Ireland to the U.S., to the EU and Bermuda. Finally, Chapter Six explores the politics of Ireland's tax games from the point of view of its national tax institutions, including its international entanglements. It explores relations with the largely internationally-sourced counter movements against Ireland's regime and Ireland's response to these challenges. This empirically driven approach provided a rich, multi-level analysis of a single case which included a focus on a diversity of actors, jurisdictions and power dynamics connected to Ireland's tax regime.

Two challenges were presented by the single case approach. The first problem arises from the fact that Ireland's corporate tax model functions within a much wider corporate tax system involving multi-jurisdictional rules and politics. Ireland's model is shaped by, and helps shape, the active world of transnational tax politics. This presented an overwhelming level of potential research material. The research approach adopted seeks to anchor the analysis in the rules and politics as they interact with the case of Ireland. This maintains an openness to the richness of the material available, while placing boundaries around the data collection and analysis.

The second challenge related to the fact that Ireland is a crucial case. But how crucial? In what ways is Ireland different from Bermuda or The Netherlands? And does it matter? The approach taken here was to, firstly, clarify the dominant modes of corporate tax avoidance in Ireland and their connections with other jurisdictions, this clarified the function of Ireland in relation to these important avoidance avenues. Secondly, I was conscious that many jurisdictions offer tax advantages on a spectrum, some more 'generous' than others. This seemed important, but also presented the danger of allowing the study to get bogged down in comparative study of a very wide range of aspects of Ireland's tax system. It was clear that Ireland's importance as a node in global tax arises from how its tax rules interact with the rules of other jurisdictions. For example, while some jurisdictions offer more aggressive tax incentives than Ireland in some cases, Ireland nevertheless maintains its tax-driven popularity among certain corporate sectors. This indicated the need to move beyond comparison of specific tax incentives to an approach that identifies the unique roles of specific jurisdictions in relation to a larger system of action within which they are embedded. The focus of the thesis therefore became to clarify the main aspects of Ireland's corporate tax regime (Chapter Four); to explain the interactions of its approach with other jurisdictions (Chapter Five); and to understand how these jurisdictions shape Ireland's model (Chapter Six).

Gerring argues that case studies are more likely to shed light on causal mechanisms rather than on causation directly. This is all the more relevant to a case study on the sensitive subject of tax avoidance. Often in the case of corporate tax avoidance, as with other processes of global financialisation, there is no 'smoking gun' (Braun, 2018). Process tracing is the method predominantly used in the thesis. Process tracing 'attempts to identify the intervening causal process – the causal chain and causal

mechanism' (George and Bennett, 2005, p. 206). Process tracing as a research method has been critiqued for overstating its possibilities. This is a valid caution due to the unwieldy nature of the claims of process tracing (Hay, 2016). The general approach taken in the thesis is to acknowledge the contingent nature of data relating to global tax, ranging from basic financial data to interview-based material. Process tracing, for all its risks, offers an opportunity to study the wide-ranging mechanisms of how corporate tax 'works'. The approach undertaken in the thesis therefore followed Burawoy (1991, p.282) in focusing on 'micro situations' which shape and are shaped by 'wider structures'. This was viewed as an appropriate approach in order to move beyond the limits of current literature relating to the world of global tax as discussed in Chapter Two.

In order to carry out such a multi-levelled study, the triangulation of data in the thesis features indirect routes to ascertaining the actions of the players, while elite interviews are used as key data sources in filling analytical gaps in this endeavour. Confirmation bias is a risk here i.e. that the author seeks a particular outcome. To avoid this problem, Bennet and Checkel (2015, p.24-25) advise being explicit about the varied risks involved in the specific types of material (e.g. historical, politically spontaneous, who makes it available etc). They also stress the importance of explicitly exploring alternative explanations (and 'being equally tough' on alternative explanations). This is done by outlining the process tracing predictions 'of a wide range of alternative explanations of a case in advance and then consider the actual evidence for and against each explanation'.

A further challenge of the research is its contemporary nature. Global tax is currently undergoing re-negotiation (Christensen, Hearson and Randriamanalina, 2020). Studying contemporary events risks a rush to judgement. Bennett and Chackel (2015)

describe an event as 'an instance of substantial and relatively quick change in an independent or dependent variable of theoretical interest.' The approach taken in the thesis does not seek to predict future outcomes of unfolding events, but rather to factually explain the empirical mechanisms and interactions which have happened so far and why. This analysis was done at a broad level (for example relating to the currently proposed global reforms) because they are currently in flux and under negotiation.

3.3 Analytical strategy

The thesis seeks to answer the question: *how does Ireland win the corporate tax games?* Two assumptions underlie the question, both requiring justification. First, is the assumption that there are tax games and, second, that Ireland is winning them. A number of conceptual decisions underlie the idea of 'winning tax games' which were made in response to the major research challenges of the thesis. The challenges relate to the inherent opacity of the practice of tax avoidance, and the diverse elements and actors involved in the practice. This section discusses the reasons for choosing the tax games framework.

3.3.1 Tax games as analytical framework

'Tax games' is the analytical framework chosen for the thesis. The value of the framework is its analytical flexibility to deal with the changing multi-level activity and actors in the world of global tax. As noted, the research question to which the thesis responds is 'how does Ireland win the tax games?' This contrasts with a different

form of research question which was considered, and ruled out, early on in the research process, that of: ‘why is Ireland such a successful tax haven?’ Tax havens are generally well recognised phenomena and Ireland has regularly been described as one. However, reviewing the literature presented two challenges regarding this. First, there is not agreement on what constitutes a tax haven. For example, Ireland does not meet the oft quoted OECD definition of a tax haven[34] (Tobin and Walsh, 2013). Also, due to its narrowness, scholars of global tax do not generally accept the parameters of the OECD description. Various lists identifying tax havens have been developed over time. Ireland has been described as a tax haven in many of these lists and descriptions (e.g. Hines and Rice, 1994, O'Boyle & Allen, 2022). However, Ireland has also been described using other ‘tax haven-like’ terms, which emphasise different or additional characteristics. These include descriptions such as:

- ‘corporate tax haven’ (TJN, 2021) describing the high concentration of corporate profits booked in Ireland in a ranking index
- ‘conduit jurisdiction’ (Garcia-Bernardo, Fichtner, Takes and Heemskerk, 2017) describing the high level of financial flows passing through Ireland
- ‘coordination centre’ (Reurink and Garcia Bernardo, 2021) describing the corporate functions in Ireland driven by tax advantages but also other advantages
- ‘offshore centre’, ‘financial centre’ (Ayadi & Arbak, 2014) or ‘investment hub’ (IMF, 2022) describing the high concentration of financial and financial services in Ireland
- ‘a higher activity haven’ (Clausing, 2020a), highlighting Ireland’s ‘important historical role as a haven, yet its effective tax rate in 2017 was a bit over [her benchmark] tax haven threshold of 10 per cent’

[34] The OECD 1998 definition of a tax haven (Tobin and Walsh, 2013): 1. No or only nominal taxes (and offering, or being perceived as offering, a place for non-residents to escape tax in their country of residence); 2. Lack of transparency (such as the absence of beneficial ownership information and bank secrecy); 3. Unwillingness to exchange information with the tax administrations of OECD member countries; and 4. Absence of a requirement that activity be substantial (transactions may be “booked” in the country with no or little real economic activity).

These descriptions describe notable features, including concentration of foreign profits and pass-through finance; types of corporate action, including real and artificial investment from both non-financial and financial sectors; and types of governance. These diverse descriptions indicate a range of potential connections between Ireland and international corporations, including tax, but that also go beyond tax. This provides six basic observations that needed to be considered when formulating a theoretical framework:

- Ireland has a role in hosting large corporate foreign profits.
- Ireland fulfils a function in the tax avoidance world within a wider set of jurisdictions.
- These jurisdictions can play different roles in relation to tax planning, but also other functions.
- Foreign non-financial, financial and financial services sectors are notably large in Ireland.
- Ireland seems to be a particularly unusual case of combined 'real' and 'artificial' activity.
- The idea of indexes, where the positions of jurisdictions in relation to each other may change from year to year, indicates that tracking change in terms of locations of intensities of corporate action, and governance of corporate activities is also important.

These considerations complicate Ireland's story significantly, a story often framed in dichotomous terms - of Ireland as a tax haven, or as a poster example of successful FDI. They also make the story more interesting, as these issues involve viewing the Irish state through a range of multi-level relations - with other states, with corporations, which in turn shape Ireland's approach to domestic governance of these relations. The tax games framework would need to facilitate these considerations.

The thesis frames the activity of corporate tax avoidance as highly problematic from a tax justice perspective. However, in the context of a competitive tax game, it is clear

that Ireland is ‘successful’ in this area. Despite the diverse descriptions of tax havens and tax haven-like jurisdictions in the literature, Ireland is consistently notable among them. ‘Success’ in the context of the thesis, is understood to operate on three different levels. First, judging by the data already mentioned, Ireland is an actively utilized jurisdiction by foreign corporations. Ireland is a jurisdiction that is ‘in demand’. Second, the outcomes of Ireland’s overall FDI (that is, the outcome of the complex combination of both ‘real’ and tax-related, ‘virtual’ FDI (Dietsch and Rixen (2014)) offer very significant economic benefits to the Irish state through comparatively high levels of tax revenue and FDI related job creation (Genshel & Seelkopf, 2015). In this sense, the model ‘works’ for Ireland. Third, these economic benefits have grown over time and appear stable, at least at the time of writing.

Two puzzles arose from thinking about these different levels of success. Firstly, the economic benefits achieved by Ireland do not fit with the features of a classic tax haven. Many tax havens have zero corporate tax receipts and low FDI employment[35]. Ireland, in contrast, has exceptionally high tax receipts and high levels of FDI related employment. It appears that a jurisdiction can have both features of a tax haven and be a location for real FDI. Separating out the ‘real’ from ‘artificial’ activity, and identifying the routes of their entanglements, presented a significant challenge to the research.

The second puzzle related to the stability of Ireland’s corporate tax regime. Since the global financial crisis, ‘noisy politics’ (Culpepper, 2021) has arisen internationally around the issue of tax avoidance. This begged the question, why don’t powerful states simply interrupt Ireland’s success? For example, the literature shows that both the

[35] Zero corporate tax rate havens usually generate revenue through administrative fees on transactions. While a certain amount of employment is generated, it is not substantial in comparison to the scale of finance they host.

U.S., and many member states of the EU and OECD have significant hard and soft power in the field of global tax (Hakelberg, 2020, Mason, 2020). Yet despite powerful states being unhappy with Ireland's tax regime, they have failed in reorienting Ireland's model. It became clear that, despite the noisy politics around global tax, there is significant state-based and inter-state complexity that shapes the stability of Ireland's model. As a result of these puzzles, describing *how* corporate tax avoidance happens in Ireland became centrally important to the thesis, both in terms of its mechanisms and the stability (or perhaps hidden instabilities) of its politics.

Responding to the question of 'how' tax avoidance happens in Ireland was addressed by firstly, studying areas of misalignment in the Irish economy i.e. where and when the value added by a sector or firm in the economy is disproportionate to its employment. However, financial and financial services sectors are very concentrated in Ireland and are characterised by high levels of financial flows which are not entirely driven by taxation. To develop a more nuanced view, a study of 'disconnection' from the Irish economy was also carried out i.e. activity that is statistically recorded as having no impact on the domestic economy. Based on this analysis, the areas that were chosen for more concentrated study in the thesis were those elements identified as being both strongly misaligned and disconnected from the Irish economy. A further challenge was that, despite this narrowing down of focus, misalignment and disconnection can be driven by other regulatory factors, beyond tax. The identified areas were therefore then situated within the four dimensions of corporate tax in order to clarify their connection to tax and the interactive tax games framework more broadly.

A key to explaining the mechanisms and political stability of Ireland's approach appeared rooted in the perceived legal character of Ireland's overall model. However,

alongside its legally sanctioned position, Ireland has experienced sustained political critique from states and international publics, in addition to a legal challenge (albeit defeated so far) by the EC (EU General Court, 2020). The thesis therefore sought to answer two further, secondary, questions relating to Ireland's success: 'why is Ireland's tax haven-like character legal?' and 'what, if any, are the non-legal conditions that uphold the Irish tax haven-like form?' In order to do this, and drawing on the analytical strategies outlined above, the thesis sought to outline the legal rules underpinning tax avoidance strategies. This enabled a tracing of their political origins, the dynamics of change relating to them and the key actors involved. Importantly, it became clear that it would be necessary to analyse the rules on a multi-jurisdictional level (especially relating to U.S. tax law and regulations). This is done in Chapter Five in relation to Irelands 'IP Tax Games'. It came as a surprise that there was so much legal activity underpinning such a stable regime. To better understand this 'busy world', Chapter Six undertakes an analysis of how Irish politics shapes and is shaped by tax politics elsewhere.

A further research challenge emerged in relation to Chapter Six. Firstly, the Irish state and U.S. corporations in Ireland, are both beneficiaries of the Irish approach. How can the actions of the Irish state, its associated public institutions, and U.S. corporations be disentangled given that their interests appear largely aligned? And how can the different strategies within the MNC sector be deciphered? Secondly, the inter-state politics of corporate taxation is largely carried out in private. How could the diverse viewpoints of stakeholders shaping the external conditions be ascertained? As noted in Chapter Two, Braun's (2020) theory of infrastructural power proved helpful here. Braun argues that in the financial system the boundaries of states are no longer de-

limited. Discussing the financial sector he writes (drawing on the work of Michael Mann),

> [Infrastructural power] is closely related to structural power in that it rests on the financial sector's centrality for economic performance, infrastructural power nevertheless constitutes a distinct sub-type derived from direct entanglement at the level of policy instruments rather than the indirect dependence at the level of ultimate policy goals [...] (Braun, 2020, p.400).

In the absence of a 'smoking gun' to reveal motivations and actions, Braun's approach proved helpful, as he essentially recommends focusing on tracing policy and legal mechanisms. Rixen (2011) describes tax avoidance as 'a coordination game with a distributive conflict'. This points to the importance of looking at the distributional interests in global tax, and their connection with coordination strategies among states, corporations and other actors. Reviewing the literature, and assisted by my supervisor, categories of 'tax dimensions' were formulated which describe the differentiated state and corporate claim-making interests (Braun & Koddenbrock, 2023). It was clear that states and corporations took different roles in coordinating these dimensions. It was also clear that the politics of this distributional-coordination dynamic occurred at different levels also, at macro (state), meso (corporate) organizational levels and also on a day-to-day micro level of the technical negotiation of tax (Christensen, 2021). Taken together, these analytical lenses formed the theoretical framework to investigate the tax games.

3.4 Data

The data underpinning the thesis is primary data, collected through qualitative interviews, and secondary documentary data. Each are discussed now in turn.

Primary data was collected through 26 research interviews. The interviews were deeply informative. The reason for this was that the interviewees were generally players in the tax games or very close observers. They provided two helpful types of information. Firstly, and most importantly, the interviewees provided previously undocumented explanations of a lot of the decision-making behind the games. This was very important as it, at least partially, clarified the intentions and perspectives of different actors. Secondly, many interviewees provided technical explanations of the games. While the detail of tax rules is well documented, it is nevertheless highly complex. Expert interviewees were able to confirm or adjust my understanding of the implications of many technical issues relating to the tax rules. The interview data proved to be very rich. This was surprising as I expected interviewees to be mostly reticent in their responses. Interviewees may have shared information for two main reasons. Firstly, the approach taken in the interviews was to understand the 'daily tax world' of the interviewee. This established a productive rapport during several interviews. In addition, once interviewees had agreed to participate they generally took the interviewing process seriously. Secondly, some interviewees were clearly critical of the tax games, despite their involvement in the tax world as a whole. While there was a general caution around discussion of the most 'infamous' games such as Apple for example, there was also a sense among several interviewees either that the stateless structure of Apple in particular was not legitimate and/or that it did not represent the core of Ireland's FDI policy.

There were two main challenges involved in collecting interview data on the topic of Ireland's corporate tax. First, was the challenge of securing access to interviewees to discuss such a politically sensitive topic. A mixed approach was taken here. 'Cold' approaches were made to a number of interviewees, some of whom agreed to be

interviewed, many of whom did not. A different approach was needed. The most successful strategy involved securing a small number of initial introductions through personal contacts, which resulted in a snowballing effect of securing further, successful introductions. Once interviews were agreed, the next step was to ensure that the interviewee followed through on giving the interview. This was achieved through emailing a research consent form to the interviewee, signaling in advance that the interview should ideally be recorded and agreeing in advance whether they would like to be asked for further approval for use of their quotations. No MNCs are directly interviewed in the data. This is because they did not respond to requests for interviews. This gap was partially filled by other interviewees working in strong alignment with these firms and with very strong knowledge of them.

The interviewees were all very senior level in their professional work. Seniority tended to be either the top or second tier of the leadership structure of their associated organisation. The interviewees were a mixture of current and retired professionals. The organisations associated with the interviewees include relevant government departments, the Irish Revenue Commissioners, the Central Bank of Ireland, the European Commission, the OECD, representative business associations, professional tax advisory bodies, trade unions, NGOs, think tanks and members of various public taxation policy initiatives and academics. A number of informal meetings were also held with well-informed individuals who did not wish to be interviewed but who were willing to support the research in terms of confirming or problematising factual or methodological issues.

The risk associated with identifying interviewees through 'snowballing access' was that interviewees would become part of an echo chamber, excluding other perspectives (Binder, 2023). Efforts to avoid this were made by proactively asking interviewees to

discuss varying viewpoints during interviews, and also to consider a wide range of potential interviewees from their professional worlds for introduction as potential research interviewees. This risk was also viewed as less of a problem in the case of this thesis because, the tax policy making world is a relatively elite and inter-connected group. This meant that, given the seniority of the interviewees secured, their insights could be viewed as valuable in and of themselves and relatively representative of the institutions with whom they work or worked. Where divergent views emerged in the interviews, they tended to reflect differences in institutional viewpoints, rather than personally driven viewpoints of the interviewees themselves. Interviewees also shared their personal perspectives but tended to be clear about when they diverged from institutional positions. In light of this, efforts were made to ensure a diversity of relevant institutional representatives were interviewed.

The second challenge involving the interviews was ensuring the interviews were productive. My concern was twofold. Firstly, that interviewees would shutdown if asked a question which they found overly intrusive. Secondly, that my own identity as a researcher would deter interviewees from being open with me. A cursory search about me would have revealed to interviewees a background with groups associated with tax justice. To mitigate these risks the approach undertaken was to pose broad and open-ended questions (focused around 10 main simple questions, see Appendix 2). This was to facilitate the interviewee to take the discussion in directions they were comfortable with. It also allowed detailed and unexpected responses, of which there were several. As Roberts (2020) writes,

> interview questions need to be capable of eliciting an in-depth response relevant to the topic of interest [..] Asking questions that fall outside of this experience or questions focused on what the researcher has predetermined to be important would be inappropriate at best, and at worst could derail the research.

Interview questions were, however, at times tailored toward the area of expertise of the interviewee (Li, 2022). For example, some interviewees were asked very specific questions of tax law or the workings of tax avoidance structures in order to check the accuracy of my understanding. As noted above, most interviewees, with some exceptions, were happy to engage with a free-flowing conversation. I think this was for three reasons. Firstly, the majority of the most important interviewees were retired and perhaps felt more able to speak freely and reflect on the topic through the interview. Secondly, the timing of the research coincides with Ireland at its peak of both winning the tax games, while maintaining a thin legitimacy through its support of global tax reforms. It's a less defensive time for the state in Ireland's tax games. Arguably, interviewees would not have been as forthcoming if interviews had been requested during the financial crisis or the crisis of the EC state aid ruling against Ireland's tax treatment of Apple in 2016, for example. Third, a number of interviewees signaled to me that they likely disagreed with what they assumed was my perspective on Ireland and corporate tax. However, they indicated that they supported research, and Phd research in particular, and so were willing to take part on that basis.

There were interviewees who were more reticent. Unsurprisingly those who were still actively involved in global tax and had 'skin in the game' were the most cautious interviewees. In these cases, the discussion tended toward confirmation, or otherwise, of facts rather than seeking to elicit analysis from the interviewee. This involved a strategy of leaving out questions I would have liked to ask, in favour of asking questions to learn other things and avoid having the interview shut down. Interviewees didn't fall into a binary category of reticent/open. Single interviewees could be open in their responses to some questions and refuse to answer other questions. The interviews were occasions of constantly trying to judge this boundary with the

interviewee. A common area of caution among many interviewees, though not all, was speaking in reference to particular companies.

Overall, the interview approach sought to prioritise accessing the experience of the interviewee in relation to the topic. This follows Peredaryenko & Krauss (2013 p.12) who indicate 'a researcher preoccupied with his or her own predispositions regarding the research question shuts [themselves] off from the informant's experience'. Instead, the approach to interviews was to ascertain as rich a picture as possible of this segment of the world of corporate tax in its day-to-day decision-making. This follows Kvale and Brinkman (2015, p. 15) who write,

> From this stance, the processes of phenomena of the world should be described before theorized, understood before explained, and seen as concrete qualities before abstract quantities.

Data from the interviews were useful in drafting all three empirical chapters of the thesis. Interviews on more technical understandings were very helpful in drafting Chapters Four and Five. Interviewees for example, assisted in providing their understandings of misalignment and disconnection in Ireland's economic sectors (Chapter Four) and in explaining the purpose and use of different tax rules (Chapter Five). The data from the interviewees forms the backbone of Chapter Six. This is because the interview data was politically orientated toward the experiences of the interviewees as either players or close observers of the games. These interviews provided rich, previously undocumented data to assist in explaining the politics of the tax games.

However, as Binder cautions (2023, p.5) it is important to treat the interview material as records of the world of the respective interviewees and not 'the' world. This risk was tempered by analysing the interview material in the context of the wider documentary material. In addition, the reader is invited to consider the validity or

otherwise of the views of interviewees. This is done through the referencing of interviews (mostly, see section on 3.2.3) in the thesis text. Readers can see if the view recorded is of one interviewee or many for example. Also, where a striking view of an interviewee is recorded and that may be questionable, this is treated discursively as such in the text. The importance of protecting the anonymity of research interviewees is discussed in Section 3.4 on ethics.

The secondary data used was comprised of a very diverse selection of documentary material and involved challenges of scale and complexity. In reviewing the literature, it became clear that the known tax avoidance structures in Ireland depend upon significant corporate organizational decisions, including choices relating to types of products and services provided, the organization of production, the form and control of assets, and organisational legal structures (e.g. Reurink & Garcia-Bernardo, 2021). A necessary approach of triangulating diverse documentary data was undertaken. While secrecy is a commonly identified feature of tax avoidance (Harrington, 2021), significant, if fragmented, material was available. Therefore, many of the positions of the players were 'hiding in plain sight'. The analytical strategy identified key areas of documentation including on national statistics, tax advantages offered in Ireland, cases of corporate tax avoidance and the structures involved, legal rules relating to relevant jurisdictions and the political positions of the various actors. These are each discussed in turn:

Statistical documentation: these were descriptions of FDI statistics, primarily from the CSO but also from the Irish Revenue Commissioners, Eurostat and the OECD. Further statistical sources provided limited, but important strategic comments providing credible market-based knowledge, for example, on linking statistics with corporate

activity or structures. These were found in Central Bank of Ireland Bulletins and CSO Releases.

Tax advantages via Ireland: These were identified by reviewing the promotional literature on Ireland as an FDI location. They were drawn from quite detailed brochures of tax advisory companies (such as published by the 'Big Four' accounting firms) indicating particular tax advantages offered by Ireland and updating potential clients on tax rule changes.

Cases of corporate tax avoidance and structures: Significant material was available in this area, but was not always reliable. Therefore, efforts to access official or academic documentation were made. These were most obviously available in relation to the Apple 'stateless' structure via the U.S. Senate, the EC ruling and EU General Court ruling. Academic literature, particularly that of legal scholars were also used to interpret Apple and other cases. Indirect but highly relevant material was available via: OECD and EU documentation in relation to BEPS, Irish Department of Finance studies and annual Tax Strategy Papers, annual reports on corporate tax returns and receipts by the Irish Revenue Commissioners, reports from the Office of the Irish Auditor and Comptroller General. Descriptions by the US Congressional Budget Office (CBO) and the U.S. Treasury Department were also useful. Commentary by academics in the U.S. based 'Tax Notes' media and research website were also important. Other media outlets were selectively utilized, in particular the Irish online business newspaper The Currency.

Legal rules: Legal and accounting textbooks provided important explanations on the meaning of certain rules and the dates of their introduction. The work of scholars in accounting and tax also supported explanation in this area.

Political positions: Political statements by the key state actors including public statements by the Government of Ireland, OECD, EU, UN and U.S. government, available on public websites. Crucial to this area of documentation is the practice of Irish governments of holding public consultations on elements of the Irish corporate tax regime. Submissions to these consultations are available on the website of the Irish Department of Finance and provide a vital insight to the positions of key actors, especially in industry and tax professional bodies. The websites of representative bodies such as the American Chamber of Commerce in Ireland and IBEC, the Irish Business and Employers Confederation, also provided important documentation on their positions.

The statistical and political material required the most careful treatment. The statistical material comes with uncertainties. Statistical work on corporate tax avoidance, generally, and in relation to Ireland exists in a world of estimation and strong assumptions (Binder 2023). This material was utilised in the study with the explicit acknowledgement of this uncertainty. Also, studies that are explicit about their methodologies were prioritised in the study. Statistical data, such as that relating to Ireland's national accounts was utilised, as providing signposts toward further documentary material.

Much of the relevant political material in the thesis records the interests of the various state, corporate and non-profit actors. They include detailed submissions to government in relation to budgets and tax related rule changes by representative industry groups and the tax advisory industry**.** This is what is often termed 'grey literature'. Grey literature carries risk and is uncertain because it represents distributional and political interests of their authors. However, as Scott (1990) points out, this kind of literature provides an important perspective, not least because of its

bias. This is what makes it interesting. This literature also carries a higher risk of error than peer reviewed material. However, it can also provide a level of detail unavailable in standard academic texts (a good example being submissions by Big Four firms to Government tax consultations for example).

Political material which was not prioritised included parliamentary debates and most (but not all) media coverage. This is because, as its most basic, the thesis aimed to find out, what is going on with Ireland and corporate tax? This required bypassing a lot of material that focused on arguments relating to the ethics of specific tax structures, and instead adopting a focus on more technically orientated material that is focused on how corporate tax 'works'.

Challenges arose in analysing this literature in relation to accessibility. Both in terms of its technical nature and the limits to information released by the Irish state. In terms of the technical detail, judgement had to be used regarding identifying which technical aspects of the topic were essential to the thesis. Once this was identified, the academic textbook-style literature was also of assistance. As a qualitative researcher, material relating to Ireland's National Accounts proved challenging, so I combined study of this material with some key meetings and interviews to check my understanding with experts. The challenge presented by the technicalities of tax, and also the lack of transparency around corporate tax, became part of the study of the games, identified as a mechanism through which the micro-politics of tax games occurs.

3.5 Ethics

Two major ethical issues arose in relation to the thesis. The first relates to treating the data accurately and interpreting it fairly. The issue of tax avoidance is a highly

ethically charged question with distributive implications. Yet not all descriptions of the practice are reliable. A genuine background to this, as discussed in Chapter Two, is that financial data, although improving in quality, is not fully reliable and open to misinterpretation in relation to corporate profits and taxation. Avoiding the use of false information about individuals or companies was imperative. This risk was mitigated in two main ways. Firstly, specific individuals are not the focus of the thesis. Where individuals are mentioned, it is generally in reference to elected political representatives or specific interest groups. Second, the thesis does not focus on specific corporations, rather it focuses on identifying the dominant modes of tax avoidance used by particular corporate sectors. The exception to this in the thesis is Apple. This is because Apple is such a significant case in the politics of Ireland's corporate tax regime. In addition, relatively reliable documentation is available on Apple, drafted by official sources such as the U.S. Senate, the EC and the EU General Court. This provided a higher degree of certainty about the descriptions of Apple's tax arrangements.

The second ethical challenge of the thesis related to the treatment of interview data. Ethical approval was secured from the university in advance of carrying out the interviews and interviewees were provided with a consent form in advance of the interview which included details of their right to anonymity, confidentiality and to opting out. The consent form also included details on the protection of the interview data, on data storage and on the final use of data. Ensuring that the anonymity of interviewees was protected in the thesis was the most prominent of the ethical concerns relating to interviews. Due to the very specific and often timebound content of some of the interview discussions, there was a risk of inadvertent identification of the interviewee and/or their organisational role. This problem was addressed in three

ways. Firstly, particularly specific or sensitive commentary is paraphrased in the thesis, rather than recording it through direct quotation. In addition, when any interviewee requested pre-approval of use of quotations, this was taken as a signal of potential discomfort, so direct quotations were not used from any of these interviewees.

Secondly, interviewees are coded fairly generally and the pronoun 'their' is used throughout the thesis so gender identities cannot be revealed. The majority of interviewees were men, which reflects the social- political world of the study. Gender descriptions were omitted from the coding on request of an interviewee. Third, on a limited number of occasions highly specific information is not referenced to an interviewee code in the thesis. This is because highly 'insider style' details, if linked to the same interviewee code on a number of occasions, could reveal the identity and/or role of the interviewee. For these reasons, the interviewee code descriptions are also general, simply recorded in the text with a number. The affiliation of the interviewees is recorded indicating 'public', 'private' or 'non-profit' categories and the time period of professional relevance to the interviewee (see table 3.1). Non-profit is a broad category including the trade union, NGO and academic sectors. This is so that the reader has a full awareness of the nature of the interviewees involved overall, but not in relation to each quotation.

Table 3. 1: Research Interviews

Interviewee code	Professional realm
Interview 1	Public
Interview 2	Public
Interview 3	Public
Interview 4	Public
Interview 5	Public
Interview 6	Public
Interview 7	Public
Interview 8	Private & public
Interview 9	Private & public
Interview 10	Public
Interview 11	Private
Interview 12	Private
Interview 13	Private
Interview 14	Private
Interview 15	Private
Interview 16	Public
Interview 17	Non-profit
Interview 18	Non-profit
Interview 19	Non-profit
Interview 20	Non-profit
Interview 21	Public
Interview 22	Public
Interview 23	Public
Interview 24	Non-profit
Interview 25	Non-profit
Interview 26	Non-profit

Periods of service of interviewees within their relevant institutions ranged from 1970s-present day.

3.6 Conclusion

The chapter has discussed the key methodological decisions taken in the thesis. Two key methodological decisions were discussed which included the decision firstly, to focus on a single case study and secondly the use of the theoretical lens of tax games. The main reason for the decision to research a singular case study was to enable a

study of why Ireland is such an important case in the global world of tax. This allowed the research to move beyond mechanisms of tax avoidance but also to study the rules, institutions and politics of those mechanisms. Choosing the route of a single case involved trade-offs, including less focus on comparative analysis of tax rules and incentives. However, the advantage of a single case allowed a holistic study of Ireland *in interaction with* the other jurisdictions in the Irish tax games and upon which the games depend to function. The lens of tax games was judged as appropriate to overcome the partiality of more narrow definitions of Ireland's role in tax. The tax games lens combines a study of the distribution function of tax, through tax dimensions, and the coordination of tax through domestic, inter-state and transnational politics (Rixen, 2011). This facilitated a richer study anchored in a single state.

The data relating to Ireland and tax avoidance is fragmented and technical. This posed risks to the research. The primary data collection through interviews was a sensitive exercise but one which proved productive. The data collected in the interviews is essential to the understanding offered in the thesis of both the ways the games worked and why. There are risks associated with the interview data, especially of bias toward the political interests of the interviewees. Nevertheless, the documentation of the interview data is a fair reflection of the perspectives offered by the interviewees, which is in itself of interest. Where there may be doubt about some interview statements, the reader is invited to make their own judgement.

The secondary data was drawn from a diverse set of documents, ranging from statistical data to the positions of interest groups on particular tax rule changes. The statistical data and commentary was important in helping clarify issues such as the scale of different sectors and types of notable financial transactions for example. The boundaries between the financial / financial services and non-financial sector were

difficult to ascertain here. The issue of the different functions of types of entities is also highly under-documented in this data. In addition, the drivers of financial flows were not always clear e.g. they could be driven by either tax or/and regulatory consideration. This lack of data and 'fuzzy boundaries' are flagged in the text of the thesis as they arise and the range of possible drivers of certain decisions are also noted.

Finally, tax avoidance is a contested and sensitive issue. The ethical concerns of the research included ensuring that individuals or companies are not incorrectly described. This is addressed through a largely sectoral focus in the research rather than a focus on particular companies, with the exception of Apple. Some nuance is certainly lost in this non-company centered approach because each firm is different depending on its sector, age and a myriad of other considerations. It is hoped that this loss of nuance is compensated for through the decision in the thesis to move beyond the level of analysis of the (likely unreliable) 'tax return file' to the level of the analysis of tax games. The anonymity of interviewees is also a central ethical consideration. Steps are taken, especially in Chapter Six to anonymise interview quotes. Where risk of loss of anonymity was a concern, paraphrasing is used instead of quotations or quotations are not referenced to a particular interview code. While this is not ideal, it was judged preferable to not using this rich and interesting data.

Chapter 4: Ireland's Corporate Tax Games

4.1 Introduction

This chapter seeks to achieve three things. First, it begins in Section 4.2 by describing the major changes in Ireland's corporate tax regime, along each of the four major corporate tax dimensions identified in Chapter Two. Second, it then investigates in Section 4.3 the well-known statistical anomalies in Ireland's economy to analyse the various ways in which locations of production and substantial economic activity are separated (or at least made relatively autonomous) from accounting for the purposes of building a global wealth chain through Ireland. This is done through identifying a range of data points on misalignments between economic substance and profit, disconnection of financial flows from the domestic economy, and diverse forms of corporate organisation among U.S. corporations that facilitate this misalignment and disconnection through Ireland. Third, the chapter combines these analyses of state and corporate institutional organisation in Section 4.4 to provide an integrated understanding of the terrain that underpins these global wealth chains. The focus is on the tax-based element of these wealth chains, achieved through an analysis of the different corporate tax games in Ireland and how they have changed over time.

4.2 The four dimensions of corporate tax in Ireland

Although Ireland has been consistent since the late 1950s in employing a policy of low corporate tax as a critical instrument in the attraction of foreign investment, the content of that policy has shifted over time. As we discussed in Chapter Two, there are four

key dimensions along which negotiation of the elements of corporate taxation are contested:

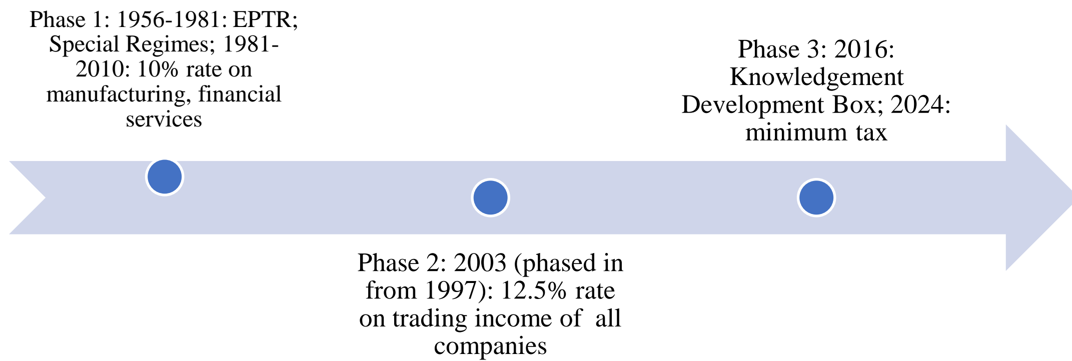
- the rate of taxation,
- the jurisdiction which makes the claim,
- the owner responsible for any payment,
- the definition of the return upon which the tax is claimed.

These are each discussed here in the context of the Irish corporate tax regime. The chapter makes clear that Ireland's tax games are unpredictable and have changed over time. When they are threatened, the tax games re-organise and generally survive and are consistent in intent, if not form. Corporations ensure this survival by changing their reliance on particular arrangements of the four tax dimensions to different combinations of the dimensions. This is how the tax game is played. The games have a capacity to be reconfigured and sustained. These reconfigurations happen through the consistent agility and forward planning of corporations, and through governments' willing and responsive engagement with the dimensions.

4.2.1 Rate

The tax rate defines the upper boundary of what the state can claim on the stream of income to which the rate relates. Ireland's approach to its corporate tax rate can be viewed in three phases (see Figure 4.1 and table 4.1).

Figure 4. 1: Corporate Tax Rates in Ireland 1956-present



Note: EPTR is Export Profit Tax Relief.

Table 4. 1: Rate (details)

Rate	**Accounting period**
Phase 1	
100% Export Sales Relief	1958-1980 (phase out) Manufacturing exporters
10% Shannon Free Airport Zone	1959-1990
10% Manufacturing relief	1981 – 2010
10% IFSC regime	1987-2010
Phase 2	
12.5% applicable to all companies	2003 (phased in from 1997)
Phase 3	
6.5% Knowledge Development Box (KDB)	2016 – present (increased to 10% in 2023)
15% *Qualified Domestic Top-up Tax*	Planned for 2024 onward (applies to largest companies only)

Source: Casey (2022 p.196), Department of Finance (2023)

Note: Ireland introduced a corporate tax in 1976. Before then, companies paid and income tax and a corporate profits tax. Combined, these worked out at an estimated effective tax rate for companies of 50 per cent. Once the corporate tax was fully introduced the headline rate was 50 per cent (Macguire,2022 p.7).

The first phase is situated within Ireland's early experimentation in FDI. This long period ran from 1956-2010. As noted in Chapter One, in 1956 Ireland introduced an Export Profits Tax Relief (EPTR). This extended tax relief to 50 per cent of corporate profits of all exporting firms, initially, and was subsequently extended to 100 per cent

in 1958. This was intended to target domestic firms but proved hugely attractive to foreign corporations (Casey, 2022 p.32). In 1959 reliefs available in a zone next to Shannon Airport in the West of Ireland were extended to companies to create a 'customs free zone' in the area. This licensed companies in the area to a total exemption from income tax and corporate profits tax arising from trades within the free zone. Killian writes (2013b p.80) 'furthermore, raw materials could be imported and finished products exported without incurring any customs duty or taxes as long as they did not enter the home market'. The early stage of this phase brought exceptional levels of investment to Ireland, which most likely surprised Irish policy makers at the time (Casey, 2022).

After Ireland joined the European Community in 1973, the country was ultimately forced to phase out the EPTR and the Shannon reliefs as they were viewed by the European Commission as in breach of European Community state aid rules. As a result, in 1980, these reliefs were replaced with a, still highly competitive, 10 per cent corporate tax rate charged on the trading income of companies in the manufacturing sector. At this stage, the headline rate was 50 per cent. In 1981 the scope of the rate was extended to include new services firms in Shannon, and the specific sectors of mushroom growing and fish farming nationally. In 1987, the scope of coverage of the 10 per cent rate was extended again, this time to financial services established in a new financial centre in Dublin called the International Financial Services Centre (IFSC). This rate was due to last until the year 2000 but continued until 2010, it seems, due to a lack of objection from the European Commission (Casey, 2022).

The second phase saw the introduction of a flat 12.5 per cent rate on the trading income of all companies, both domestic and foreign. The 12.5 per cent rate became the marketing vehicle for Ireland's FDI 'brand' (although it applied to both domestic and

foreign companies).[36] The 12.5 per cent rate was introduced on a phased basis from 1997 onward and was fully established by 2003. However, as noted above, some companies continued to be entitled to the special rates (manufacturing rate of 10 per cent) until 2010. Complaints had been building against Ireland's 10 per cent rate, from businesses in the UK and from other European states, making the EC insist that Ireland end its special rate regimes. The new rate of 12.5 per cent was slightly higher than the previous 10 per cent but still very low by European standards. The difference was that it applied to all companies tax resident in Ireland, with no special regimes for certain sectors, making it compatible with European state aid rules. The 12.5 per cent rate replaced the standard rate which had begun to be periodically reduced from 1991 on all companies (except for those companies where the special rates of 10 per cent applied were permitted to continue to benefit from this rate until 2010). This transition period involved a phased reduction from 50 per cent and an accelerated 4 per cent decrease in the rate per year from 1998 until the 12.5% rate was fully operational by 2003[37].

The third phase, dating from 2016 to the present day, reflects Ireland's response to the ongoing global tax reforms regarding the dimension of rate. This third phase represents a signalling of intent from Ireland of aligning itself with new global tax norms. During this phase Ireland introduced a special rate of 6.25 per cent on qualifying research and development (R&D) activity, called the 'knowledge development box' (KDB) (sometimes also called the 'patent box'). The KDB was introduced in 2016 and subsequently increased to 10 per cent in 2023 in order to maintain OECD compliance

[36] Corporations are also taxed at a 25% rate on non-trading income (e.g. rental and investment income) and certain excepted trades

[37] The transition to 12.5% corporate tax on trading profits was announced on 3rd December 1997. The phased decrease from 36% to 12.5% worked as follows: 36% 1/4/1997 – 31/12/1997, 32% 1/1/1998 – 31/12/1998, 28% 1/1/1999 – 31/12/1999, 24% 1/1/2000 – 31/12/2000, 20% 1/1/2001 – 31/12/2001, 16% 1/1/2002 – 31/12/2002, 12.5% 1/1/2003 – present (Mulcahy (2020)

in light of the new global minimum tax. The KDB was introduced during a period of intense scrutiny of Ireland's tax regime. In this context Ireland ensured that the KDB was fully compliant with OECD standards in relation to the taxation of R&D. And finally, as noted in Chapter One, after a period of domestic political resistance, Ireland is set to introduce a form of minimum tax from 2024 which is a 15 per cent *'Qualified Domestic Top-up Tax'* targeting very large MNCs as part of the ongoing global reforms.

In summary, these three phases can be viewed as a first, initial experimentation phase, focused on attracting FDI jobs, a second phase focused on securing an international brand for Ireland in the world of tax competition through emphasis on the 12.5 per cent rate and a third, current, phase of alignment with new global tax norms, while maintaining Ireland's place as a tax competitive location globally.

4.2.2 Jurisdiction

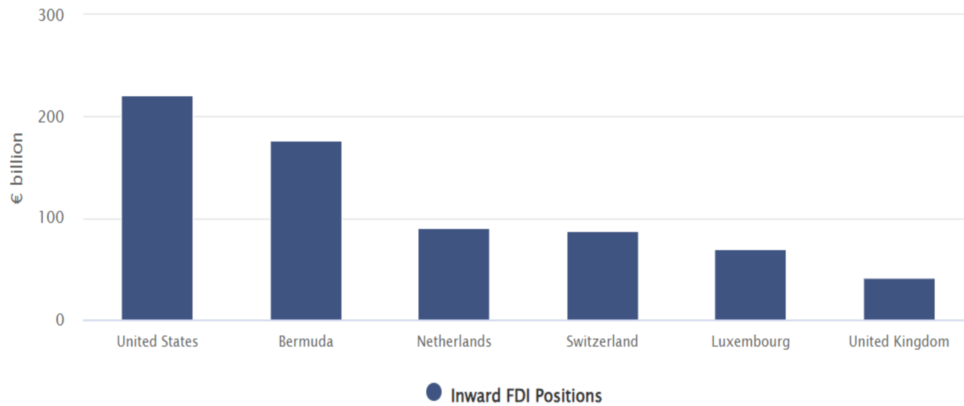
The jurisdiction dimension relates to the rules that link a taxpayer or an item of income to claims made by a tax jurisdiction. This dimension shows Ireland to be a 'conduit-style' jurisdiction for FDI flows from U.S. corporations. As noted, while the aim of tax avoidance structures is to reduce corporate tax liabilities, the strategy applied must be legal in each jurisdiction where taxes are paid. To build a tax avoidance structure, corporations are able to construct mismatching legal interactions among different locations to minimise tax liability. As Sigler, Martinus, Iacopini and Derudder (2019, p.3) argue, the integration of tax havens and offshore centres into firm networks has,

> reoriented the role of "place" in firm decision-making from one based on either supply-side or demand-side advantages, to one tied to purely financial considerations derived from complex regulatory arbitrage.

Ireland is identified primarily as a ‘conduit’ style jurisdiction whereby very significant flows are routed in and out of the jurisdiction. This is in contrast with ‘sink’ jurisdictions which tend to be the ‘end’ point of what Picciotto (2021) has termed ‘stepping-stone’ jurisdictions which build tax avoidance structures. Conduit jurisdictions are positioned between other jurisdictions in terms of the FDI flows passing through them (Garcia-Bernardo, Fichtner, Takes, & Heemskerk, 2017). So, while the ultimate owners of the majority of inward FDI to Ireland are U.S. corporations, data shows that significant portions of this U.S. investment arrives in Ireland after passing through other jurisdictions first. In the current Onshoring game, Ireland appears to be maybe changing in character from a conduit to a sink jurisdiction[38]. This data is too high level (or aggregated) to tell us much about specific corporate practices. However, it does signal that Ireland’s geographical position in the flows of U.S. FDI is important relative to other low tax jurisdictions in hosting U.S. investment. For example, in 2019, the US, Bermuda and the Netherlands were the top three immediate locations of investors into Ireland of U.S. owned investment (Figure 4.2).

[38]Garcia-Bernardo, Fichtner, Takes and Heemskerk (2017) write that ‘Sink-Offshore Financial Centers (OFCs) attract and retain foreign capital while conduit-OFCs are attractive intermediate destinations in the routing of international investments and enable the transfer of capital without taxation’

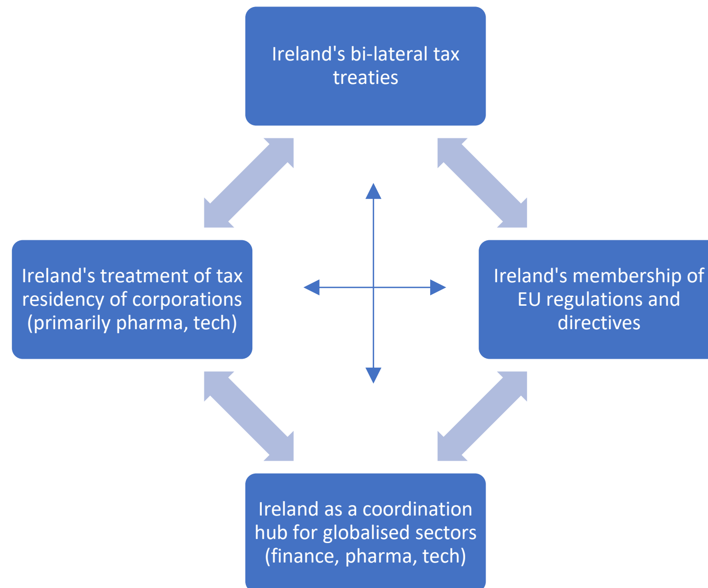
Figure 4. 2: Inward FDI into Ireland by country of immediate investor, 2019



Source: CSO, 2021[39]

Ireland' s conduit jurisdiction has four key features (Figure 4.3).

Figure 4. 3: Ireland as a conduit jurisdiction



Firstly, Ireland's tax treaty network is crucial to this dimension as the legal underpinning of Ireland's position as a conduit jurisdiction in the world of global tax. Tax treaties are

[39] CSO Foreign Direct Investment to Ireland, 2019 https://www.cso.ie/en/releasesandpublications/ep/p-fdi/foreigndirectinvestmentinireland2019/ultimateinvestment/, accessed 13th October 2024

essential to the jurisdiction dimension, because, among other things, they determine corporate liability for withholding tax payments[40].

Hearson (2021 p.10) explains that specific articles in tax treaties pertain to the treatment of withholding taxes. He explains that withholding tax rates on certain transactions are set in tax treaty negotiations and the outcome of these negotiations usually favours the capital exporting country,

> In addition to profit taxes, states often levy taxes on overseas payments made by companies, such as interest payments, royalties, and dividends. These [tax treaty] clauses specify the types of payments on which a country can levy withholding taxes, and the maximum rates at which they can be levied. The maximum rates are usually set lower than the statutory rates in the capital-importing country, as a key concession making the treaty advantageous to the capital exporting country.

Where there is no tax treaty in place, the withholding tax is usually applied at the domestic corporate tax rate (Deloitte, 2023) making higher tax jurisdictions unattractive to carrying out such transactions. The position of states within tax treaty networks is therefore a critical consideration for globalised corporations. Ireland has, over many decades, built up a tax treaty network with 74 countries, which is relatively extensive in international terms. Negotiating a tax treaty with another jurisdiction is an intensive technical and political exercise which can take years to complete (Hearson, 2021). In its treaty negotiations, Ireland has prioritised the tax treatment of key payments relating to certain sectors, for example, the aviation industry[41]. Hearson (2022, p.49) argues that tax treaties 'are the links' in multinationals global wealth

[40] A withholding tax (WHT) is when tax is withheld from (or deducted from the income due to) the recipient by the payer, and directly paid to the Revenue Authorities (Oxford University, 2023) https://finance.admin.ox.ac.uk/wht. Accessed 12th October 2023

[41] Burger (2017) writing in Aviation Finance magazine indicates 'the majority of the double tax treaties reduce the potential domestic withholding tax on rental payments on aircraft to nil. As a result, Ireland still possesses the best quality double tax treaty network for aircraft leasing even though Singapore may have a larger quantity' (Aviation Finance, 2017)

chains. As global tax norms shift toward linking profit with economic substance, Hearson argues that low tax jurisdictions like Ireland are attracting more corporate hubs as corporations shift assets away from zero tax jurisdictions in favour of low tax jurisdictions.

Second, Ireland's tax treaty network is bolstered by Ireland's position as an EU member state and the regulatory and tax related frameworks which Ireland is party to. For example, the EU Directive on Royalty and Interest payments, introduced in 2003, allows the waiving of withholding tax payments on those payments between companies in one member state to its associated company resident in another member state in the EU. This means that companies outside of the EU, once operational in Ireland can gain additional tax advantages in other EU countries where they might establish affiliates.

Third, Ireland is a 'hub' jurisdiction for global financial flows in relation to certain payments. Ireland's strategic approach to tax treaty negotiation has been buttressed by opportunities provided by the evolution of EU regulatory rules which have facilitated the formation of coordination 'hubs' in certain sectors, such as in insurance. Ireland's tax treaty network and the provisions within these treaties, especially regarding withholding taxes on certain payments is central to its attractiveness to those sectors. Ireland has a trend of hosting 'shared service centres' (SSC)[42] which include high and low value work and shows an orientation toward 'hub like' activity whereby workers provide support services to their affiliates across Europe and beyond. From at least the 1990s onwards Ireland is a hub for coordination of corporate operations in Europe,

[42] A shared service centre is described by Reurink and Garcia-Bernardo (2020 p.8) as a way that MNCs 'centralize and "in-source" some or all business support activities and have them performed by a captive entity [..] This entity, known as a 'shared service centre' (SSC), then provides the services to other group entities. Such an SSC may serve the entire corporate group or selected group entities operating in a specific geographical region or line of business.'

which changed the idea of the corporate owner from a broad emphasis on the internally integrated transnational corporation to a network of trading partners which often operated externally to one another through supply networks, but also included internal 'markets' within the global firm. This holds true for descriptions of the growth of insurance hubs and ICT service hubs in Ireland for example. This affected tax by enabling profits from sales (e.g. of computers or insurance premiums) to be booked in one central location. This means that the low overall corporate tax rate would apply to these profits, in addition to further advantages supplied through Ireland's tax treaties, such as no withholding taxes on certain payments among affiliated companies in tax treaty countries (and sometimes extended to non-treaty countries) in the insurance sector, for example.

Finally, this legal framework overlaps with a further feature, which is Ireland's approach to its tax residency rules for companies. Tax residency rules are legally decisive factors regarding whether a stream of revenue is taxable in a jurisdiction. Ireland's tax residency rules were an inherited approach from U.K. tax law. These longstanding tax residency rules allowed foreign subsidiaries to be incorporated in Ireland but remain non-tax resident (this was called Irish Registered Non-Resident (IRNR)). As discussed in Section 4.4, this approach to tax residency was central to the now infamous tax avoidance structures of the Double Irish Dutch Sandwich (DIDS) and Apple's Statelessness structure. However, Ireland came under pressure regarding, these controversial structures which depended on these longstanding Irish tax residency laws and was ultimately forced to change them (see table 4.2). This residency rule was adjusted by Ireland in 1999. The adjustment was intended to stop Russian and Eastern European companies suspected of tax avoidance through Ireland. U.S. companies remained untouched by the 1999, change however. This was because

countries with a tax treaty with Ireland were excluded. The DIDS and Apple structure continued to be protected until 2014 when Ireland, under fierce political pressure, fundamentally altered its tax residency rules. However, the wording of the rule change gave rise to an alternative tax structure, the so-called 'Single Malt'. After further political pressure, this new loophole was ended by negotiations between the Irish and Maltese governments on their tax treaty. These rule changes and how they both enabled and halted certain tax avoidance structures indicates both the crucial importance of tax treaties as a legal foundation of the treatment of payments between affiliated companies in different jurisdiction and their importance regarding their interaction with other tax rules, such as those relating to tax residency.

Table 4. 2: Major tax residency rule amendments

Residency rule	History	Amendment application
Case law	1999 amendment	Non-tax treaty partner countries banned from using IRNR companies (eg E Europe/Russia)
2014-15	2014-15 amendment	'Stateless' tax avoidance structures outlawed (2014); Double Irish Dutch Sandwich outlawed (2015)

4.2.3 Owner

The dimension of 'owner' describes the entity responsible for paying the tax claim. As noted under the 'jurisdiction' dimension, Ireland hosts capital owners which are situated within a global ownership structure of U.S. multi-national corporations. Ownership links are the legal way a firm's foreign subsidiaries are connected. The number of ownership links within a global corporation can range from two to hundreds of entities (Lewellen and Robinson, 2013 p.2). The entanglement of 'real' and 'artificial' FDI in Ireland can be partially viewed through the dimension of 'owner' through the establishment in Ireland of subsidiaries of global corporations hosting high

employment, alongside entities which host significant FDI in holding companies[43]. This entanglement has been supported in Ireland through the Irish holding company regime in addition to the introduction of a regime in the 1990s for Special Purpose Entities (SPEs) (called Section 110 companies after the part of the tax code which governs them). While these types of entities carry out a range of functions (including the reduction of risk in the case of debt default of an affiliated company for example) they come with significant tax advantages.

The Central Bank estimated that about 2,265 SPEs availed of Section 110 in 2015 (Golden and Hughes, 2018). These are a subset of a larger number of SPEs in Ireland. These SPEs are further sub-divided, by Irish Central Bank definitions, into financial vehicle corporations (FVCs) and special purpose vehicles (SPVs). FVCs are 'securitisation vehicles', effectively dealing with the repackaging of assets as new forms of transferable securities. SPVs (termed 'other SPEs' by the Irish Central Bank) are understood to be linked to non-financial corporations engaged in, among other activities, intragroup financing (see section 4.3), external financing, and companies involved in aircraft leasing (Golden and Hughes, 2018). Large corporations in this grouping of 'other SPEs' have their headquarters in Ireland (Golden and Hughes, 2018 p.14).

The holding company and Section 110 regimes are used across the financial and non-financial sectors in Ireland as corporations increase the complexity of functions within their internal ownership chains. Much of this growing complexity is related to production, innovation and other business activities, with Ireland, as noted, emerging as a 'hub' of local and transnational networks for various activities, particularly within

[43] A holding company is a corporate entity which is established to hold controlling shares in other companies or assets such as intellectual property or real estate for example

the European Union (Ó Riain, 2004). While low level manufacturing (e.g. inputs into computer or drug manufacturing) is very strong in Ireland, many of these manufacturing operations are now accompanied by other corporate services including, customer care, marketing, logistics or financial management (eg Novartis, Microsoft, Apple). Treasury centres are also a feature, with Pfizer hosting its treasury centre in Ireland for example. The fragmentation, networking and financialisation of corporate forms (Davis, 2016) have also made it easier for corporations to construct their structures and relations between units in ways that are advantageous for tax. In addition, these forms interact with tax rules of jurisdictions as outlined under that dimension in Section 4.2.2.

Holding companies

Reurnik and Garcia-Bernardo (2020) identify Ireland as a hub for hosting intermediate holding companies and top holding companies. Intermediate holding companies 'engage in narrowly defined activities such as the holding of equity or debt stakes in group subsidiaries or the holding of rights to the (sub)licensing of intellectual property' (Reurnik and Garcia-Bernardo, 2020 p.1278-9). Top holding companies 'appear at the apex of a corporate group's ownership structure' (the group's 'global ultimate owner') and are central to the legal-financial organization of the group. Reurnik and Garcia-Bernardo (2020 p.1282) indicate that the location of the top holding company generally determines the legal home of a corporate group, and so, often its tax residency.

In a study of 2009 data[44], Lewellen and Robinson (2013, p.13) indicate that subsidiaries which own affiliated companies in U.S. corporate global ownership

[44] Including 1,354 major U.S. multinational corporations and their 47,371 foreign entities.

chains, account for ‘10% of complex firms foreign subsidiaries, but they control (directly or indirectly) 50% of the firms’ total foreign operating assets’. They note that these subsidiaries, which own other companies, include pure holding companies, but also companies with operational aspects. For example, 40 per cent of the subsidiaries report that most of their consolidated income ‘is attributable to their own operations rather than the operations of the subsidiaries they own’ (Lewellen and Robinson, 2013 p.3). In this sample, Ireland emerges as a prominent ‘owner country’ (Lewellen and Robinson, 2013 p.18) for both holding companies and R&D related income. Lewellen and Robinson (2013) indicate that Ireland was prominent among the top 25 countries of U.S. multinational subsidiaries hosting significant equity and assets. Stewart (2005) traces Ireland’s focus on attracting holding companies to changes in the 2004 Irish Finance Act which reduced taxation on intra firm dividend payments in order to encourage the location of holding companies in Ireland. Ireland has become a jurisdiction that attracts corporate headquarters, often housed in holding companies, enabling them to avail of a range of advantages relating to the tax treatment of dividends, tax credits of foreign branches, and withholding taxes on certain dividend repatriations and treatment of interest. Ireland is also attractive to potential headquarters due to its liberal provision of capital allowances on the purchase of intangible assets, often held by headquarter holding companies (Grant Thorton, 2023). The attraction of headquarters to Ireland was partially prompted by a tax related wave of redomiciled firms (discussed further in Section 4.4) in tech and pharma and insurance that was also a trend for a short period of years (2008-2016).

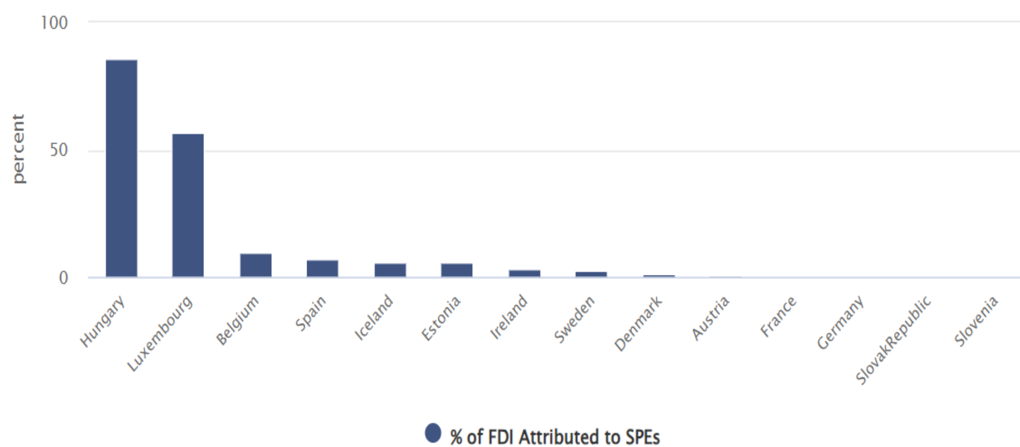
Special Purpose Entities (SPEs)

SPEs are described by the Central Bank of Ireland as

> legal entities, with little or no physical presence and narrow, special and/or ring-fenced, objectives, such as the segregation of risks, assets and/or liabilities, or as a cash conduit. The directors of an SPE typically have limited or no discretionary powers; rather activities are strictly defined by the terms of the SPE contract or arrangement. An SPE is often, though not exclusively, a satellite company of another financial entity and forms an ancillary part of the associate entity's business by warehousing particular assets or risks. (Golden and Hughes, 2018 p.3–4).

Because of this 'warehousing' function, SPEs are often known as 'brass plate' or 'shell' companies. An important regime governing regulated SPEs in Ireland is Section 110 of the Irish tax code. Section 110 was introduced in 1991 to support growth in the securitisation sector in Ireland. The scope of qualifying assets of Section 110 companies has been extended over time to include a wide range of qualifying financial assets (See Department of Finance, 2023). SPE's are comparatively significant in Ireland by international standards, but less so than in Hungary or Luxemburg (see Figure 4.4).

Figure 4. 4: Percentage of FDI attributed to SPEs for selected countries, 2021



Source: CSO Chart[45]

[45] CSO, *Foreign Direct Investment in Ireland, 2021*, https://www.cso.ie/en/releasesandpublications/ep/p-fdi/foreigndirectinvestmentinireland2021/specialpurposeentitiesandpass-through/, accessed 13th October 2023

Golden et al (2018) indicate SPEs are used in both the financial and non-financial sectors. They identify 14 types of activity. In examining first counterparty financial flows, Golden & Maqui (2018, p.6) find that flows to Irish resident sponsors reflect, among other things, MNCs headquartered in Ireland engaging in intra-group financing or external financing, and operational leasing activity, mostly involving aircraft. These hub-like features occur in Ireland across a range of corporate entities due to the ease of establishment of these entities, their advantageous tax treatment, their scope and the interaction of Ireland with other jurisdictions. The specific tax advantage of Section 110 companies is outlined by the Department of Finance (2023, p.46)

> the key difference between a section 110 company and a standard Irish tax resident company is that it is permissible for a section 110 company to get a tax deduction for interest which is dependent on the results of the company (i.e. interest on profit participating notes). This is necessary in order for the section 110 company to be a tax neutral vehicle and it effectively allows the noteholder to invest through one structured vehicle without giving rise to an additional layer of tax as compared to a direct investment in the underlying assets. The note holders in receipt of the profit participating interest are taxed in accordance with the rules in their home jurisdiction.

SPEs are used across financial and non-financial sectors in Ireland. These include non-financial corporations 'that re-domiciled their headquarters to Ireland, that are engaged in intragroup financing, external financing and operational leasing activity' (Golden and Hughes 2018, p.14). Regarding U.S. sponsors of SPEs, Golden and Hughes indicate, intra-group financing activity is the most prominent. They argue that 'tax disincentives for U.S. sponsors to repatriate foreign earnings onshore may also have played a role up to recently.' This implies that SPEs were used in Ireland to retain wealth offshore from the U.S. to avoid triggering tax payments in the U.S. upon repatriation (up till U.S. law changes in 2017).

Up until the 1990s, the large transfers of profit into Ireland appear to have occurred through branches of U.S. owned corporations i.e. a division of a foreign company

(interview 13). The intensification of holding companies and SPEs appears to date from the 1990s, indicating an orientation toward asset management and management of financial payments through Ireland. This is relevant to both the financial and non-financial sectors. For example, in the financial sector, Insurance Ireland (2021) indicate that holding companies are generally used for divisional or jurisdictional holding purposes or to ringfence entities subject to certain regulations from other entities. Ireland is also a hub for investment fund management and also treasury services supplied to NFCs (which has in turn supported the growth of significant presence of legal and accounting professional services).

Overall, Ireland has seen a reconstruction of the category of the corporate owner, subject to tax claims, from branch-like structures to the use of holding companies and SPEs to serve a range of various financial assets. This increased 'malleability' of the definition of 'owner' is not unusual to Ireland but it is also clear from Reurink and Garcia-Bernardo (2021) that these forms are highly concentrated in Ireland, especially in the financial sector but also in the non-financial sector.

4.2.4 Return

The return dimension describes the asset or stream of income that is taxable. We note here four main ways in which the definition of the asset/ income stream can be constructed and related to taxation. The first is the definition of the return to an activity as falling under one or other form of taxation e.g. as capital gains, profit, interest, or other categories. Each of these may be treated as subject to different tax rules in different contexts. Although these categories are generally reasonably clear, there are cases where the returns to activities can be constructed in different ways. For example,

limitations can be placed on the level of interest that can benefit from a tax deduction based on national tax laws.

Secondly, the categories themselves are subject to re-definition. The definition of profit and loss are particularly important in the case of corporate taxation. Corporate profits are reduced in a variety of ways including through depreciation on capital assets and use and placement of debt for example. Third, jurisdictions can also provide tax deductions to particular financial transactions in an effort to gain an advantage in a particular field. Without re-defining the return itself, such policies favour some kinds of returns over others. In Ireland's case there are a number of very notable potential deductions including capital allowances on tangible and intangible capital, relief on R&D related activity and income tax relief on the income for foreign workers in the FDI sector (see table 4.3). These offerings vary in terms of how they are viewed competitively with other jurisdictions (Deloitte, 2022). Capital allowances on intangible assets when introduced in 2009 was however set at the maximum rate possible of an allowance of 100 per cent (before being subsequently reduced to 80 per cent).

Table 4. 3: Notable deductions across the games

Deduction	**Description**	**Cost to State (2018)* € millions**
Capital allowances on fixed assets	Profit subject to tax are reduced by claiming capital allowances on capital expenditure, in this case investment in fixed assets	€ 34,453
Capital allowances on intangible assets	Profit subject to tax are reduced by claiming capital allowances on capital expenditure	€ 45,365
R&D tax credit	Tax liability is reduced for qualifying expenditure on certain research activities	€ 355
Special Assignee relief programme (SARP)	Relief on income tax of individuals assigned to work in the Irish State	€ 424

*Sources: Lawlor & Acheson (2021), Revenue (2020, 2021)

Finally, inter-temporal aspects relating to the treatment of investments are also important. For example, the timeframes and scope of schemes covering the allowances mentioned on writing down the costs of capital investments against profit can serve to reduce payments by MNCs investing in valuable assets, such as IP. The possibility of carrying forward losses, or unused tax credits, is also a feature of this dimension. For example, unused credits on R&D can also be carried forward into future years. The Irish Revenue Commissioners record significant losses by Irish companies registered for corporate tax[46]. The Comptroller and Auditor General (2017) in Ireland expressed concern about 'a high degree of concentration in companies that have accumulated losses, and significant persistence in companies with large accumulated losses'. While many of these firms may be small companies, for 2016, the Comptroller and Auditor General found that over half (56 per cent) of the €220 billion losses carried forward involved just 26 companies, an average of approximately €4.7 billion each. There is significant presence of financial and insurance companies in the overall losses but it is unclear where precisely the concentrated losses are occurring. The Comptroller and Auditor General indicated the potential tax avoidance concern highlighting that the presence of consistent losses can be an indicator of transfer mispricing risk. In addition to these issues, as noted in Chapter 2, for U.S. companies, the option of tax deferral (which when in place could last indefinitely) was also very important as we shall see. In summary, the dimension of return depends on legal and regulatory rules which make its definition malleable. The 'return' dimension is shaped by the treatment within a jurisdiction of particular transactions. In turn, their treatment depends upon their definition, which can be widely or narrowly defined. Ireland has a history of

[46] To tackle the phenomenon, of using losses to counter future corporate tax liabilities as it related to the banking sector post the Financial Crash, the government introduced a banking levy specifically targeting that sector as a consequence of popular pressure and public anger at that sector. This indicates a presence of state capacity to take action against loss making companies when relevant.

consistently widening the scope of tax reliefs. In addition, the provision of allowances and reliefs can shape the level of investment. The scope of these reliefs can also have an inter-temporal aspect.

4.3 Misalignment, disconnection and corporate organisation

The four dimensions of corporate tax are the basis of the corporate tax games in Ireland and globally. The flexibility of each of those dimensions and of their configuration with each other across time and space is the basis of both the tax games and the complex connections and, crucially, mis-alignments and disconnections between business activities, corporate structures and tax liabilities and claims. In this context, 'misalignment' refers to when the valued added by a sector or firm in the economy is disproportionate to its employment. 'Disconnection' refers to activity that is statistically recorded as having no impact on the domestic economy. Corporate organisation refers to the decisions a firm makes regarding its internal ownership structure and transactions within this structure. Before going on to examine the corporate tax games through which this has been organised in Ireland (Section 4.4), this section provides an analysis of these areas.

As noted in Chapter Two, the practice of tax avoidance is partially embedded in the dislocation of corporate global value chains from wealth chains (Torslov, Wier & Zucman, 2018). However, Seabrooke & Stausholm (2023) also indicate that global value chains and global wealth chains do not operate on entirely separate pathways. They can be entangled. This is highly relevant to the Irish case. This entanglement makes it very difficult to know where to start in identifying global wealth chains, let alone the various components within them. Seabrooke and Stausholm (2023 p.6-8)

advocate the use of diverse data points to assist in mapping the global value and wealth chain entanglement through what they call the 'firm-territory nexus'. They 'operationalise the firm' by examining aggregate economic activities in countries, the number of incorporated entities in each jurisdiction, and the individuals in charge of economic management. They 'operationalize the territory' which they define as countries (economies and jurisdictions) and larger cities. They propose mapping value chains (in the case of their study, in the apparel sector) through examining trade linkages (using OECD trade data), the presence of non-financial corporations (using Orbis data) and management locations of staff (using linkedIn). And they map the corresponding wealth chains by examining financial linkages (using the Financial Secrecy Index of the Tax Justice Network), financial subsidiaries of sectors (using Orbis data) and tax professional and Chief Financial Officer (CFO) locations (using LinkedIn).

The approach taken here has similarities with Seabrooke & Stausholm's (2023) 'firm-territory' nexus, but uses the entry points of three corporate practices, namely a) disconnection from the Irish domestic economy, b) misalignment from economic substance in the economy, and c) types of corporate organisation referred to in commentary on Irish national macro-economic statistics and in expert sectoral commentary. This is in order to avoid the data gaps in more globally focused data and to facilitate a deeper dive into the complexities within the 'entanglements' within the Irish case. Three key data points are used (Table 4.4).

Table 4. 4: Diverse data points: Misalignment, disconnection, corporate organisation

Practice	**Data points**	**Indicates**	**Level of operation**
Misalignment: FDI misalignment between profits & substance	National & sectoral data on value added	Sectors of interest	Macro & meso

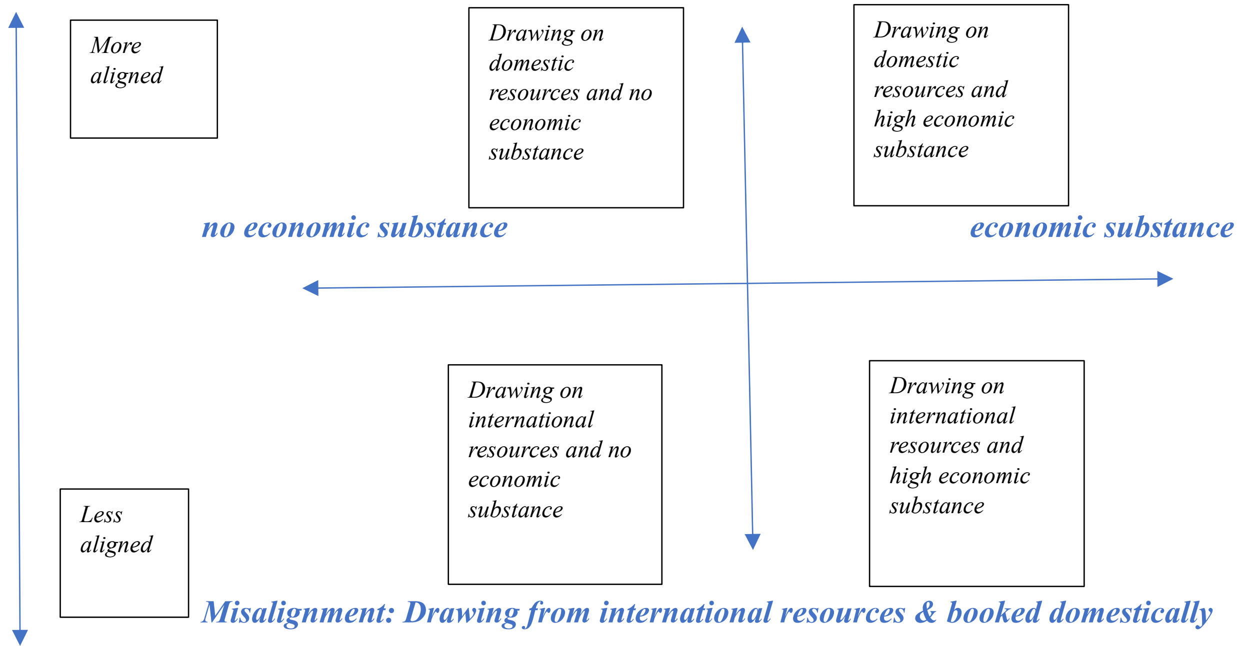
Disconnection: elements unrelated to the domestic economy	Calculations of GNI* minus GDP; calculations of conduit flows	Transactions of interest	Meso & micro
Corporate organisation	‘Strategic comments’ in statistical releases; sectoral commentary	Corporate structures of interest	Meso & micro

Firstly, data on misalignment is measured through examining the employment created by sectors in comparison with its value added. This enables a focus on sectors of interest. Secondly, to track disconnection, the transactions relating to the difference between Ireland’s GDP and GNI* are examined. This puts the focus on particular corporate transactions identified by the Irish national Central Statistics Office (CSO) in Ireland’s macroeconomic statistics that feature this disconnection. Importantly, in a field of study where the scale is undefined, this allows a focus on the largest transactions in the Irish economy that are formally noted by the CSO as disconnected from domestic economic substance. Thirdly, corporate organisation is examined through trawling ‘strategic comments’ made by bodies such as the CSO and the Central Bank of Ireland based on intelligence which they gather in their statistical work. Additional commentary from sector experts is also examined. While, this documentation is eclectic, the value of this approach enables a focus on the most notable factors relating to corporate structure in a highly complex field and fast-changing field of action.

The results of this analysis can then be placed along an illustrative axis of mis/alignment from economic substance and dis/connection from the domestic economy which also shows the entanglement of ‘real-artificial’ FDI (Figure 4.5). This provides an illustrative sense of a ‘spectrum’ of entanglement that has a range of drivers behind corporate decision-making.

Figure 4. 5: Misalignment and disconnection axes: Method

Alignment: Drawing from domestic resources & booked domestically

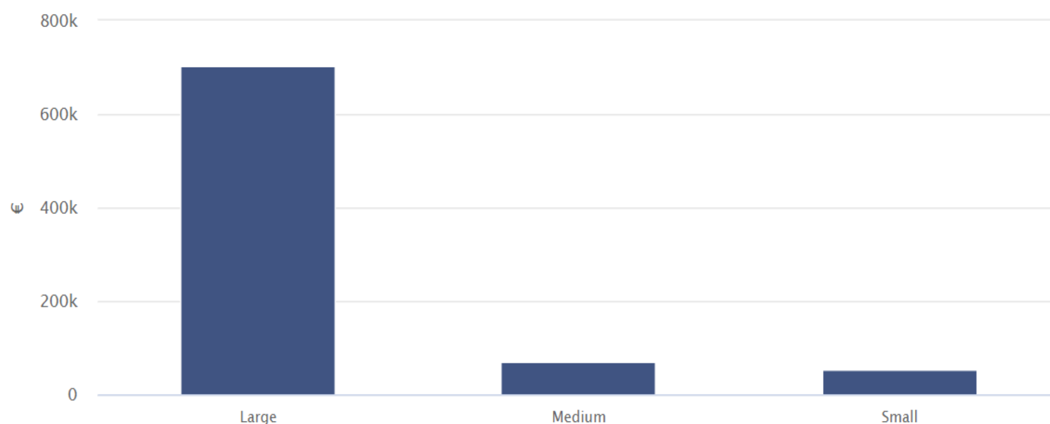


Next, I discuss each data point in order to populate the axes (shown at the end of this section, Figure 4.15). I start by reviewing the evidence on the misalignment of value from substance, in sectors. I then review the major sources of disconnection in the Irish economy identified by the CSO i.e. divergence between international flows and domestic activity. Finally, I investigate a series of mechanisms through which these are combined in corporate organisation which includes corporate structures and transactions.

4.3.1 Misalignment: Drawing from international resources & booked domestically

The CSO indicates extremely high levels of gross value added (GVA)[47] per employee among large firms in Ireland (figure 4.6).

Figure 4. 6: GVA per employee by firm size in 2019

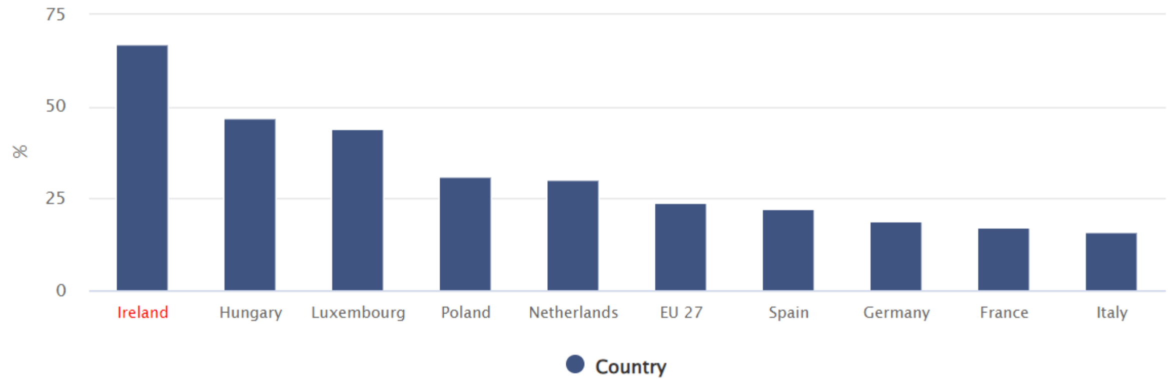


Source: CSO Chart[48]

While it is to be expected that large companies would outpace smaller companies in this regard, the GVA for large foreign owned companies in Ireland is astonishingly high, significantly outpacing other countries, including larger and high income, EU states (figure 4.7).

[47] GVA is the value generated in an economy by the production of goods and services. (The difference between GVA and GDP is that GDP includes product related taxes and deducts subsidies. GVA does not include product taxes but does include product subsidies) (CSO, 2020)
[48] CSO, *Information and Communication Technology, A Value Chain Analysis, 2019* Figure 4.3 https://www.cso.ie/en/releasesandpublications/fp/fp-ictvca/informationandcommunicationstechnologyavaluechainanalysis2019/productivity/, accessed 13th October 2023

Figure 4. 7: Percentage of GVA in selected countries from Foreign-Controlled Enterprises, 2018



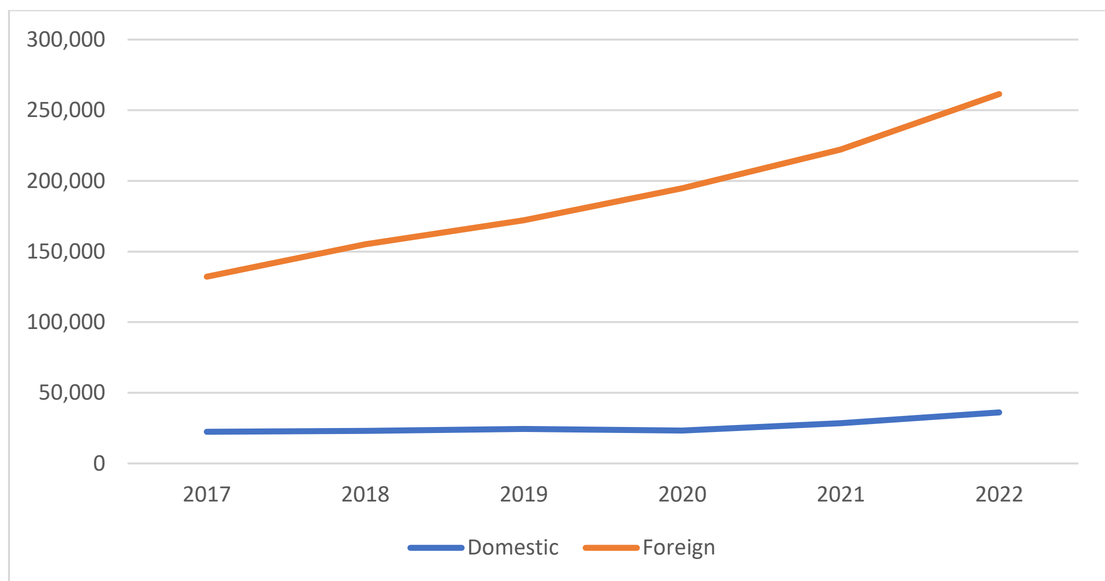
Source: CSO Chart[49]

Polayk (2023) also finds ‘substantial and unexplained discrepancies’ between value added in sectors and job growth dominated by US ownership in pharmaceutical and ICT industries in Ireland. While the ICT and pharma sectors are major employers in Ireland, their value added is disproportionate. Polyak argues that this is associated with corporate profit shifting. For example, she finds that there was a 200 per cent increase in activity from 2014-15 in the pharmaceutical sector while employment and earnings were stagnant. In ICT, she finds that value added grew at four times the rate of wages in the sector between 2016-19 which also cannot be explained by trends in the labour share or the performance of the sector comparatively in other countries (Polyak, 2023: 3-4). Polyak (2023:12) also examines the performance of sectors in the Euro area and finds that two key measures (domestic value added sustained by foreign final demand and employment sustained by foreign final demand) ‘grew in an almost identical lockstep’, whereas in Ireland, there is a visible discrepancy between the two.

[49] CSO, Institutional Sector Accounts, Non-Financial and Financial, 2020 Figure 2.2 https://www.cso.ie/en/releasesandpublications/ep/p-isanff/institutionalsectoraccountsnon-financialandfinancial2020/nfc/, accessed 13th October 2023

The CSO also report disproportionately high levels of foreign profits, dwarfing domestic profits, in the accounting of foreign corporations in Ireland. While it is to be expected that foreign profits would be higher, the significance of the difference, especially in recent years is very notable, growing from over €132 billion in 2017 to over € 160 billion in 2022 (figure 4.8).

Figure 4. 8: Gross Corporate Profits by foreign/domestic ownership



Source: CSO data (from Table 3 Gross Corporate Profits, by ownership)

The last quarter of 2022 also indicates that this profit is highly concentrated in industry (largely composed of pharmaceuticals) and in ICT (see figure 4.9).

Figure 4. 9: Gross Corporate Profits by Sector and Ownership Q4 2022

Source: CSO Chart[50]

Polyak (2023: 13) also finds a discrepancy between export growth rates and employment in the business services sector. These include services such as 'research and development, business consultancy, legal work, accounting, leasing services'. However, unlike pharma and ICT, the discrepancy narrows for the business services sector when corrected for wage growth. Polyak points out that these sectors are a genuine growth sector in Ireland post 2012 and are possibly legal and business support for the pharma tech and potentially sectors. Polyak argues,

> It is quite plausible [..] that they are linked to the presence of these tech and pharma giants, feeding into the bigger ecosystem these firms create. This claim is also supported by OECD regional employment data, which shows that similarly to ICT and pharma, job growth in these sectors are concentrated in the Dublin area.

This is reinforced by Garcia-Bernardo & Stausholm (2023) who find a significant concentration of legal and accounting advisors in Ireland compared to the rest of the world. Active insurance functions are present in these sectors in Ireland and include

[50] CSO, Gross Corporate Profits by Sector and Ownership Q4 2022https://www.cso.ie/en/releasesandpublications/fp/fp-cp/corporateprofitsq12017-q42022/#:~:text=Foreign%2Downed%20corporations%20earned%20%E2%82%AC,economic%20sector%20and%20ownership%20group, accessed 13th October2023

activities such as actuarial, underwriting, claims handling and adjustment, finance, compliance, risk, legal, marketing, and others. While nowhere near as high as the ICT and pharma sectors, there is strong employment in the insurance sector in Ireland. In 2018, insurance comprised of 28,000 employments, both direct and indirect (IFS, 2018). What is notable about this industry is its very high concentration of financial value in Ireland (shared among 3 types of insurance sectors – life, captive and reinsurance). Ireland hosts the 6th largest insurance market in EU and the 2nd largest reinsurance market in EU. Similarly, there is a very high concentration of aircraft ownership in Ireland. This does not lead to significant employment however (only 1,971 employments in 2018, (CSO, 2019a). Treasury activities are also notable in Ireland, representing high financial value. Employment is also notable, employing about 40,000 people within the financial services sector serving this industry. This is understood to mostly be 'back office' employment in funds management, but also involves some financial services for some NFCs (various interviews).

In summary, we can understand two things from this discussion. Firstly, it is clear that significant 'misalignment' is occurring in relation to Ireland's inward FDI. This is particularly notable in the sectors of pharma and tech. Despite these sectors being high employers in Ireland, there are unexplained discrepancies between their declared earnings and their levels of employment. These kinds of discrepancies have long been reported in relation to these sectors in Ireland, along with the chemical sector (Stewart, 1989). However, the CSO indicates that this discrepancy is increasing since 2017. Misalignment is an indication of profit shifting (Cobham and Jansky, 2020). The global tax reforms were intended to stop profit shifting, which clearly has not worked effectively in relation to the Irish case.

Second, there is an associated and substantial business services sector in Ireland despite being such a small economy. This is likely to be partially related to servicing the pharma and tech sectors, in addition to certain financial sectors such as some forms of insurance and treasury management. The business services sector can be viewed as having flourished as a result of 'misalignment' in other sectors, but in and of itself is a relatively high employer.

Third, there are notably high levels of assets raised from abroad associated with insurance and aircraft leasing in Ireland. While the bulk of employment related to insurance is linked to the life and non-life insurance sectors, very high assets are associated with re-insurance /captive insurance[51], despite low levels of associated employment. This is the inherent nature of these sectors, which are highly financialised but low employers. As noted, treasury services are also significant in Ireland, generating material employment (around 40,000 employments) though mostly linked to investment fund industry (CSO, 2019b). This shows that Ireland, along with being a host of misaligned FDI in the non-financial sector, it is also a host of significant financialised sectors and financial support services for both the financial and non-financial sectors.

4.3.2 Disconnection from the domestic economy: From GDP to GNI*

Prompted by the major spike in Ireland's GDP growth in 2015, the CSO identified the main transactions which led to the spike. The suddenness and scale of these transactions (e.g. in 2015) and the activity to which they relate, indicate their

[51] Reinsurance is a form of insurance purchased by insurance companies to manage risk. Reinsurance releases insurance companies from 'the part of a risk that exceeds their underwriting capacity, or from risks which they do not wish to bear alone' (Everett, McNeill & Phelan, 2013). Reinsurance companies fall into two types – captive or non-captive. Captive reinsurance companies are established by a parent firm to insure exposures within the group. Non-captives provide reinsurance cover of different kinds to a variety of clients (Kelly & O'Leary, 2014, p.2).

disconnection from the Irish economy i.e. that they have not been generated by employment or real activity within the Irish state. The adjustments made by the CSO in calculating the difference between the measurement of Ireland's GDP and GNI* indicates this disconnection.[52] The difference between GDP and GNI* is very large (over €192 billion in 2021). The relevant flows that comprise this difference are primarily identified by the CSO as four different things: a) net factor income from the rest of the world, b) income from redomiciled firms, c) depreciation relating to intellectual property, and d) aircraft assets. We discuss each in turn.

Net Factor Income from the rest of the world is the difference between income flows into and out of Ireland. While both types of flows are significant, the outflows are larger than the inflows, partly due to the repatriation of profits out of Ireland. This is why Net Factor Income from the Rest of the World is often understood in Ireland simply as 'MNC profits'. Specifically, Net Factor Income is comprised of a number of elements but is dominated by two types of flows. Firstly, by 'net direct investment income'. Net direct investment income includes dividends, reinvested earnings and income on debt. Within this set of flows, 'reinvested earnings' is the largest category [53]. Such investment is owned by controlling investors in other countries outside Ireland. The second largest element in 'net factor income' is 'net portfolio investment income'. Net portfolio investment income relates to income on debt and equity in the investment fund industry where investors do not have a controlling stake in the entity in which they are investing (CSO, 2023b). Figure 4.10 shows direct investment income is by far the largest share of the outflows involved in net factor income[54].

[52] GDP is the measure of the goods and services produced in the economy. GNI* is a statistical measure created by the CSO in 2015 to strip out what it terms '*the globalised effects*' in GDP which the CSO explains is activity that has no connection with the Irish domestic economy.

[53] This is implicit reinvested earnings i.e. it is assumed to be reinvested earnings as they have not been distributed.

[54] This is basically reinvested earnings from profits.

Figure 4. 10:Net Factor Income Components

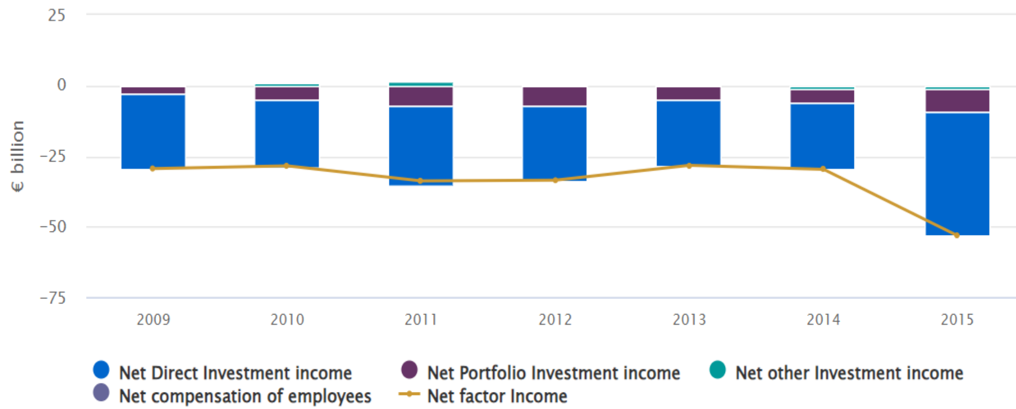
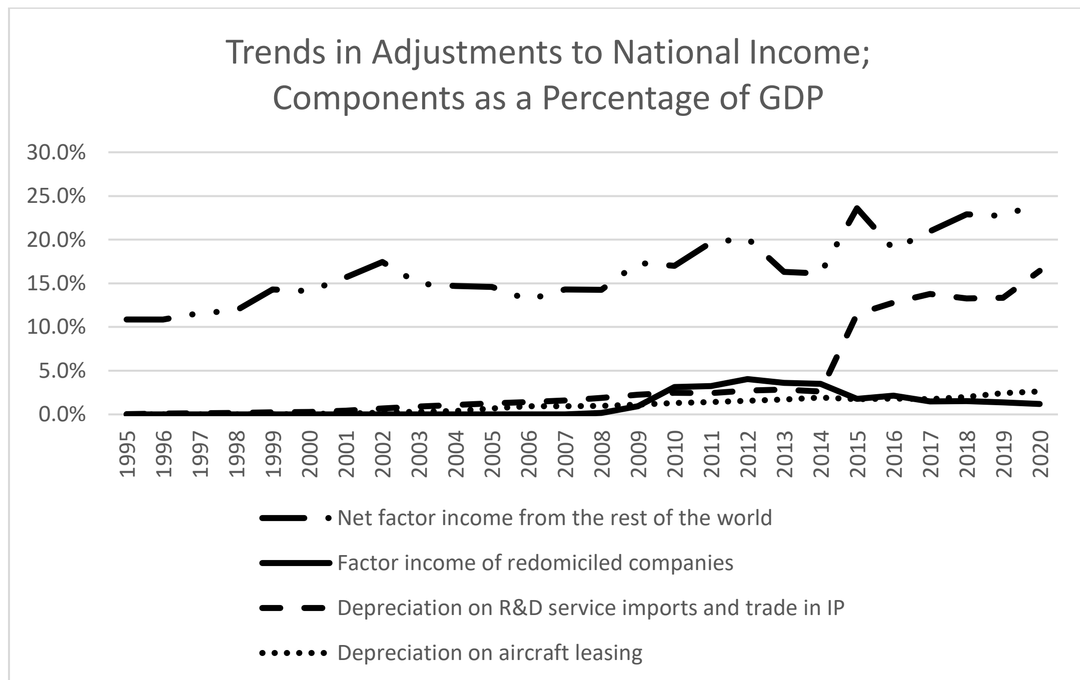


Figure 4.11 provides an overview of change over time in the scale of the four key components that are disconnected from the Irish domestic economy. We can see that Net Factor Income from Abroad is the largest of these components.

Figure 4. 11: Trends in adjustments to National Income



Source: CSO

Firstly, figure 4.11 indicates that net factor income (the MNC inflows and outflows through Ireland) was the main notable factor of disconnection until around the year 2000. Net Factor Income has been notable in Ireland's growth statistics since the arrival of MNCs in Ireland in the 1960s (Honohan, 1984). While there is a temporary decline in the period after the financial crash until 2012, Net Factor Income grows again out to 2015 before increasing massively from 2015 onward. Secondly, the effect of redomiciled firms on GDP is smaller but still meaningful. Redomiciled firms become important from 2008 onwards and became less important from 2016 onward. However, even with this decline in scale they still represent a steady percentage of the economy. Third, the R&D category refers to the purchasing of IP licenses and IP assets. This has been growing steadily from early 2000s and then, as discussed, explodes in size from 2015. This R&D related activity follows along a similar trend as the Net Factor Income, indicating a link between the location of MNC profits and R&D activity. Finally, aircraft leasing exhibits a steady increase, indicating the steady growth of the industry in Ireland over time.

Looking at 'disconnection' moves our understanding along in three ways. Firstly, Net Factor Income from abroad – that is U.S. corporate profits booked in Ireland - is consistently very large and growing as a percentage of GDP. This implies that Ireland has consistently been a centre for profit shifting over time. Second, IP related assets are an important factor regarding how profit shifting occurs through Ireland and it is an increasing feature, particularly since 2015. Third, aircraft leasing is a steadily growing feature of the 'disconnected' economy, but it doesn't seem to experience sudden discrepancies, indicating that the aircraft leasing regime in Ireland appears to be stable. And fourth, redomiciled firms were a feature but appear to be dying out. An examination of corporate organisation related to 'misalignment' and 'disconnection'

will give us a further understanding of what corporate practices are behind these observations.

4.3.3 Corporate organisation: corporate structures and transactions

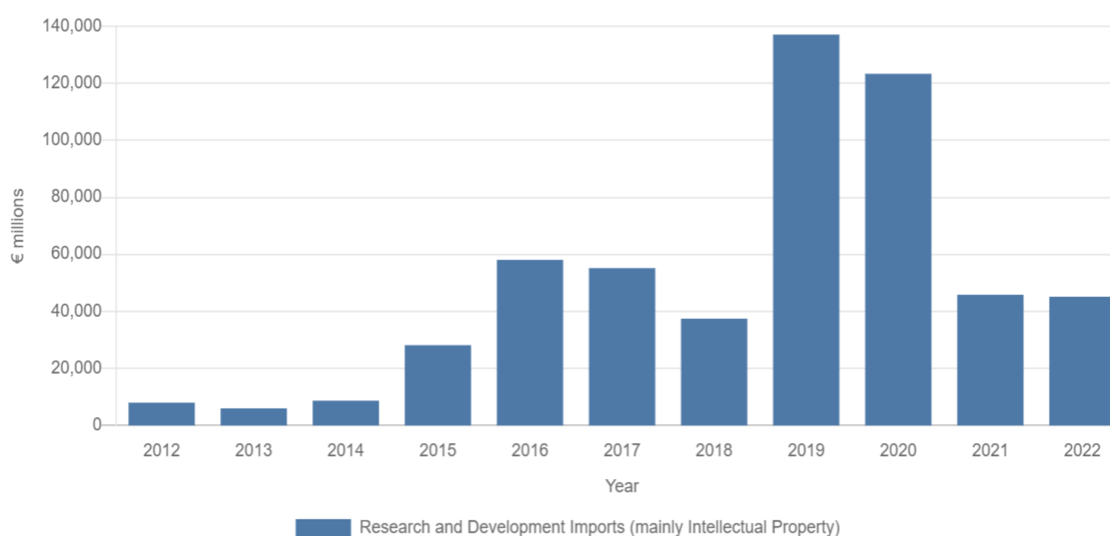
In this section, I dig deeper into the institutional forms of this misalignment and disconnection, namely, the specificities of IP, redomiciled firms, aircraft leasing, insurance, and intra company financing. I then look at the drivers of the corporate practices underpinning what we have learned so far, which can be tax related, but are also related to other considerations.

Intellectual property

Figures 4.12 and 4.13 indicate very significant increases of IP assets in Ireland since 2015 that are out of step with increases in tangible investments. The CSO indicate that,

> There is a lot of Intellectual Property held in Ireland. Some of it has been produced here, and much has been imported when an Irish arm of a global corporation has bought it from another arm of the same corporation. Most of the IP is an asset of Foreign-Owned Corporations, and the return on this investment goes abroad, rather than staying in the economy (CSO, 2022).

Figure 4. 12: Research and Development Imports[55]



Source: CSO Chart[56]

By far the most IP-rich firms in Ireland are in the pharma and tech sectors. By combining calculations from Bloomberg and their own data, the Central Bank of Ireland (2019) find that the pharma sector holds the highest level of IP in Ireland, followed by med-tech, tech including the GAMF grouping (Google, Apple, Microsoft, Facebook) between 2010 and 2019 Q1 (Central Bank, 2019).

IP assets are often held in holding companies (CSO, 2022). The stability of the legal framework within a country is important to corporations when deciding where to place their valuable IP, making Ireland an attractive location (Fitzgerald, 2020). The holders of this IP are usually members of what are called Cost Sharing Agreements (CSAs) within the corporate group. CSAs link a set of (usually) affiliated companies to bearing the costs and risks of IP development. Crucially, this also entitles these CSA

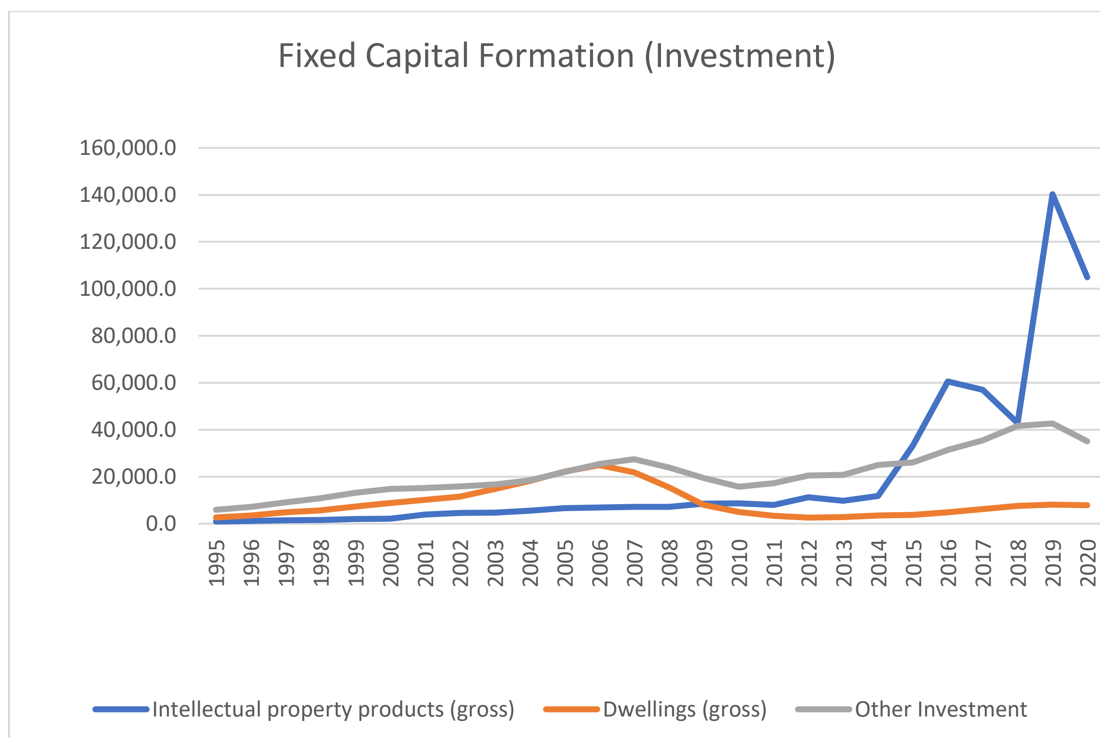
[55] In this context, royalty imports are when a royalty license is purchased by an Irish based US firm from an affiliated firm in another country. Royalty exports are when a license is issued abroad by an Irish based firm

[56] CSO, *Intellectual Property*, https://www.cso.ie/en/interactivezone/statisticsexplained/nationalaccountsexplained/intellectualproperty/, accessed on 13th October2023

participants to shares of the resulting profits. The valuation of this U.S. developed IP is also a matter of considerable legal controversy because it can be strategically valued to reduce the transfer price, thus reducing tax liability (Avi-Yonah, 2019).

There was a step change in IP asset holdings in Ireland from 2015 which has been linked to the onshoring of Apple's IP into Ireland. This onshoring trend continued from that period with IP dominating investment into Ireland (figure 4.13). This also begs the question of the nature of the relation between IP and these firms before they on-shored the IP assets to Ireland. The CSO data (see Figure 4.11) shows that royalty payments flowing out of Ireland have been consistently high. This indicates that previous to the recent IP onshoring, firms in Ireland paid affiliates in other jurisdictions licence fees for the use of the IP in the corporate group.

Figure 4. 13: Fixed Capital Formation



Source: CSO, 2022

The ownership of the products manufactured using these patents has also impacted the Irish national accounts. This relates to a process of ‘contract manufacturing’ whereby the contracting subsidiary in Ireland retains ownership over the inputs and end products by simply paying a fee for production work often in another country (Department of Finance, 2019). The CSO explain the relations between ownership of materials, production, patents, costs and profits earned in contract manufacturing relationships,

> The raw materials used in this production process are owned by the company in Ireland, even while they are going through the factory abroad. Importantly, the know-how, or intellectual property required to make the goods is usually also owned by the Irish company. For example, the patent on pharmaceuticals can be a large part of the cost of the drug. The Irish company might own the patent or might pay royalties to use the patent. Either way, this is a cost to the Irish company, even though it is being used in a physical production process overseas. When the finished goods come out of the factory abroad, they too are owned by the Irish company not the contract manufacturer. It is only when the production cycle is completed and the goods are sold to a customer does the Irish company receive money for an export.

Contract manufacturing has a cost saving advantage by outsourcing manufacturing to locations where labour and materials are comparatively cheap. It also has a tax reduction advantage. As in the case of Apple, contract manufacturing allowed the company to book profits from sales via its stateless structure, thereby reducing its tax liability (see case of Apple in chapter 5). There are contract manufacturing companies operating in Ireland (notably in relation to the production of pharmaceutical tablets), but the activity of interest here is when this outsourcing of production to countries outside of Ireland occurs in order to make use of the Irish tax system. Contract manufacturing showed up in the 2017 Irish Balance of Payments through a very significant ‘change of ownership adjustment’ to Ireland’s export figures worth €17 billion (CSO, 2018). Coffey (2018) argues that it is possible that this is a fee paid by Apple’s Irish subsidiaries for manufacturing and the purchase of goods in other

countries and sent on to China. Because of the ownership, profits from sales can then be recorded in Ireland, and therefore taxed at the comparatively low rate of 12.5 per cent and avail of other tax benefits in Ireland.

Redomiciled firms

As noted, redomiciled firms are netted out of GDP to get to GNI*. A redomiciled company or, as it is sometimes called, an 'inversion', is generally carried out by a US parent company acquiring (or merging with) an overseas subsidiary and relocating the group headquarters from the U.S. to Ireland. The parent company then moves its place of incorporation to the Irish company while maintaining majority ownership in the U.S. i.e. it effectively 'inverts' its legal status, making the Irish firm the parent company and the US firm its subsidiary. These U.S. owned firms arrived in Ireland largely from the UK in 2008 onward as a result of the introduction of stricter anti-tax avoidance rules in the UK. While their net income is very significant, the CSO describes redomiciled firms as engaging in '*little or no real activity in Ireland'* and holding substantial investments overseas (CSO, 2023a). A Deloitte staffer indicated in 2016, that while some groups have increased their substance in Ireland following an inversion, 'many of the C-suite positions [executive management] and operations remain in the U.S' (Kelly, 2016). Polyak (2023, p.11) highlights very notable movements in Irish statistics of two very large-scale inverted operations – those of Coviden merging with Medtronic in 2014 (reportedly a €48 billion deal) and Allergan merging with Actavis in 2015 (reportedly a €66 billion deal). She writes,

> The smaller deal already qualified as the biggest corporate tax inversion in history (to illustrate the scale – total Irish export value added was €180 billion in 2015). The merger resulted in the post-inversion companies' manufacturing activity (that was already taking place elsewhere) to show up in Irish GDP – with presumably little or no shift in production.

Voget (2010) finds that between 1997-2007, 6 per cent of multinational companies relocated their headquarters across borders. In a study of 1,943 MNCs, Voget finds that the presence of Controlled Foreign Company (CFC) rules (which limit MNCs ability to defer tax payments or engage in profit shifting) in a jurisdiction increases the likelihood of relocation. Voget also found that relocation is likely to occur to avoid residual taxes. Kelly (2010) finds that debt shifting from the US to places like Ireland (i.e. from a high to a low tax jurisdiction) to gain a tax advantage is a key driver of inversions.

The CSO show a massive growth in the net income of re-domiciled firms in Ireland, growing from € 292 million in 2008 to € 9,979 million in 2021 (table 4.5). There is no official list of inverted companies into Ireland. However, Everett (2012) points to firms in the pharmaceutical sector in particular, and also, to a degree, in insurance. The movement of redomiciled firms into Ireland now appears to have largely stopped. The increase, indicated in table 4.5, relates to an increase in profitability of existing redomiciled firms, rather than newly arrived redomiciled firms. Notably, some redomiciled firms are now significant employers in Ireland.[57] This indicates that while redomiciling may happen for tax related reasons, substance may be added to the transaction over time.

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[57] For example, Medtronic employs more than 4,000 people across five sites in Galway, Dublin and Athlone (Medtronic.ie)

Table 4. 5: Net Income of Redomiciled PLCs

Net Income of Redomiciled PLCs														**€ million**
	2008	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**
US & BM*	-	503	3,352	3,312	3,947	4,674	4,635	3,290	-	-	-	-	-	
GB & Other	-	1,091	1,908	2,236	3,155	1,803	2,220	1,467	-	-	-	-	-	
Total					7,102	6,477	6,855	4,757						
Total**	292	1594	5260	5548	7,097	6474	6851	4,663	5,780	4,457	4,912	4,862	4,506	9,979

**BM is primarily composed of US entities redomiciled to Ireland from Bermuda*

*** updated by CSO from 2012, but without geographical breakdowns (& slightly adjusted totals for 2012-15))*

Source: CSO, 2022

Aircraft depreciation

Aircraft are the next element of the adjustment. Ireland is a major global hub for the leasing of aircraft. First established in the 1970s, the share of the global aircraft fleet that is leased in Ireland has grown rapidly, accelerating in the 1990s (Guzhva, Raghavan, D'Agostino, 2018, p.9) and surpassing 50 per cent share of the global fleet in 2021. Over 60 per cent of the world's leased aircraft are leased via Ireland with the world's top aircraft leasing companies registered in Ireland (KPMG, 2021).

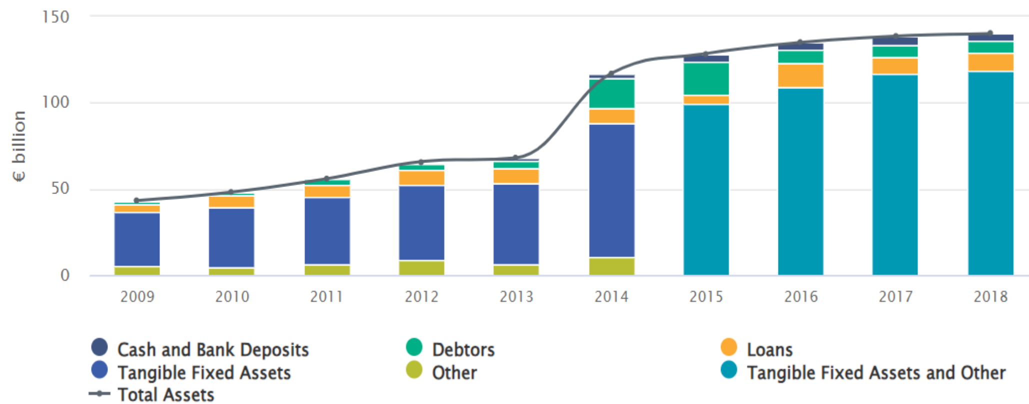
Accessing finance for aircraft leasing was partially driven by tax avoidance goals, using what were called Section 84 loans as it comes from Section 84 of the Corporation Tax Act 1976. Section 84 was, ironically an anti-avoidance measure, which deemed certain specified payments as dividend distributions. Killian, (2013a) indicates that distributions to companies qualifying for the EPTR (discussed earlier under the 'rate' dimension) were considered tax-free in the hands of the recipient and accordingly interest payments on section 84 loans advanced to EPTR companies were considered tax free in the hands of the lender. This game between Irish banks and customers became a key basis for financing the aircraft leasing industry in Ireland.

Since then, the aircraft leasing sector has consistently expanded in Ireland. Osborne-Kinch et al (2017) indicate that there are two types of foreign owned lessors in Ireland – the established, long-standing firms (including their redomiciled assets over time) and, since 2011, Special Purpose Vehicles. In simplified terms, KPMG (2021) outline how the flow of finance to Irish leasing firms works via debt or equity flowing to an operating company which can then be pushed on to a special purpose vehicle (SPV) which is the owner of the aircraft. Rental income from airlines (the lessees) is paid to the SPV which is returned to investors via interest or dividends (KPMG, 2021). KPMG

(2021) indicate that, aviation operating platforms have become more complex, expanding to include 'multiple SPVs, parallel/side-car structures, foreign presences and numerous holding companies, bond issuers, treasury companies and legal orphan offshoots [..].'

There are a range of reasons for the large number of entities in aircraft leasing groups, including bankruptcy remoteness (where companies are protected from the bankruptcy of their affiliates); enabling sale of shares in entities rather than assets thus avoiding costly novations (where one party replaces another contractually) relating to underlying lease agreements; and risk management. An aircraft leasing group can have up to 400 companies (Aircraft leasing Ireland, 2020). Aircraft Leasing Ireland (2019) indicate that third party lenders to aircraft leasing companies require debt finance entities to be bankruptcy remote 'for tax purposes'. There are a wide set of tax advantages offered to aircraft lessors in Ireland. The most notable advantage is depreciation on the purchase of aircraft over a short time period of eight years. Among the other drivers identified, this huge tax advantage has led to major investments in Ireland in the purchase of aircraft. Figure 4.14 shows the increases in tangible assets of the aircraft leasing industry in Ireland over recent years.

Figure 4. 14: Assets Aircraft Leasing



Source: CSO Chart[58]

Insurance

Insurance is a highly internationalised industry, surpassing the banking industry in globalised corporate structures. The majority of premiums of the insurance industry in Ireland are earned outside of Ireland, relating to more than 110 countries (Insurance Ireland, 2018). The majority of insurance companies in Ireland are subsidiaries of larger global groups (Kelly & Osborne-Kinch, 2018). In 2016 the reinsurance sector earned almost all of its premiums from abroad, followed by life insurance (94 per cent) and non-life (69 per cent). Insurance companies operating in Ireland deal with three types of insurance - life insurance (dealing in death benefits), non-life (fire, motor, general, other) and reinsurance. The organisational approach of the sector follows a so-called 'hub and spoke' model whereby under EU Directive Solvency II, insurance companies were provided with the freedom to operate on a pan-European basis. An insurance company can establish a foreign branch ('Freedom of Establishment'

[58] CSO, *Aircraft leasing in Ireland, 2018* Figure3.1 Assets, accessed on 13th October2023

(FOE)), or a writing business, from a head office or subsidiary ('Freedom of Services' FOS)) (Kelly & Osborne-Kinch, 2018). The branch model 'involves a company, operating as a single legal entity, but providing services on a cross-border basis via branches, rather than via subsidiaries' (Everett et al, 2012 p.89). This has resulted in greater geographical concentrations of capital, including in Ireland. Insurance Ireland (2018) indicates a growing trend of insurance companies establishing their EMEA headquarters in Ireland. They also indicate that companies use Ireland as an 'international servicing hub', carrying out activities including customer support, finance and accounting, risk and compliance, legal, and claims processing. PWC (2021) indicate that reinsurers are redomiciling in Ireland from Bermuda in addition to Brexit impacted groups seeking access to the EU market.

It is clear that there are a range of non-tax, regulatory reasons for the insurance sector to have become concentrated in Ireland. The EU regulatory regime and along with the market efficiencies achieved through the servicing hub model are clearly very important attractions. However, two significant tax advantages appear important to the insurance sector in Ireland. Firstly, its favourable tax treatment of insurance premiums received from abroad and secondly, an exemption from U.S federal excise tax under the US-Ireland tax treaty (PWC, 2021).

Intracompany financing of NFCs

Nonfinancial corporations (NFCs) in Ireland are highly indebted. The Irish Department of Finance (2019) estimate that 30 per cent of NFC debt in 2017 relates to Irish companies borrowing from domestic financial institutions and from international banks and markets. The balance (70 per cent) is related to foreign owned corporations and not to the domestic Irish economy. The Department estimate that out

of this, 50 per cent of the share of NFC debt is comprised of these corporations borrowing internationally or from overseas affiliates; 13 per cent is debt of redomiciled PLCs and the balance, 7 per cent, relates to foreign MNCs with at least two subsidiaries registered in Ireland with one subsidiary functioning as an operational company (e.g. manufacturing) and the other as the counterparty corporate treasury, managing the cash and investments of the company including intra-group loans. The Department of Finance indicate large levels of debt of MNCs in the technology, pharmaceuticals and aircraft leasing sectors. They write,

> Due to their corporate structures, many of these firms hold disproportionately large amounts of debt and assets on the balance sheets of their Irish subsidiaries, relative to the scale of their Irish operations. Much of this debt is intra-group, with overseas affiliates lending to Irish subsidiaries within the same corporate group. This debt is not consolidated out as consolidation only removes within-country intra-group lending. Other MNE debt is typically owed to foreign banks and financial markets, and does not generally constitute a burden on the domestic Irish economy, whether to the operations of companies in Ireland or to the domestic banking system. (2019 p.8)

The Central Bank also indicate significant levels of portfolio debt securities and other debt instruments (€98.5bn) held in the NFC and households sector (see table 4.6). This is likely comprised mostly of NFC debt.

Table 4. 6: Debt and equity, year-end 2016

Institution	Debt and equity instruments* € billions		
	PEQA	PDA	ODI
Total	*229.70*	*196.3*	*438.4*
Central Bank	-	18.7	1.6
Depository taking corporations except the Central Bank	0.50	22.9	33.8
General Government	4.30	1.9	2.2
Other Sectors	225.00	152.7	400.7
Non-Financial Corporations, Households, Non-profit institutions serving households (NPISH)	-	1.1	98.5
Other Financial Corporations	225.00	151.6	302.5
Insurance Corporations	36.90	19.2	11.3
Pension Funds	48.00	42.6	0
Money Market Funds	-	19	4.9
Investment Funds	58.90	26.9	20.7
Financial Vehicle Corporations	-	1.7	10.2
Special Purpose Vehicles	-	0.6	4.1
Treasuries	81.20	41.7	251.1

*PEQA, PDA, ODI are stocks of portfolio equity and investment fund shares, portfolio debt securities and other debt instruments.

Source: Galstyan[*] (2019)

This data shows us that there are significant concentrations of debt held by the NFC sector. However, it doesn't tell us anything about the drivers of this. We know from stylised examples from the Galstyan, Maqui & McQuade (2019) and the EC (2015) among others that there is suspected scope for the creation of tax related advantages through the use of intra-company debt financing involving Ireland. These are somewhat speculative and are discussed further under Section 4.4.5.

4.3.4 Drivers of corporate decisions

Based on the description above, and on what we have learned from the literature in Chapter two, there are a set of diverse reasons for firms to decide to locate part of their group in Ireland, even within the management of a global wealth chain. The activities involved include profit shifting, debt shifting and use of tax treaty networks, all of which can offer tax reduction advantages. However, carrying out these activities in Ireland can also offer additional non-tax related advantages to the corporation such as

legal stability, skilled labour to manage the transactions, efficiencies, risk reduction and low regulation (table 4.7). When mapping 'misalignment' and 'disconnection' in Ireland, these mixed motivations should be kept in mind.

Table 4. 7: Corporate decisions on transactions, advantages and structure

Corporate decision	**Main corporate advantage of decision**	**Corporate structure**
Profit-shifting		
Transfer mis-pricing	Tax reduction	Affiliated companies
Placement of IP	Tax reduction Legal stability	Holding company (IP assets), participant in a CSA
Placement of IP licenses	Tax reduction Skilled labour	Operating company (royalty payments), participant in a CSA
Location of production (contract manufacturing)	Cost savings Tax reduction	Company owns products but not physically holding them (factory-less production)
Debt shifting		
Debt shifting	Risk reduction Tax reduction Reduction in regulatory requirements Legal regime Skilled labour	HQ / Regional HQs, Treasuries, SPEs
Redomiciling HQ	Tax reduction Skilled labour	Merger, SPEs, possibly expanding to larger companies over time
Tax treaties & targeted regimes		
Location of aircraft lessor	Ease of regulation Tax reduction Skilled labour	Mixed structures
Location of insurance premiums	Ease of regulation Tax reduction Skilled labour (some forms of insurance)	Regional hub in a 'hub and spoke' model

4.3.5 Mis/aligned and dis/connected sectors and activities: Axes of 'real-artificial' entanglement

As noted in previous chapters, Torslov, Wier and Zucman (2018) present useful data indicating the misalignment between profits and economic substance, globally and highlight Ireland as a major centre for misaligned US profits. In my analysis in this chapter, I significantly add to their high-level analysis of this trend, by showing the

spectrum of entangled real-artificial FDI of US corporations in Ireland. Figure 4.15 is illustrative and populated figure based on the discussion above.

The top right quadrant is populated with the significant economic substance delivered, in particular, by the tech and pharma sectors in Ireland. These are major employers in Ireland in the manufacturing sectors. They also use corporate support services for their global operations in Ireland (Reurink & Garcia-Bernardo, 2021). The top left has little going on in it. An interesting example in this quadrant is that of the Section 84 loans, an example of local, financialised tax avoidance in the 1980s which, notably, supported the aircraft leasing sector. The bottom left quadrant contains the 'classic' tax avoidance activities of (mostly) U.S. pharma and tech. While some of these activities have motivations beyond tax, as per table 4.7, they are highly tax driven. IP asset placement, royalty payments and contract manufacturing (likely related to Apple and other corporations) are entangled with the highly aligned and substantive sectors of pharma and tech manufacturing. These lower left quadrant activities are slightly overlapping into the bottom right quadrant to signal that despite their zero to low economic substance, they may be becoming associated with greater employment. For example, some redomiciled firms began with no employment in Ireland but are now significant employers.

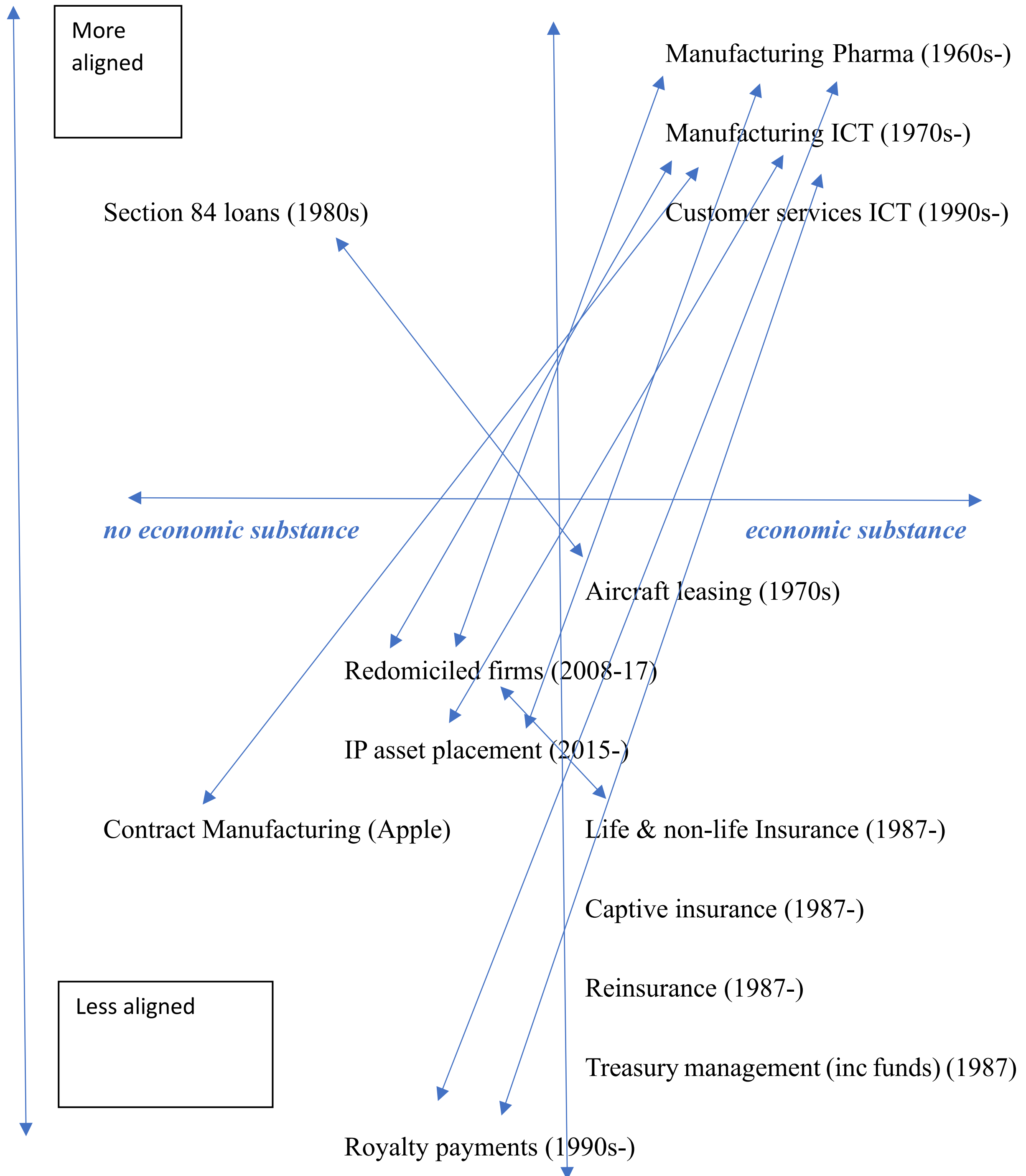
The bottom right quadrant contains highly financialised sectors, with some employment, and largely draws on international finance but which have formed into hubs in Ireland. There are tax advantages to this sector, but they also appear very responsive to non-tax drivers such as skilled labour and EU regulation for example.

The illustrative figure 4.15 provides a background context for exploring the entanglement of global value chains and global wealth chains via Ireland. Against this

background, and drawing on additional tax-based material, the structure of the sectors, activities and form of corporate organisation, can be explored in light of the tax dimensions discussed in Section 4.2. This makes the tax games in Ireland more visible. The tax games are discussed next.

Figure 4. 15: Misalignment and disconnection: Axes of 'real-artificial' entanglement

Alignment: Drawing from domestic resources & booked domestically



Misalignment: Drawing from international resources & booked domestically

Arrows indicate entanglements

4.4 Ireland's corporate tax games

These different institutional mechanisms of misalignment and disconnection are profoundly related to how the four dimensions of taxation are configured into tax games. Therefore, this section discusses Ireland's corporate tax games along the lines of the four dimensions of corporate tax discussed in Section 4.2. In addition, the analysis of these tax games will provide insight into the organisational and institutional changes that underpin the macro trends and varying forms of misalignment analysed in the previous section.

As discussed in Chapter Two, the framework of 'games' advances the analysis of the four dimensions of corporate tax by displaying their interactions and the evolution of these interactions over time. Six games are identified based on the discussion so far. While there may be variations of these games, these appear as the most significant tax games. It should be noted that the financial sector/services game focuses on insurance and aircraft leasing. These are somewhat different to the other games as while they achieve tax advantages, they also benefit from additional specific regulatory arrangements. The area of fund management is excluded from this for reasons of scope. Also, as we have seen, the achievement of tax advantages through intra company financing is significant and occurs in a wide range of ways. For this reason, it is viewed as cross cutting to games along the dimension of return.

4.4.1 Export platform profit-shifting: manufacturing 1960s-00s

As noted in Chapter One, Ireland's shift away from industrial protectionism in the late 1950s was characterized by the establishment of an Export Profits Tax Relief which offered a 100 percent tax relief on export sales of manufactured goods made in Ireland.

It was open to all companies but was mostly used by exporting MNCs and became a key factor in attracting FDI into the country (Killian, 2013a). A customs free area at Shannon Airport in the West of Ireland was also established with additional customs duty reliefs for goods made for export. It was among the first export free zones in the world (Killian, 2013a).

In the Finance Act 1980, a 10 percent corporation tax on profits from sales of goods from manufacturing was introduced. As the term 'manufacture' was not defined in legislation, it led to tax abuse. Infamously, bananas came to be 'manufactured' in Ireland, as they were imported from other countries to ripen in Ireland before export in order to benefit from the tax environment (Killian, 2013b). The rate was accompanied by a range of tax expenditures, notably a system of accelerated capital allowances on plant and machinery which increased from a 20 percent rate at its introduction in 1956 to 100 percent by 1972 (Coffey, 2017, p.14). The interactions of these tax deductions created 'tax-based financing and tax-based leasing' incentives (Coffey, 2017, p.16). As noted earlier, this involved the abuse of Section 84 of the tax code, by Irish financial institutions purchasing plant and machinery, claiming accelerated capital allowances along with state grants and providing cheap loans to recipients of the EPTR, to lease the machinery, that were tax free for both the lender and the borrower (Killian, 2013a; Coffey, 2017). In 1999, in light of the ending of the manufacturing relief, which became ultimately seen by the EEC as a form of state aid, the Finance Act scheduled the incremental introduction of a single 12.5 percent corporation tax rate on trading income to commence in 2003. This was introduced alongside a 25 percent tax rate on passive income (unearned income such as interest and dividends) and is still the case today. These reliefs were offered along with a nation-wide industrial grants scheme (Barry and O'Mahony, 2017). Grants from the

state, awarded through the IDA were important incentives to newly establishing companies. Barry and O'Mahony (2017, p.14) find that state grants had been awarded to 359 foreign-owned manufacturing plants between 1955 and 1972.

Transfer mispricing has been associated with Ireland from early in its FDI trajectory. Studies published in the 1980s and 1990s indicate very high profits booked in Ireland in comparison to employment (e.g. Stewart, 1989). Conroy, et al (1998, p.5) identify four sub-sectors of manufacturing, which had unusually high profits in Ireland. These included speciality chemicals, software reproduction, computers and certain food products ('specifically the production of cola concentrate'). They highlight that these sectors have an 'extremely high net output per employee – over IR£1 million in 1994 for the cola concentrate companies, with lesser but still very high figures in the others'. Writing about this period, Fitzgerald and Honohan (2023, p.12) indicate that software products and pharmaceuticals 'became the most conspicuous of the new tax-advantaged manufacturing sectors' where net output per employee in Ireland in 1999 was 11 times (software) and 5 times (pharmaceuticals) the average for the same sectors in the rest of the EU. The authors argue,

> no doubt a considerable amount of transfer pricing underlay such differences, arranged to ensure that the return on this investment was attached to the group's unit in the low-tax jurisdiction. With the wage bill such a small fraction of net output, these firms were highly profitable – though the ultimate source of these profits was typically the proprietary knowledge and distribution network of the U.S.-based parents.

A 1982 report commissioned by the National Economic and Social Council (NESC) indicated that 80 percent of FDI firms surveyed for the report were in Ireland 'primarily because it provided a tax shelter for penetrating the EEC' (NESC, 1982, p. 21).

This early tax game effectively enabled branches of U.S. MNCs to shift profits into Ireland using transfer mispricing by carrying out very low level manufacturing activity on goods for export to the EU and beyond. This was primarily facilitated by the 0 per cent, then 10 per cent corporate tax rates. The dimension of rate was the key driver to this game, underpinned by additional attractions in the return dimension through capital allowances and state funded grants and Section 84 loans. The EPTR was ultimately phased out (by 1990) due to pressure from the European Economic Community (EEC) regarding compliance with state aid rules. This prompted these firms to create alternative, more complex games.

Table 4. 8: Export platform profit-shifting: manufacturing 1960s-00s

Tax dimension	**Manufacturing export platform '60s-'00s**
Rate	0% on trading profits; 10% on trading profits
Jurisdiction	US, Shannon zone, Ireland
Owner	Branches
Return	Profits (initially untaxed at 0%), capital allowances on fixed assets, grants, Section 84 loans

4.4.2 International Financial Services 1987- present

The establishment of the International Financial Services Centre (IFSC) in 1987 marked a shift toward Ireland becoming a globally recognised financial centre for investment funds, insurance, aircraft leasing, among other financial services. A big attraction was the 10 per cent corporate tax rate which was extended out from manufacturing to financial services. In addition, as discussed, the introduction in the early 1990s of Section 110 was introduced into the Irish tax code to allow securitised arrangements to be set up in Ireland, as 'tax neutral' vehicles.

Specific tax advantages are available to the insurance sector, including through a 'gross roll up regime' for life funds which means investment returns for non-Irish resident policyholders are tax-free. An exemption from US Federal Excise Tax (FET) also applies to the sector under the US-Ireland tax treaty. In addition, there is no Insurance Premium Tax (IPT) on insurance premiums received in Ireland in respect of risk located outside of Ireland, and no IPT on reinsurance, irrespective of the location of risk (PWC, 2021).

Aircraft leasing also has a number of tax advantages in Ireland. Most notable among them is an accelerated tax depreciation write off over a period of eight years on the purchase of aircraft or aircraft engines. This eight-year period is viewed as extremely generous as a lifespan of an aircraft is generally about 25-30 years. Other considerable tax advantages relate to tax free interest payments, no withholding tax on outbound lease rentals, no stamp duty on aircraft transfers (and none on specific aircraft financing instruments) and no VAT on international leasing (PWC, 2021). Since 2011, the Section 110 regime also applies to aircraft as qualifying assets. Section 110 appears to be used by the newcomer leasing companies[59] (Osborne-Kinch, Coates and Nolan, 2017).

[59] In their 2017 study, Osborne-Kinch, et al found 1,132 Irish-incorporated entities with activities linked to the aircraft leasing industry. Data was only available for 848 of these entities. They found SPVs with a Section 110 designation to be a minority (147) and 701 entities which fall outside the Section 110 designation.

Table 4. 9: International Financial Services 1987- present

Tax dimension	International Financial Services '87-
Rate	10% -12.5% on trading profits
Jurisdiction	US, Ireland, tax treaty partners
Owner	Financial subsidiaries; Section 110 companies; diverse SPVs
Return	Capital allowances (tangible), Depreciation (e.g. aircraft), Section 84 loans SARP, Debt and profit shifting, Tax deferral - US

4.4.3 Redomiciled firms (2008 - 2017)

Redomiciled firms into Ireland became notable after the relocation of the FTSE 100 company Shire pharmaceuticals in April 2008, followed by about a further dozen companies within that year. Voget (2010, p.1068) writes,

> Many observers argued that the firms were attracted to Ireland by the lack of controlled foreign corporation (CFC) legislation, which is employed by other countries to counter abusive deferral or profit-shifting by multinational groups. The U.K. authorities, on the other hand, had proposed more stringent CFC rules that would have resulted in the taxation of large parts of worldwide passive income on accrual. The U.K. government quickly caved in and shelved the controversial parts of its tax reform.

Everett (2012) indicates the sets of companies which redomiciled in the early stages of the so-called 'Shire effect'. They include Ingersoll Rand, Accenture, Covidien, and Cooper Industries. Insurance companies also relocated including Willis, Zurich Financial Services, RSA Group, Beazley and XL Capital. Kelly (2016) from Deloitte emphasises that residual taxes still fall due in the US within the scope of the US CFC regime. She notes that the real value of an inversion lies in debt shifting which results in a tax benefit. She writes,

> Sometimes, there is a misunderstandings that an inversion means that the global profits become taxable at the Irish corporate tax rate of 12.5%

> (compared to the U.S. rate of 35%, before state taxes) when a company inverts to Ireland. That is not the case, as any profits of the U.S. companies will remain taxable in the U.S. and any subsidiaries of the U.S. would remain within the scope of the U.S. CFC regime. However, usually as part of the inversion structuring, additional debt is introduced into the U.S. group, which leads to a reduction in U.S. taxes and non-U.S. subsidiaries are often transferred from the U.S. group, so that they are no longer within the scope of the U.S. CFC regime

The US Congressional Budget Office estimates that as a result of redomiciled US companies from 1994 to 2014, the worldwide corporate tax expense reported on their financial reports fell, on average, by US$ 45million in the financial year after the redomiciling (CBO, 2017). Like Kelly, the CBO also highlight that redomiciling has likely been used as a springboard to shift debt out of the US for tax reduction purposes. Interestingly, contestation over tax deductible expenses, some in relation to costs incurred through corporate planning for the restructuring involved in an inversion are currently a matter of legal contest between Covidien and Irish Revenue (Hubert, July, 2023). Redomiciling firms into Ireland have effectively ended due to changes in US tax rules to prevent them. An interviewee indicated that there has not been any inversions into Ireland since 2017 due to the decrease in 2017 of the US corporate tax rate (from 35% to 21%) and other new US rules. They indicated,

> As long as the US corporate tax is at 21 per cent there is no point in doing an inversion. [..] Inversions were really valuable under a 35 per cent tax rate. And also, inversions require a merger. Post 2004, inversions require a merger with a smaller foreign company and that happened with some Irish companies as well as UK companies and so on. But frequently it is not easy to find one (interview 16)

The driving dimension of this game is the dimensions of owner. The owner dimension is important because, as the interviewee above indicates, a company must be identified to merge with by the initiating corporation. Given that Ireland has an established pharma sector, this set Ireland up as a highly attractive jurisdiction. The dimension of jurisdiction is also very important. In addition, Ireland did not have anti-avoidance

(CFC) rules in place which also made it a more attractive jurisdiction than the UK which was in the process of tightening its own rules at the time of the wave of redomiciled firms into Ireland.

Table 4. 10: Redomiciled firms (2008 - 2017)

Rate	12.5% on trading income.
Jurisdiction	US, UK rule changes pushed firms to Ireland
Owner	Merged companies form the parent. Parent can be an SPE (i.e. holding the balance sheet)
Return	Relocation of group debts; treatment of expenses (e.g. Covidien case)

4.4.4 Pharma and Tech: 'IP games' (90's-present)

Once the special regimes on tax rates were phased out, the tech and pharma sectors which were engaged in significant profit shifting into Ireland already, needed to design new games to sustain their tax advantage. These games revolved around the placement and licensing of their IP. Building tax avoidance around their IP makes sense for two main reasons. Firstly, because IP is their most valuable of assets and can therefore generate high tax savings depending on where it is placed and licensed from. And secondly, because U.S. tax rules have historically facilitated the offshoring of IP (which is discussed in detail in Chapter six). Three major 'IP tax games' can be identified. These IP games are complex, interlinked and ongoing. For this reason, they are the focus of a more detailed discussion in Chapter 5.

a. The Double Irish Dutch Sandwich structure (2003-2020)

This structure, which existed up until 2020, involved the distribution of profits based on Cost Sharing Agreements within these corporate groups for the sharing of the costs

of development of valuable IP between the US parent company and offshore affiliates. The ultimate outcome of this structure is to ensure high levels of profits are booked in zero tax locations such as Bermuda. This was achieved through shifting profits away from higher tax locations and then holding the profits, untaxed, indefinitely, offshore in the zero-tax location.

The building blocks of this structure were two key things. Firstly, the interaction of U.S. and Irish tax residency rules, which created a loophole of no taxation. Secondly the treatment by the U.S. of payments between affiliated companies (the so-called 'check-the-box' rule) which allowed certain transactions between affiliated companies to be disregarded by the IRS. These tax advantages were further boosted by the non-taxation of royalties between affiliated companies in the EU; and the withholding tax arrangement between the Netherlands and Bermuda. Finally, and crucially, U.S. companies, up until 2017 had the option of deferring tax payments in the US if they kept their profits offshore, so once the profits landed in Bermuda (the end point of the game) they could stay there untaxed. This was essentially a huge tax holiday.

In a study of 2017 MNC country-by-country reporting data, Stewart (2021) finds 34 companies from large U.S. owned groups using the structure. Some of these companies are members of the same corporate group. For 2014, Samarakoon (2023) finds a much higher number using the structure (possibly because it's phasing out period of 6 years was announced that year) – 134 companies – and estimates that in 2017, 14-17% of the U.S. tax base was shifted to low tax jurisdictions using the structure. Some of the largest companies in the world are recorded as using the structure, generally from the Tech (e.g. Google) and Pharma (e.g. Abbot Laboratories) sectors.

The driving dimensions of this structure are very different from the early games. The dimension of 'owner' becomes much more important than in the early games, reflecting the growing complexity in internal corporate ownership structures. The owners involved had to be 'cost sharing participant' entities in order to share costs and crucially, the profits, from the development of the IP within the group. The jurisdiction dimension is also very important, signally a greater global integration of tax planning approaches. This movement of royalty related payments, via a range of different rules-based jurisdictions, facilitated major tax savings along the way to the final destination of Bermuda where no tax is paid and where the profits could stay untaxed.

Irish tax residency rules were changed in 2015 in order phase out the Double Irish by 2020. The new rules will not apply if a firm is 'treated as a tax resident company in another country under a Double Taxation Agreement' (Revenue Commissioners, 2015). This allowance gave rise to what the NGO, Christian Aid Ireland, termed the 'Single Malt' tax avoidance structure. The 'Single Malt' structure is a simplified version of the Double Irish-Dutch Sandwich which replaces the Bermuda and Netherlands subsidiaries with one in Malta. In 2018, the Minister for Finance announced an end to the 'Single Malt' through a new agreement between Ireland and Malta (Irish Times, 27 November 2018).

Table 4. 11: The Double Irish Dutch Sandwich structure (2003-2020)

Tax dimension	Double Irish Dutch Sandwich
Rate	12.5% on trading profits
Jurisdiction	US, Ireland, Bermuda, Netherlands
Owner	Holding company (incorporated in Ireland, tax resident in Bermuda), tax resident operational company (Ireland), tax resident company (Netherlands)
Return	Profits from non-US sales booked in Ireland, used to pay royalty fees in Bermuda (at 0%) via Netherlands (no WHT). Profits retained in Bermuda so untaxed in the US.

b. Apple Statelessness (1990s-2013)

The Apple ‘stateless’ structure works on the same principle as the Double Irish Dutch Sandwich structure. The main difference is that the flow of funds which occurred in the DIDS from Ireland to the Netherlands to Bermuda does not occur. Instead, the profits are placed in a ‘stateless’ entity, which was recorded as a head office, of no address, attached to Irish subsidiaries. The profits remain in the ‘stateless’ entity, untaxed, similar to the DIDS structure and Bermuda, until repatriated to the U.S. It is most likely that Apple did not chose to do a DIDS game because it preferred not to have a ‘classic’ tax haven jurisdiction like Bermuda recorded as a significant entity in its financial statements (interview 13). The possibility of the ’stateless’ option was not widely known, not even in Irish government circles, as we shall see (in Chapter six) and so likely appeared to Apple as a safe bet reputationally.

Unfortunately for Apple, the stateless structure was noticed, though not until several decades into its use, and then widely publicly discussed. Apple is the most widely documented case of this structure due to the legal challenge against Ireland by the EC

involving a (thus far legally defeated) claim of over €13 billion in unpaid taxes by Apple to Ireland. However, the ex-CEO of Pepsi has indicated that Pepsi used this structure through Ireland before Apple (Goodbody, 2018).

The driving dimension to the stateless structure is the jurisdictional element. Due to the interactions of US and Irish tax residency rules the Irish subsidiaries were not taxed in Ireland and coupled with the check-the-box rule in the US and the option of tax deferral, were not taxed in the US until repatriated. The added dimension of the subsidiary headquarters 'at no address' provided a 'Bermuda style' location to Apple which ensured profits remained untaxed.

Table 4. 12: Apple Statelessness (1990s-2013)

Tax dimension	**Apple Statelessness**
Rate	12.5% on trading profits.
Jurisdiction	Ireland Advance Pricing Agreements; US-Ireland tax residency rules; US 'check-the-box' rule; US tax deferral
Owner	AOI, ASI
Return	Contract manufacturing; Commissionaire arrangement / merchanting; Cost sharing agreement

c. Onshoring by Apple and other IP-rich firms (2015-present)

Responding to changes in law both in Ireland and the U.S., Apple's next game after 'statelessness', was to bring valuable IP assets onshore to Ireland. Many other IP rich firms from the tech and pharma sectors also subsequently decided either to onshore IP to Ireland, elsewhere, or 're-shore' it to the U.S. The key motivator for this move is the availability in Ireland of accelerated capital allowances on intangible assets. In addition, the motivation to align IP with economic substance, which by this time had become a new norm in global tax, made Ireland a more attractive location than zero tax jurisdictions post BEPS reforms. Deductions on interest payments on loans

extended by Apple subsidiaries in Jersey to Apple subsidiaries in Ireland is a further (more minor) attraction in the case of Apple and this structure.

The driving dimension here is the dimension of 'return'. The capital allowances, at the time of the Apple onshoring were set at a 100% deduction, so the most generous possible level was provided. These allowances were essential to this game. It meant that the costs of onshoring this very valuable IP could be written off over an eight year period. Given the huge value of Apple's IP assets, it is likely that the tax deduction associated with its purchase wrote off a very significant element of its global tax liability (interview 8).

Table 4. 13: Onshoring by Apple and other IP-rich firms (2015-present)

Tax dimension	**Onshoring (Apple & other IP-rich firms)**
Rate	12.5% on trading profits
Jurisdiction	Bermuda, Jersey, Ireland
Owner	Tax resident company in Ireland
Return	Loans (intra-firm) from Jersey subsidiaries to Irish subsidiary; contract manufacturing; Capital depreciation allowance (100%, subsequently 80%)

4.4.5 Cross cutting in the games: Intragroup financing

As noted in Section 4.2, there is a high level of foreign corporate debt in Ireland, including the non-financial corporate sector. This debt is understood as MNCs holding large debt asset claims against direct investors (i.e. a parent company) and affiliated enterprises (i.e. to a company with whom the Irish entity shares a common parent) (Coffey, 2017). As noted in Chapter 2, debt shifting is a tax avoidance mechanism among MNCs. Debt shifting for tax purposes is generally understood as occurring through companies booking high levels of debt in high tax jurisdictions and low levels

in low tax jurisdiction. This poses something of a puzzle in relation to Ireland. As a low tax jurisdiction, low levels of NFC debt might be expected. However, it is possible that in terms of debt shifting, Ireland is viewed as a comparatively higher tax jurisdiction than other zero rate havens. A research interviewee indicated that NFC debt may be held in Ireland for non-tax reasons, such as high levels of data protection provided to MNCs (interview 8).

Other possibilities of how Ireland may be used as part of wider debt shifting arrangements have been flagged via specific examples in the literature whereby the Irish jurisdiction plays diverse functions in tax avoidance. For example, significant NFC debt arrived in Ireland as a result of the Apple Onshoring game. This is because Apple in Ireland borrowed from its Jersey based affiliate to fund the onshoring of the IP.

The European Commission (EC) (2015, p.38) describes the scope of particular corporations' debt shifting structure involving Ireland. The structure involves four jurisdictions. The EC describes it as follows: The parent MNC places equity in a subsidiary in a low tax jurisdiction like Ireland. The Irish MNC extends an interest free loan to a subsidiary in a third jurisdiction. This third jurisdiction assumes an arms-length interest payment was made by the subsidiary there and deducts tax accordingly. This subsidiary (in the third jurisdiction) then on-loans the funds to a subsidiary in a fourth jurisdiction, with interest charged. This fourth jurisdiction deducts tax on interest payments made on the loan. The subsidiary in the third jurisdiction (that extended the second loan) has the interest payments received offset against the deemed interest paid on the first loan. A profit has thus been created in the third jurisdiction and it is returned to the parent as a dividend.

Central Bank authors, Galstyan, Maqui & McQuade (2019, p.4), also provide a stylised example of the use of debt for tax purposes relating to SPEs and investment funds. They write,

> In this case, the sponsor of the Irish-resident SPE is a foreign investment manager of an Irish-resident investment fund whose shares are owned by foreign investors. The SPE is consolidated into the fund and receives a profit participating loan extended by the fund, using the proceeds to purchase securities from the fund. The SPE serves the purpose of tax efficiency, as foreign investors from jurisdictions with double taxation treaties with Ireland can discharge a tax liability upon the receipt of profits from their investments in the fund.

These are stylistic examples by the EC and Central Bank of Ireland. It is not known to what extent if any they are being used at the time of writing.

A further example is provided via 'Luxleaks', which was a leak of a large volume of confidential tax rulings by the Luxembourg tax authorities, drafted by the auditing company PWC. The Irish Times (6 November 2014) reports an example involving Ireland from the Luxleaks relating to the media company, Northern and Shell. It was reported to operate as follows. A subsidiary of Northern and Shell in Luxembourg loaned funds to a subsidiary in Ireland. The Irish subsidiary then paid the money back to the subsidiary in Luxembourg after four years. The funds were then re-classified as non-Luxembourg resident and therefore not subject to a Luxembourg wealth tax.

Intra-company financing is relevant across the tax games and appear to become more complex over time. They are eclectic and hard to trace so they are viewed as likely present in each game, but in different formulations.

4.4.6 The evolution of the tax games

Table 4.14 provides a snapshot of the evolution of the tax games in Ireland since the 1950s. We can see a more complex picture evolving over time. The early period of manufacturing export platforms were effectively 'stop offs' for products for export on the way to EU and other foreign markets whereby corporations benefitted from the tax advantages of the rate and certain allowances. Research from this period shows indications of significant profit shifting occurring as a result of these early games. These were extended in the 1980s to a wider set of firms in manufacturing and financial services. Although the rate was higher, at 10 per cent per cent, it was still highly competitive. Ireland's tax treaty network, coupled with comparatively low regulation meant that the financial flows via Ireland increased as corporations managed their assets, with Ireland now playing the role of a key 'hub' jurisdiction.

The redomiciled firms are an interesting example, because they were fairly short-lived. These occurred due to changes in UK tax rules, with Ireland being the next best location in the eyes of U.S. corporations fleeing more restrictive rules in the UK. This game demonstrates the importance of the interaction of rules among jurisdictions as this game largely stopped once rule changes were enacted in the UK and in the US to prevent them. The redomiciled firms were essentially pushed to the Irish jurisdiction because it was less regulated than the UK and less highly taxed than the U.S. Interestingly, redomiciled firms largely ended as a trend once rule changes to prevent them were implemented by the U.K. and U.S. rather than prompted by any action by the Irish state.

The later 'IP games' are effectively a more complex version of the early export manufacturing games. Due to EU regulation of the dimension of rate, the games had

to become more complex to survive. The dimensions of jurisdiction and owner were crucial to the DIDS and the Apple Statelessness structure. The dimension of return was the main driver of the Apple (and later other corporations') onshoring game.

Overall, we can observe four things which are strongly reflected in the literature relating to global wealth chains and tax. Firstly, the games are unpredictable. The importance of the different tax dimensions has changed over time and utilised in more complex ways. The rate appears to be the driving dimension in the early games. For redomiciled firms, the owner and jurisdiction dimensions were crucial. For the latter three IP related games the owner and return dimensions became very important.

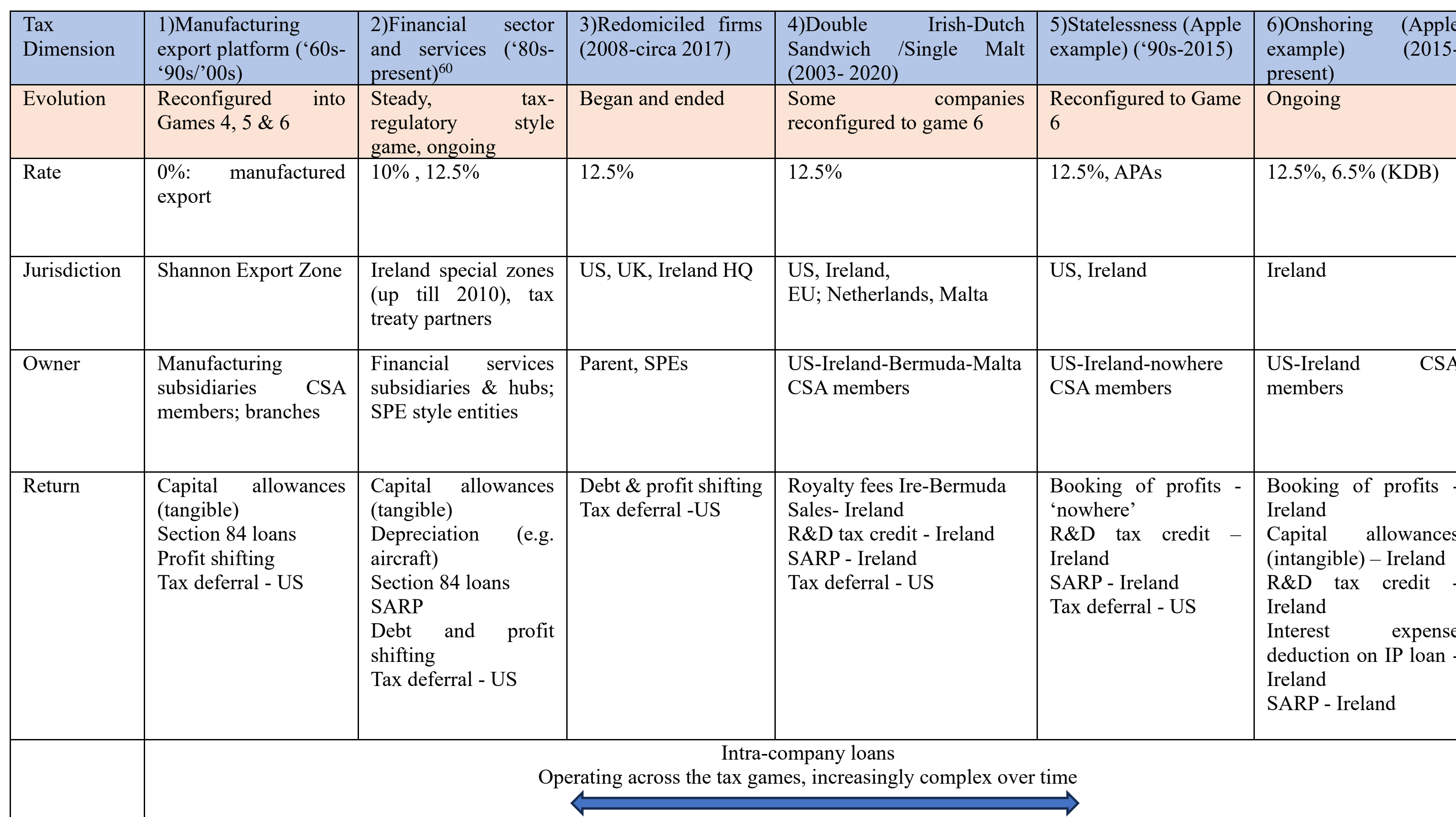
Second, U.S. tax rules really matter. The presence of the various jurisdictions are generally connected with the interaction of the transactions that involved them with the tax rules of the U.S. For example, the presence of the option of US tax deferral was a crucial feature throughout the games (though not any longer as it has been abolished in 2017). The result of its abolition is very notable as it has partially resulted in the invention of the final (thus far) Onshoring tax game which has resulted in very significant increases in the booking of profits in Ireland.

Third, corporate activity has become more financialised and complex over time. We can see the presence of debt shifting across many of the games over time. The games also became more complex. This reflects the global segmenting of the corporation, with different entities fulfilling different functions in global value and wealth chains in different jurisdictions.

Fourth, when games end, they reconfigure themselves. This indicates that any fragility in the games tends to be overcome in the form of new configurations of games. This signals the strength of state-corporate action in sustaining the overall robustness of the

games and, crucially, how difficult it will be to end the tax games. This is discussed further in Chapter Seven.

Table 4. 14: The evolution of tax games



Tax Dimension	1)Manufacturing export platform ('60s-'90s/'00s)	2)Financial sector and services ('80s-present)[60]	3)Redomiciled firms (2008-circa 2017)	4)Double Irish-Dutch Sandwich /Single Malt (2003- 2020)	5)Statelessness (Apple example) ('90s-2015)	6)Onshoring (Apple example) (2015-present)
Evolution	Reconfigured into Games 4, 5 & 6	Steady, tax-regulatory style game, ongoing	Began and ended	Some companies reconfigured to game 6	Reconfigured to Game 6	Ongoing
Rate	0%: manufactured export	10% , 12.5%	12.5%	12.5%	12.5%, APAs	12.5%, 6.5% (KDB)
Jurisdiction	Shannon Export Zone	Ireland special zones (up till 2010), tax treaty partners	US, UK, Ireland HQ	US, Ireland, EU; Netherlands, Malta	US, Ireland	Ireland
Owner	Manufacturing subsidiaries CSA members; branches	Financial services subsidiaries & hubs; SPE style entities	Parent, SPEs	US-Ireland-Bermuda-Malta CSA members	US-Ireland-nowhere CSA members	US-Ireland CSA members
Return	Capital allowances (tangible) Section 84 loans Profit shifting Tax deferral - US	Capital allowances (tangible) Depreciation (e.g. aircraft) Section 84 loans SARP Debt and profit shifting Tax deferral - US	Debt & profit shifting Tax deferral -US	Royalty fees Ire-Bermuda Sales- Ireland R&D tax credit - Ireland SARP - Ireland Tax deferral - US	Booking of profits - 'nowhere' R&D tax credit – Ireland SARP - Ireland Tax deferral - US	Booking of profits - Ireland Capital allowances (intangible) – Ireland R&D tax credit - Ireland Interest expense deduction on IP loan - Ireland SARP - Ireland
	Intra-company loans Operating across the tax games, increasingly complex over time					

[60] Focus on aircraft leasing and insurance

4.5 Conclusion

This chapter discussed three themes. These were the four dimensions of corporate tax in Ireland, the terrain of 'misalignment' and 'disconnection' and corporate organisation in Ireland and the evolution of corporate tax games in Ireland.

The four dimensions of corporate tax

These areas were explored in relation to the four dimensions of tax which underpin the games – the rate, jurisdiction, owner and return. On the dimension of rate, Ireland offered a consistently advantageous corporate tax rate, ring fenced to certain activities initially and then pitched at a low blanket rate. Despite its changes, it was always on the competitive end of global options, while never placing Ireland in the 'zero' rate tax haven category. On the dimension of jurisdiction, the most consistent corporate sectors served by this dimension have been the pharma and tech sectors. The early phases of the games secured their presence in Ireland and the later phases sustained their involvement in Ireland through new inter-jurisdictional configurations. The slight outlier in the jurisdiction dimension is the trend of redomiciled firms, which occurred for a more limited period and ended due to external rule changes in other jurisdictions. This indicates influence of other jurisdictions to impair the Irish model, though perhaps not fundamentally.

The dimension of owner began focused on either branches or subsidiaries in low level manufacturing. Holding companies and SPEs became to feature in later phases. Owning entities became highly complex in the financial / financial services sectors both for tax and regulatory reasons. The owner dimension was crucial to the later stages of the 'IP rich' firms in tech and pharma where we see the membership of many entities with CSAs relating to the development of IP within the overall corporate group.

The return dimension features capital allowances provided in the Irish tax code, along with other reliefs. It also features debt and profit shifting and flows of finance relating to IP (royalty payments, assets and profits from sales). This became an increasingly dominant dimension over time.

The terrain of misalignment, disconnection and corporate organisation

The chapter traced the terrain upon which the tax games are played. It began with a wide-ranging exploration of the areas of foreign investment in Ireland along the themes of misalignment and disconnection. Foreign investment was found to be wide-ranging across financial and non-financial sectors. The pharma and tech sectors were found to be very important employers. A more limited level of employment has also emerged in insurance and legal and accounting services. These latter two are connected to Ireland's regulatory environment as a financial centre, among other things.

The evolution of tax games

Tracing the dimensions of tax over time shows four things. Firstly, the games are unpredictable. The tax dimensions are consistently utilised but it is not clear which dimension will become important over time as the games continuously reconfigure. Secondly, the rules of other jurisdictions in the construction of the games really matter, especially, in Ireland's case, those of the U.S. Third, the games have become more financialised and complex over time. The tax games had to become more complex to sustain themselves and highly globally segmented corporations were well positioned to deliver this. Fourth, the agility and consistency of the games, albeit in different configurations, signals the future difficulty of ending the games.

This chapter contributes by outlining the elements of the four dimensions of tax. It has shown that the dimensions themselves are very rich and internally malleable. It

also outlined how the Irish state and corporations have engaged differently with the dimensions over time in response to changes in the global corporate environment. In addition, the chapter outlined the context of real-artificial entanglement in Ireland FDI. It showed, as is well known, that there is significant 'misalignment' and 'disconnection' within Ireland's FDI. The chapter also broadly maps the key elements of this in terms of the entanglement within sectors of real, employment based activity, with transactions that are partially or purely tax driven. Focusing in on the tax driven elements, the chapter then outlined the changing configurations of Ireland's main tax games. The tax games are shown to be unpredictable, and capable of change. The Irish state and corporations appear very agile in their engagement with the games, though not always fully in control of them.

Chapter Five: Ireland, the U.S. and Intellectual Property Tax Games

5.1 Introduction

This chapter outlines the, now famous, tax games in Ireland constructed around the placement and use of intellectual property (IP) by U.S. corporations. It takes a deeper dive into these games which were previously outlined in Chapter Four. I focus on these particular games for both empirical and methodological reasons. Empirically, these IP games are important because they show that IP performs a corporate function beyond its primary purpose of innovation, in this case, to support corporate tax avoidance. The IP games are also very financially significant due to the high value placed on the IP owned by the U.S. corporations involved. These games are also methodologically important because, while corporate tax avoidance remain opaque, the IP games are better documented than most. This documentation makes the rule-based elements of each game more decipherable. This chapter therefore reveals more, not just about IP games, but about the social technologies of tax games in general.

As previously discussed in Chapter Two, taxation in the global economy has changed. Empirically, Tørsløv, Wier and Zucman (2018) have shown the huge rise in 'paper profits' which they note is significantly attributable to IP. However, beyond some short description, they do not offer further insight into how paper profits are sustained. Saez and Zucman (2019) describe a problem of disentangling data on financial flows between Ireland and Bermuda ('Bermuland' as they call it). In making this point, they are highlighting a node within the Double Irish Dutch Sandwich structure which connects Bermuda and Irish jurisdictions. But Saez and Zucman do not explain the wider game of which these flows form a part, through the social technologies of rules.

This is regrettable, but a product of the methodological approach of prioritising focus on financial flows in macro-economic statistics.

More broadly, profits in the global economy have shifted towards research-intensive sectors which, some argue (not necessarily successfully[61]), has ushered in a period of 'capitalism without capital' (Haskel and Westlake, 2017). The key competitive drivers are seen to be 'knowledge' and, in particular, the ownership of that knowledge i.e. ' intellectual property'. This is a field of intense debate. However, it is clear that IP has become increasingly valuable, making the regimes underpinning IP, whether legal or labour related, vital to the fabric of the global economy. We also know that there is a hugely contested and contestable process in the turning of 'knowledge' into 'IP'. IP is a circumscribed asset that is owned (Pistor, 2019). This is deeply linked not just to the 'knowledge economy' but to 'financialisation' and the asset-ification of the world (Haskel and Westlake, 2022).

The process of legal and rule based political contestation is both shaped by tax rules and has major implications for those rules. The literature on global wealth chains (Seabrooke and Wigan, 2022) integrates analyses of state and regulatory strategies and changing corporate structures. This chapter advances this approach by using the tax game framework to understand what is happening in the tax driven arena of these wealth chains. This puts a focus on the areas of global wealth chains – that of corporate-state action - but also on how these actions change and sustain tax games. The chapter does this by exploring the relationship between IP and entangled real-artificial FDI in Ireland. Specifically, through studying three IP tax games the chapter

[61] Pistor challenges the understanding of 'capital' in Haskel and Westlake (2018) arguing that they are mistaken in interpreting capital as 'things', ignoring the underlying codes, in her analysis the law, that determines their functions (see Pistor 2019 p.116)

reveals the central importance of rule-making across the four dimensions of tax as social technologies in global wealth chains. It shows that the highly active management of contestation around rule-making shapes the structural dynamics of the tax games.

In Ireland, it is clear that IP has become more central to corporate activities. As noted in Chapter Four, for many decades royalty flows from Ireland and more recently, IP asset flows into Ireland, have been very large. As we will see, the scheme for capital allowances on intangible assets, introduced in Ireland in 2009, has lead to an explosion of IP asset flows since 2015. This chapter explains why this is the case.

The chapter is divided into three sections. The first section discusses the 'productive-tax driven' entanglement of IP driven U.S. corporations in Ireland. This is important because IP related accounting and tax management are related, however indirectly, to productive activity based on the knowledge or information claimed by IP rights. The second section discusses three important IP tax games. It discusses the evolution of U.S. rules on international tax and the resulting tax arbitrage opportunities they give rise to, generally, and in interaction with Irish tax rules. It then discusses the workings of each game in turn, how they emerged and how rule-based adjustments were made to sustain the games. In the process, the analysis sheds further light on the particular ways in which the growing importance of IP in business activities reshapes tax policies. Specifically, it examines how tax practices shape strategies around the mobilisation of IP and how entities are defined in relation to IP, whether as asset holders or license holders, and shape tax outcomes. In addition, this detailed examination allows closer analysis of the particular ways in which tax games are configured and the dynamics and creative interactions associated with them. The third section concludes that IP is a central tool in the social technologies of Ireland's tax

games and which increased the scale of the tax games. The IP tax games are revealed as robust and continuous. Although highly managed and constantly changing, fundamental challenges to them do not arise internally from states but from external pressure. The menu of options provided through the four dimensions of the tax games however, provide the players with rich rule-based possibilities to ensure their continuation.

5.2 Productive-tax driven entanglement of U.S. IP driven firms in Ireland

As outlined in Chapter Four, IP driven U.S. corporations have invested significant productive capacity in Ireland, providing a large portion of overall employment in the State. This section highlights how the development of this productive capacity was consistently intertwined with tax driven planning by these large firms in Ireland. The scale of tax driven activity is significant, as indicated by disproportionate IP-related financial flows to and from the U.S. and affiliated corporations in Ireland over time. There is an entangled dynamic of 'productive' and 'tax driven' decisions made by these companies in Ireland. IP driven tech and pharma firms developed in different ways, some starting out in Ireland with significant productive investment (e.g. Microsoft) and some adding productive capacity on to what appear as initially tax driven arrangements (e.g. Google). The overall picture is that while firms may fall into either of these two categories, over time, they generally sought to entwine productive and tax driven elements into their activities. This implies that to participate in the large-scale IP games outlined here, some productive base was eventually necessary. In turn, the tax driven advantages of Ireland appear essential to attracting much of the

productive investment to Ireland. In this way, the institutional ties between productive and tax driven activity appear as a facilitative condition for a successful tax game.

The consistent construction of compatibility between Irish and U.S. tax rules is the method which maintains the tax side of this 'productive-tax driven' entanglement. The most aggressive (and infamous) corporate tax games in Ireland revolve around decisions on the placement and licensing of IP, which are the most valuable assets of many of these corporations. As previously noted, U.S. pharma and Tech corporations have invested significant productive capacity in Ireland, in turn providing a notable portion of overall employment in the state. This chapter highlights how the development of this productive capacity was consistently intertwined with tax driven planning by these large firms in Ireland. This is a particularly dominant characteristic of Pharma and Tech in Ireland, not least because their highly valuable IP makes the financial implications of tax games revolving around these assets so significant.

The tax driven aspect of this entanglement cannot be understood without examining rule-making in corporate tax law and regulation on both sides of the Atlantic. It is a tale of the intertwined paths of U.S. and Irish tax rules. The evolution of the interacting tax rules form the foundation of three major tax games used by U.S. tech and pharma companies in Ireland – a) the Double Irish Dutch Sandwich, b) the Apple Stateless structure, and c) the onshoring of IP to Ireland. While the former two games are now outlawed in Ireland, the latter 'onshoring' game is ongoing. All three games are distinguished from the earlier games of the tech and pharma sectors by a great complexity and by a reliance on the tax dimensions beyond the rate.

A wider gaze beyond specific firms is necessary in order to better appreciate the evolution of U.S. IP driven corporations and their relationship with Ireland. The U.S.

emerged early as the global leader in the 'knowledge economy'. This was driven by massive investment in R&D by the U.S. State, partially driven by national defence interests (Ó Riain, 2004). A range of distinctive features of the U.S. political economy brought these IP rich firms to prominence (and to market dominance in some cases). Rahman & Thelen (2019) indicate market control among 'megafirms' is not new (e.g. think of General Motors or General Electric in the 20th century). However, these latter firms operated in the U.S. with large workforces on secure contracts, with powerful managers focused on long term stable growth, funded by 'patient capital'. The 'new' knowledge economy operates to a shorter time horizon, with shareholder value as a key measurement of performance (Lazonick and O'Sullivan, 2000). This has led to highly financialised activity by U.S. corporations, including non-financial corporations. Krippner (2011) finds that financialization involves changes well beyond the financial and banking sector.[62] Financialisation is now central to the way profit is accumulated in the economy as a whole (Lapavitsas, 2013). Financialisation is clearly occurring in the U.S. tech and pharma sectors, buttressed by their market dominance[63]. In the pharma sector, from 2006-2015, 18 of the biggest U.S. pharma companies spent more on stock buybacks and dividends than they did on R&D (Hacker et al, 2022).

Financialised practices and IP go comfortably hand in hand. Financial activity itself is often intellectually driven and/or trades in proprietary instruments defined in purely intellectual terms. More importantly, the constituent elements of productive activity

[62] Krippner (2005, pp. 174–5) describes financialisation as 'a pattern of accumulation in which profits accrue primarily through financial channels rather than through trade and commodity production'. For Krippner, 'financial' refers to activities relating to the 'provision (or transfer) of liquid capital in expectation of future interest, dividends or capital gains'.

[63] For example, Apple, in 2012 held $121.3 billion in liquid assets ($10.7 billion in cash and cash equivalents, $18.4 billion in short-term marketable securities, and $92.1 billion in long-term marketable securities) (Lazonick, Mazzucato & Tulum, 2013).

have been asset-ised. For example, the drive for shareholder value has changed the approach of pharma corporations to research and development. Busfield (2020) argues that outsourcing of R&D in the pharma industry, has emerged as a kind of vicious cycle of cost-cutting and lack of success in identifying new drugs. Most radical, perhaps, is the monetisation of our interaction through digital platforms and the turning of data about our networks and activities into proprietary databases and algorithms. This then opens up possibilities for the creative re-coding of knowledge into capital (i.e. generating IP from productive activity).

Financialised practices also work comfortably alongside the territorially fragmented practices in game playing. Outsourcing and subcontracting by corporations has become an embedded practice (Lazonick and O' Sullivan, 2000). Game playing also occurs at the regulatory level. The so-called 'platform companies' (e.g. Amazon, Facebook, Uber) have developed new capacities presenting challenges to the legal frameworks where they operate. This is because they have the capacity to exploit data 'which has placed them as 'critical intermediaries and market makers' (Rahman & Thelen 2019, p.178). The regulatory framework in the U.S. supported this radical shift much more than was the case in their European counterparts. Rahem & Thelen (2019) outline how the fragmented U.S. state regulatory capacity in 1980s, along with weak unions and the U.S. legal pro-consumer orientation enabled the rapid expansion of companies such as Uber for example. Grasten, Seabrooke and Wigan (2023) describe firms working in legal grey areas. For example, they indicate that Bird (the e-scooter rental firm) works amidst legal 'absences' i.e. by simply placing its scooters in local thoroughfares, awaiting legal challenge. The resulting long court cases can buy time to establish a consumer base.

The political-legal institutional context in the U.S. also favours these well-resourced, businesses. The U.S. legal system facilitates the consolidation of corporate power. As Hacker et al, (2023, p.22) argue, the U.S. legal system benefits participants with 'superior resources, specialised expertise and the ability to stay in the game for the duration' [..] and 'is an arena for the organised and resourceful, and for repeat (rather than one-shot) players'. The fragmented U.S. political system (including federal, state and local policy-making) has also provided well-resourced business interests the opportunity to operate in 'multiple venues' simultaneously. This has also provided exceptional power to U.S. corporate players in the field of tax. As we will see, corporate tax reform efforts in the U.S. are repeatedly defeated as a result of congressional opposition (Hackelberg, 2020).

5.2.1 Disproportionate US MNC financial flows to and from Ireland

As outlined in Chapter Four, disproportionate levels of U.S. corporate owned profits are booked in Ireland relative to the small size in the Irish economy. This has been documented by U.S. based tax scholars for several decades. Grubert and Altshuler (2006) indicate that U.S. Treasury files in 2002 show that pre-tax profits from sales from US affiliates in Ireland are almost 3 times higher than the corporate group mean. A 2004 temporary tax holiday on profit repatriation in the U.S. also indicated a disproportionate level of dividend payments (8 per cent) made to the U.S. from Ireland (Gravelle, 2009). The problem of profit shifting to low tax jurisdictions by U.S. corporations has grown over time. Clausing, Saez & Zucman (2021, p.3) indicate that the portion of foreign profits of U.S. corporations held in low tax jurisdictions, overall, increased from 10 percent in the early 2000s to close to 60 percent by 2019. The top

low-tax hosts for this foreign profit, in order of importance, were Bermuda, the Caymans, Ireland, Luxembourg, the Netherlands, Singapore, and Switzerland. In updated research Clausing (2020c p.7) identifies seven 'big havens', including Ireland, as holding around 50 per cent of U.S. corporate foreign profits in 2017, depending on the data used. Clausing indicates that many other havens feature in the data, but not to the significant degree of the 'Big Seven' havens, including Ireland.

Profit shifting is strongly associated with U.S. IP driven firms. Grubert (2003) estimates that about half of profit shifting by U.S. corporations was due to transfer mispricing of intangibles and most of the remainder to shifting of debt. Royalty payments from Ireland also become a big feature from the 1990s onward. Grubert and Altshuler (2006) argue that royalty payments can be used as an indicator of where IP is being invested. This is because royalty payments flow to the location where either the IP asset and/or the license to use the asset is held (Coffey, 2021)[64]. Drawing on Bureau of Economic Analysis (BEA) foreign investment data, Grubert and Altshuler (2006) highlight that the share of total royalty payments by U.S. affiliates in Ireland and Singapore doubled between 1994 and 1999 from 9.3 per cent to 20.9 per cent. They also highlight that the share of royalties paid to the U.S. parent increased from 8.4 percent to 19.6 percent. These payments far exceeded royalties paid by US affiliates in higher tax countries such as Germany or the UK. Finally, in their study of MNC value chain structures, Davies and Markusen (2021, p. 3472) summarise the disproportionality of IP related financial flows relating to 2014 BEA data,

[64] Coffey (2021 p.21) explains that companies pay to use technology that is developed elsewhere. 'There are essentially two ways in which this can be achieved: 1. An outright purchase with the subsidiary acquiring the rights or license to use the technology; 2. Recurrent payments with the subsidiary getting access to the technology via royalty payments. Historically, the latter was the main method used and recent years have seen an increase in outright purchases or a combination of the two.'

> Ireland's population is about 0.06% of the world's population, yet Irish affiliates of US firms account for about 6% of all US foreign affiliates sales, 5% of affiliates' value added and R&D, though a modest 1% of affiliates' employment worldwide. These numbers are not surprising given Ireland's status as an export platform. But [..] Irish affiliates' share of all US affiliates' profits worldwide is 11%, double Ireland's share of sales and value added, suggesting profit shifting to this low-tax jurisdiction. However, the truly impressive numbers [..] are that Irish affiliates receive a full 50% of all fees and royalties received by US foreign affiliates and pay 42% of all fees and royalties paid by US affiliates. This is partly because of Irish affiliates' industry composition, which is heavily weighted towards computer hardware and software and pharmaceuticals. Still, it likely also suggests financial and accounting manoeuvres.

Overall, we can say that firstly, pharma and tech U.S. owned corporations in Ireland create significant productive employment although some categories are more employment intensive than others and secondly, that the profit booked with Irish affiliates is disproportionate to this, albeit significant, productive investment. Clausing (2020) summarises the characteristic of the tax element of this 'productive-tax driven' entanglement. Examining U.S. corporate country-by-country financial reports for 2017, she identifies Ireland as a 'higher activity haven' (along with Singapore, Switzerland, Puerto Rico and Hong Kong), in comparison with what she terms 'low activity havens' (Cayman Islands, Bermuda, Luxembourg, Jersey, Isle of Man).

5.2.2 A long term tax-driven strategy

An acceleration in profit shifting by U.S. corporations to Ireland occurred in the late 1990s (Tørsløv, Wier and Zucman, 2018). This is related to the introduction of a key regulation in the U.S. tax code in 1997 called 'check-the-box' (Grubert and Alshuler, 2006). This regulation, explained further below, was central to the construction of the first two IP related tax games discussed here (the Double Irish Dutch Sandwich and Apple's Statelessness). While this accelerated profit shifting to Ireland in the 1990s, there was consistent tax planning opportunities present for pharma and tech

corporations which sustained low taxation in Ireland after the Export Sales Relief was phased out by 1981. Mutti and Grubert (2006, p.122) confirm a pre-cursor to 'check-the-box'. They indicate 'before the advent of 'check-the-box', U.S. parents already had found it attractive to shift profits to Ireland'. An interviewee confirms the longevity of profit shifting structures in Ireland. They indicate 'Those structures, they are long term, I think they are there a long time going back to the 1980s' (interview 8). An interviewee indicated that this worked through U.S. corporations setting up a branch of a foreign company in Ireland which then evolved into the Double Irish Dutch Sandwich type structure in the 1990s (interview, 13). This is likely because 'check-the-box' in the 1990s fulfilled a similar function to that of manufacturing export oriented branches of U.S. corporation in Ireland in the 1980s, which was to make the entities in Ireland disregarded by the IRS for tax purposes (explained further in Section 5.3).

As noted in Chapter Four, the tax-based attraction of Ireland in the early period of the games 1956-90s was focused on manufactured products for export. Even these early arrivals would have had to have in place what is called a 'cost-sharing agreement' (CSA) between the parent and its offshore entities (discussed in detail in Section 5.3) which drew up the terms between (usually) affiliated entities about how they would share costs and risks, and in turn, the profits arising from the group IP. At this early stage, the CSAs did not have as important implications as they have today, simply because the companies in question had not become the super star companies that they are now. For many of the early arrivals to Ireland, the companies themselves, and the jurisdictions hosting them, did not foresee how important their IP would become[65]. It

[65] A journalistic account of when these major corporations established in Ireland is as follows: Leo Laboratories (1959), Warner-Lambert (1960), General Electric (1963), Pfizer (1969), Ericsson (1974), Nixdorf Computer (1977), Apple (1980), Fujitsu (1980), Smith Kline & French (1974), Merck, Sharp & Dohme (1976), Allergan (1977), Eli Lilly (1981), Abbott Laboratories (1974), Bausch & Lomb

was only when the IP of these groups came to determine the market value of those corporations (Haskel and Westlake, 2018), and was in turn activated as a profit shifting mechanism, that the CSAs became so controversial (interview 8). The early involvement of the tech and pharma firms was focused on export manufacturing. From the 1990s, their IP had become a valuable tool for profit shifting. The next section explores the way in which this is the case.

5.3 Overview of the operation of three IP tax games

This section examines the organisation of the three major IP related tax games in Ireland. The first two are similar to each other because they create so-called 'stateless income' - the Double Irish Dutch Sandwich and the Stateless structure used by Apple. The third game, their successor, is 'IP onshoring' which involves the movement of IP to different jurisdictions, including Ireland, in response to the ending of the two former stateless income structures. The three tax avoidance structures outlined here are important, firstly, because they involve significant U.S. corporations. Secondly, they reveal a tax planning design which involves evolving productive activity in Ireland, aligned with entirely tax driven elements. Third, they have IP at their centre. This

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(1980), Lotus (1984), Microsoft (1985), Intel (1989), Motorola (1989), Dell (1990), HP (1995), IBM (1996), Oracle (1996), Xerox (1998), Cisco (2007), Citi (1996) Deutsche Bank (1991), HSBC (2000), State Street (1996), Mastercard (2009), PayPal (2003), Google (2003) Yahoo (2003), eBay (2004), Amazon (2005), Facebook (2008), Twitter (2011), LinkedIn (2010), Electronic Arts (2010), Zynga (2010) (Donnelly, 13th Nov 2013) https://www.irishtimes.com/business/how-foreign-firms-transformed-ireland-s-domestic-economy-1.1593462#:~:text=The%20economy%20had%20a%20huge,finally%20abandoned%20in%20the%201950s&text=Today%2C%20Ireland%20is%20host%20to,its%20roots%20in%20the%201940s., accessed 13th October 2023

expands our understanding of the multi-faceted role of IP which, beyond serving its pure knowledge function, serves other corporate functions, in this case, tax avoidance.

The rest of this section explores two things. Firstly, it explores the key tax rules that are central to the three identified structures and their tax effects. Secondly, it examines their dynamics focusing on how the rules were activated to create the three games and how actors adjusted to sustain the games.

5.3.1 Key rules and institutional elements of the games

5.3.1.1 Stateless income: Double Irish Dutch Sandwich and Apple Statelessness

The creation of stateless income depends upon a set of interacting tax rules. The rules are broadly the same for both structures, but with a key geographical difference, discussed below. The key rules discussed are as follows. From the U.S. side: the option of tax deferral, Cost Sharing Agreements, 'check-the-box', and U.S. residency rules. From the Irish side: Advance Tax Rulings and Irish tax residency rules. There are also 'sweeteners' to the rules which increase their value, namely the Irish R&D tax credit and smaller tax reliefs such as SARP. EU rules and the rules of other jurisdictions also play a part: the EU Interest and Royalties Directive, withholding tax rules in The Netherlands, and the zero-tax rate in Bermuda. We discuss each in turn.

Firstly, we turn to a discussion of the U.S. tax rules of the stateless structures. Up until 2017, after which structural changes were introduced into the U.S. tax code (discussed under the Onshoring tax game), the U.S. taxed its residents on their worldwide income. However, a credit on foreign income generated abroad was allowed. U.S. tax on active business income was deferred until it was repatriated to the U.S. However, certain

types of income were subject to immediate tax even if not repatriated. Creating what is called a 'hybrid' corporate structure enabled U.S. corporations to avoid these immediate tax payments and provided a way of availing of greater opportunities to defer tax payments to the U.S. on their foreign income (Mutti & Grubert, 2006, p.113). At the time, U.S. corporations were subject to a 35 per cent corporate tax, so achieving tax deferral was the holy grail of U.S. corporate tax avoidance. Achieving tax deferral through these 'hybrid' corporate structures became termed the creation of 'stateless income'. The late U.S. tax scholar, Ed Kleinbard, was among the first to define the stateless phenomenon. Kleinbard (2011, p.700) described Stateless income as

> income derived for tax purposes by a multinational group from business activities in a country other than the domicile of the group's ultimate parent company, but which is subject to tax only in a jurisdiction that is not the location of the customers or the factors of production through which the income was derived and is not the domicile of the group's parent company.

In this definition, Kleinbard is describing the divergence of 'real' economic activity from where it is financially accounted for within global corporate groups as central to the generation of stateless income. The 'Double Irish Dutch Sandwich' (DIDS) (and the stateless structure in relation to Apple) achieved stateless income for a range of large U.S. tech and pharma corporations from at least the 1990s till 2015 (in the case of Apple) and 2020 in the case of the DIDS (Kleinbard, 2011; Rubringer, 2004, Stewart, 2021). The Apple 'stateless' structure was a lesser used structure than the DIDS, used perhaps by one or two other US firms in addition to Apple (interviews 2, 8, 13). Pepsi is a likely second candidate (Goodbody, 23 April 2018). Despite this latter structure being less utilised, we include it, firstly because the funds involved are so large, and secondly, because the documentation surrounding the Apple structure is

relatively reliable due to its official and legal basis (Senate 2013, EC, 2016, General Court, 2020).

The DIDS and the Apple structure were 'high value' tax avoidance structures because they were structured around decision-making in response to the location of IP which was very valuable. The legal foundation for the development, co-ownership and use of IP are contracts developed in the U.S. requiring approval by the IRS between affiliated companies called '**Cost Sharing Agreements'** (CSAs). CSAs are used in a range of countries, but the U.S. was an early pioneer. The CSA is a contract which creates the legal basis for corporate decisions about the geographical placement of significant funds within their global groups for the development of intangible assets. U.S. CSAs were originally introduced in U.S. law in 1968 (IRC S.1.482-2(d) (4)). A CSA is defined in U.S. law as

> an agreement under which the parties agree to share the costs of development of one or more intangibles in proportion to their shares of reasonably anticipated benefits from their individual exploitation of the interests in the intangibles assigned to them under the arrangement.

This means that a group of, usually affiliated, companies legally agree to share the risks and costs of the development of intangible assets in exchange for proportionate shares of the profits and losses. This enabled U.S. corporations to shift IP, and the profits generated by it out of the U.S. to lower tax jurisdictions.

The tax effects of the CSAs became turbo charged with the introduction of the **'check-the-box regulation'** in 1997. The U.S. tax code (along with other tax jurisdictions internationally) includes mechanisms which seek to tax offshore income of their corporations. These safeguards are called 'controlled foreign company' (CFC) rules. As noted, as a general rule, foreign income of U.S. corporations was not taxed in the

U.S. until it was returned to the U.S[66]. If a corporation did not return this income to the U.S. this was termed ‘tax deferral’. In 1962, the Kennedy administration introduced a new CFC regulation commonly called ‘Subpart F’. Subpart F expressly sought to deter tax deferral by U.S. corporations by immediately taxing certain types of offshore income of U.S. corporations. The effectiveness of Subpart F was, however, fundamentally undermined by the introduction of the ‘check-the-box’ regulation in 1997. The regulation allowed corporations to elect to ‘check-the-box’ of their tax return form if they wanted certain parts of their corporate structures to be treated as partnerships. Partnerships are treated as ‘transparent’ entities whose taxable income flows to their shareholders, rather than as separate companies subject to tax (Ecribano, 2017). This means that subsidiaries can be treated as an extension of their owner i.e. lower tier companies are disregarded by the IRS. The effect of the check-the-box regulation is that payments between subsidiaries that chose to ‘check-the-box’ are ignored, and untaxed, by the IRS in the U.S. This removed a significant portion of U.S. corporate offshore income from the IRS tax net until repatriation.

A further U.S. tax rule that is central to the DIDS and the Apple Stateless structure is the U.S. tax residency rule. The U.S. tax rule is not notable in and of itself. The U.S. taxes companies based on their place of incorporation (I.R.C. § 7701(a)(4)). This is a very common approach to tax residency. The U.S. rule becomes notable only due to its interaction with Ireland’s more unusual tax residency rule (discussed in the next section). The ‘mismatch’ between these two different approaches to tax residency allowed U.S. corporations to be tax resident in neither jurisdiction and therefore untaxed in both jurisdictions.

[66] Until rule changes in 2017, discussed under the ‘Onshoring’ game.

Secondly, we must therefore discuss the Irish tax rules central to the stateless structures. Until changes in Ireland's tax residency rules in 2015[67], Irish tax rules determined that a company is tax resident based on where the company was managed & controlled. This was based on case law principles (Revenue, 2022). As noted above, U.S. tax residency is determined on the different measure of where a company is incorporated. What happened was that a key subsidiary in the stateless structure was registered in Ireland but registered as tax resident elsewhere - in Bermuda in the case of the DIDS and 'nowhere' in the Apple stateless structure and so was not in the charge of tax in Ireland. In Irish law this was called an Irish Registered Non Resident (IRNR) Company. Because the IRNR was also not incorporated in the U.S. it meant that it was not tax resident in the U.S. either.

All of the above rules are central to both the DIDS and the Apple stateless structures. As a result of the EC investigation into potential state aid provided by Ireland to Apple, we know that **Advance Tax Agreements (ATA)** (also called tax rulings or Advance Pricing Agreements) were important to the Apple stateless structure too. An ATA is defined by the EC (2015) as

> a statement provided by the tax authorities, or an independent council, regarding the tax treatment of a taxpayer with respect to his future transactions and on which he is – to a certain extent – entitled to rely.

ATAs therefore provide an amount of certainty (though not total certainty) to corporate taxpayers regarding the likely tax due in a jurisdiction of operation. ATAs are not mentioned in literature relating to the DIDS, but given that two ATA rulings were issued to Apple that we know of (EC, 2016), it is possible that this was a more

[67] discussed under the 'Onshoring' game in Section 5.3

generally practice in Ireland with larger firms seeking assurance about the tax implications of their ownership structures and activities.

Ireland's residency rules and the ATAs held structural importance to the delivery of the stateless structures. There were also a number of what might be viewed as 'sweeteners' which provided further financial value to the corporations engaged in the structures. These are not specific to the structure but were used across the FDI sector in Ireland. One of these rules is a more recent one, the Irish **R&D tax credit**. Ireland introduced an R&D tax credit in 2004. The credit exists alongside direct R&D grant support via the Irish Industrial Development Authority (IDA). Other 'sweeteners' such as the SARP programme also likely played a later, albeit much more modest, role in these structures. We focus on the R&D credit here as it is so large.

As noted at the outset, the endgame of stateless structures is to achieve tax deferral in the U.S.. Up until 2017, U.S. tax on foreign income could be deferred by not bringing income back to the U.S.. The income was stored elsewhere, ideally in a stopping place where the jurisdiction does not impose a tax on those earnings. **Bermuda,** with its **zero per cent tax rate** was an ideal location for this purpose. In contrast, the location chosen for the same purpose in the Apple stateless structure was 'Head Offices' of no address, attached to Irish Apple subsidiaries. As there is no tax jurisdiction, in this 'nowhere' location, it achieved the equivalence of the zero-rate provided in Bermuda to the DIDS.

The large profits ended up in Bermuda or 'nowhere' because entities in these locations were the holders of IP licensing rights and were paid large royalty fees by other affiliated entities in Ireland. In the case of the DIDS, these payments passed through The Netherlands from Ireland. The **EU Interest and Royalties Directive,** which was introduced in 2003, abolished withholding tax on business interest and royalty

payments made by companies in one EU member state to its associated company resident in another member state in the EU. The royalty payments were indeed between two EU member states, Ireland and The Netherlands, meaning no withholding tax arose. **The Netherlands** also does not impose **withholding taxes**, just a pass through fee (interview 16). These rules mean that the strategic routing of large royalty payments escaped taxation on route to locations which also imposed zero taxation.

5.3.1.2 Discussion of the institutional elements of statelessness through the four tax dimensions

Table 5.1 outlines these rules-based components of the DIDS and the Apple stateless structure framed along the four dimensions of corporate tax outlined in Chapter Four. We can see that all dimensions are activated in the two stateless structures. The dimension of **rate**, is comprised of the corporate response to different tax rates in the U.S., Ireland, Bermuda and 'nowhere'. The purpose here is to avoid the high U.S. tax rate, avoid the lower Irish rate as much as possible (though not entirely, see Section 5.3.2 on 'how the game works') and lodge the bulk of profits in the zero havens of Bermuda, in the case of the DIDS, and 'nowhere' in the case of Apple. The ATAs also had importance beyond the Irish jurisdiction as they gave comfort to the IRS in the U.S. when approving CSAs.

The dimension of **jurisdiction** was crucial in terms of achieving avoidance of tax residency. In the DIDS case, the non-resident status of a key entity meant that royalty payments could be channelled through it to Bermuda and escape tax. In the Apple case, the most relevant Irish subsidies to the structure had 'head offices' of no address i.e. 'nowhere' and therefore was not in the charge of tax anywhere.

The **owner** dimension is arguably the foundation of both games. This is because the CSAs provide the legal basis for the offshoring of IP from the U.S. to low tax jurisdictions. The check-the-box regulation made the CSAs effective because it prevented the IRS from enforcing immediate taxation on IP related income through Subpart F. Because of their foundational role, the CSAs merit some additional explanation. Specifically, the CSAs are activated by the parent company loaning the development costs of IP to an affiliated offshore company which is repaid on the success of the project. If there is a loss, the parent loses the ability to deduct the cost sent offshore. This possibility of losses led the US Inland Revenue Service (IRS) to believe that there would be a natural limit to the potential deductions that the parent would put at risk (Avi-Yonah, 2019). This proved to be incorrect.

The two parts of a CSA are a 'buy-in' payment to compensate the company with pre-existing intangibles, and an ongoing cost-sharing system which agrees the split of costs and risks relating to future developments. Determining the costs is inherently difficult, as it involves projected estimates of both costs and future benefits (Burns, 2015 p.65). The operational decisions that determine costs in a CSA are critical. They relate to the eligibility of participants, the basis for the share of costs, transfer pricing methods and the timeframes covered relating to the life of the intangible (Benshalom, 2006). The major concerns relate to the calculation of risk involved in R&D, which is often unknowable to external regulators, and the valuation of future returns which, in the case of intangibles, can far exceed the costs of development (Avi-Yonah, 2012). Burns (2015, p.65) also points out that CSAs can be a more tax efficient option than intra-company royalty payments from foreign subsidiaries building on existing IP developed by the parent.

Two major problems emerged with the CSAs. Firstly, a CSA is just what it says it is – an agreement to share costs. There is no requirement for participating companies to actually develop the IP. The only requirement is to share in the cost (and therefore the risk) of its development. A participating company can therefore be a shell company as long as it participates in cost sharing (interview 16). Secondly, and particularly among Big Tech companies, losses were not the trend. The tech and pharma sectors approached CSAs differently. Pharma tends to wait until after initial drug trials and then 'battles the IRS over valuation issues at the time the CSA was executed' (Avi-Yonah, 2019, p.70). Indeed, the pharma approach has resulted in a range of largely victorious legal battles over valuations with the IRS, indicating how the IRS is bound by its own weak legislation (Avi-Yonah, 2019). Big tech, however, tended to enter CSAs at the very beginning of a research project. These companies participated in funding the costs of what would become enormously successful product in future, the profits from which far outweighed their development costs. This allowed huge profits to be booked proportionately in CSA participating companies, which also happen to be in low tax jurisdictions. For example, if an offshore participant company funds 80 per cent of the costs of the development of a product, 80 per cent of the resulting profits can then legally be booked with that company (Avi Yonah, 2019).

The dimension of **return** effectively introduced further tax savings into the two games. The majority of these were introduced more recently (EU Interest and Royalty Directive, R&D tax credit, SARP). It is likely that before the introduction of the EU Directive, the funds may have moved in a different geographical direction, or the corporations bore the cost of the withholding taxes from Ireland directly to Bermuda. Crucially, this dimension also contains the ultimate end goal of the game, U.S. tax deferral.

Table 5. 1: Tax dimensions and purpose and tax effect of each rule

Tax Game Dimension	Rule	Purpose	Tax effect
Rate	Corporate tax rate (US 35%, Ireland 12.5%, Bermuda 0%) Nowhere (0%)	Rates compete with each other for profits. Jurisdictions with the lowest rates gain the most profits	Avoidance of U.S high rate, very little tax paid in the 12,5% low rate, profits end up on the 0% rate locations
	Advance Tax Agreement (US, Ireland)	Provided legal certainty to the MNC from the tax authorities in the relevant jurisdictions	IE: Revenue Commissioners provides increased certainty re: overall corporate tax due in IE US: IRS provides increased certainty to company re: the CSA
Jurisdiction	Irish tax residency rule (pre-2015)	Tax residency is primarily determined by the place of management and control of the company. Allows a company to operate in Ireland but be tax resident in a different jurisdiction (an Irish registered non-resident company)	Irish Revenue Commissioners ignore the transactions of IRNR companies as they are outside the charge of Irish tax
	U.S. tax residency rule	Tax residency is determined by the place of incorporation	Where the residency rule is different from IE in another jurisdiction (e.g. in the US), a company operating in both jurisdictions can be tax resident 'nowhere', as in the case of Apple and therefore be outside the charge of corporate tax in both jurisdictions
Owner	Cost sharing Agreement (CSA) (US + other jurisdictions)	Shares out the cost of investment, and risk, if any among affiliated companies in the development of IP	Justifies large profits being booked in no, or low, tax jurisdictions where there are cost sharing participants.
	Check-the-box rule (CTB) (US)	Subsidiaries can be treated as an extension of their owner i.e. CTB Allows lower tier companies to be disregarded by the IRS	Payments between subsidiaries that 'check-the-box' are ignored (and untaxed) by the IRS
Return	EU Interest and Royalties Directive (2003-)	Abolishes withholding tax on business interest and royalty payments made by a company in one Member State to its associated company	No withholding tax is charged

		resident in another Member State in the EU	
	Withholding taxes in The Netherlands	No withholding taxes charged on royalty flows between Netherlands and Bermuda	Dutch Revenue authorities agree a relatively small fee on outbound royalty payments
	US tax deferral	Allows U.S. MNCs to reinvest their earnings in the company	U.S. tax is deferred until profits are repatriated to the US
	Irish R&D tax credit (2003-)	Allows claims for tax relief on eligible costs, including refunds	Significant tax deductions for R&D activity
	SARP (2012-)	Allows for income tax relief for senior expatriate FDI workers in IE	Significant income tax deductions for FDI executives

5.3.1.3 The Onshoring Game

This section discusses the tax game which followed the DIDS and Apple stateless structures. This game is built around three major rule-based developments, firstly the outlawing of the previously discussed stateless structures. Secondly, the structural changes in the U.S. tax code as a result of The Tax Cuts and Jobs Act (TCJA) 2017. And finally, the effect of the global tax reforms to counter the Base Erosion and Profit Shifting (BEPS) (the so-called 'BEPS reforms'). I first discuss the rules relating to the specific Apple Onshoring Game (2015-) and second, the rules relating to the Onshoring game used by many other tech and pharma corporations in Ireland (2017).

I will begin by discussing the Apple Onshoring game. Apple began its Onshoring Game before other corporations in Ireland, in 2015. Apple was the first mover because its stateless structure was outlawed by Ireland in 2015 with immediate effect. Apple had no choice but to change to a different structure. The key rules around which the Apple Onshoring game is constructed are the CSAs and Ireland's regime for Capital Allowances on Intangible Assets, with the goal of achieving U.S. tax deferral (up to 2017).

The **CSA rules** and the **tax deferral option** were central to the Apple Onshoring Game. It is not known in what way Apple's CSA was updated after it changed its game from statelessness to onshoring, but we know that Apple's CSA was amended a number of times since its inception in the 1980s. Once a CSA is in place, U.S. companies rarely abandon them for newly drafted ones because, this would provide a (much desired) opportunity to the IRS to influence the content of a new, less corporate-friendly version. Amendments are allowed, however (interview 8). **Tax deferral** was still in place at this stage. It is clear that Apple moved its cash reserves to Jersey (Clancy and Christensen, 2018) which effectively replaced 'nowhere' in the DIDS, with a same effect of a zero tax corporate tax rate.

On the Irish side, the crucial rule at the heart of the Onshoring Game was Ireland's **Capital Allowances of Intangible Assets**. This rule was introduced in 2009, but was underutilised until Apple activated it in 2015 (interview 2). The scheme allows a company to claim allowances for capital expenditure incurred on specified intangible assets against its income from 'relevant activities' spread over a period of eight years. After eight years these capital allowances run out, indicating that the Onshoring game is timebound to this period. 'Relevant activities' applicable include managing, developing and exploiting the specified asset and 'sales deriving the greater part of their value from the specified intangible asset' (Revenue, December 2022). The percentage of capital allowances permitted to be claimed against income is usually capped in some way. In 2015, the Irish allowance permitted was increased to 100 per cent of expenditure on intangible assets to be claimed against income. Previously, it had a lower cap of 80 per cent but was increased to the full 100 per cent level as there was little take up of the allowance. Once the 100 per cent increase occurred, Apple entered the Irish market with its IP. The 100 per cent cap meant that Apple was in a

position to write down the total cost of the purchase of this IP against its profits booked in Ireland – effectively wiping out its corporate tax bill (interview 8).

In order to fund the purchase of IP from Bermuda to Ireland, an Irish Apple subsidiary took out a loan from the Apple subsidiary in Jersey where its cash reserves were held. The repayments benefited from **tax relief on interest payments,** as interest payments are tax deductible in Ireland, as is common in many jurisdictions (Stewart, 2018). It is likely that the R&D tax credit also remained in use by Apple in this Onshoring Game. After the introduction of the TCJA in the U.S. in 2017, the Onshoring Game became more relevant to more corporations. The TCJA ended the system of tax deferral by introducing various forms of immediate taxation of offshore income which changed the rules of the Onshoring game on the U.S. side post 2017. The DIDS was also being closed off (completely by 2020) so more companies had to identify another game. Many corporations also decided to move their IP to other locations, including 're-shoring' to the U.S. The return of IP to the U.S. was promoted by certain elements of the TCJA, which included both 'carrots' and 'sticks' to attract the IP 'back home' to the U.S.

President Trump passed the TCJA in December 2017. The TCJA is a labyrinthine set of tax reforms dealing with diverse areas of the US tax system. For the purposes of this chapter, we focus on the key international corporate tax changes. These elements may be understood as a combination of 'carrots and sticks' to corporations (Clausing, 2020). The 'carrots' can be understood as the following components:

A **reduction in the corporate tax rate** from 35 per cent to 21 per cent.

The introduction of a special rate for **Foreign Derived Intangible Income** (FDII) aimed to encourage US MNCs to keep their IP in the US. The FDII measure provides

a deduction of 13.125 per cent corporate tax rate (which will increase in 2025) for income defined as foreign derived intangible income (Herzfeld, 2023, p.244).

A **Transition tax** on foreign accumulated earnings: a one-time tax amnesty on profits retained overseas, which under the old pre-2017 regime escaped tax until repatriation to the US. The rate is 15.5 per cent on earnings and profits related to cash assets and 8 per cent transition tax on the rest of the accumulated earnings and profits. As one tax advisory company described it, 'this law is a great opportunity for Americans to repatriate their retained earnings abroad at a discount rate and payable on instalments' (H&CO, 2023).

The elements of the TCJA which may be viewed more like 'sticks' include:

The introduction of a **Global Intangible Low-Taxed Income** (GILTI) rule. This is an immediate tax on income above a 'normal return' (set at above 10 per cent - it works out at 13.125 per cent). GILTI significantly broadens the old Subpart F regime (discussed in relation to the previous two tax games) by imposing immediate U.S. tax on most of the earnings of controlled foreign corporations (Herzfeld, 2023 p.295). While GILTI has been critiqued as not robust enough (President Biden stated an aim to amend this) (Clausing 2020), it effectively ends the notorious system of deferral of tax payments on foreign corporate profits. Some taxpayers appear to even prefer their income to be taxable under the previously dreaded category of subpart F income which is some cases 'now being preferable to an inclusion of GILTI' (Herzfeld, 2023 p.295-6)

The introduction of the **Base Erosion Anti-Abuse Tax** (the BEAT) which is a measure to limit the deductibility of certain payments suspected to shift income out of the US (e.g. such as reinsurance payments or payments to foreign affiliates that redomicile

post-2017). It is a minimum tax applied to large US corporations ‘which make relatively large amounts of base eroding payments that are not fully subject to U.S. withholding tax to related foreign entities’ (Herzfeld, 2023, p.128-30). The BEAT is strongly incentive based, whereby only relevant payments in the BEAT criteria fall under this additional tax. ‘BEAT’s application is more of a matter of proper planning, and it’s not clear that the BEAT is having its full desired effect[..]’(Herzfeld, 2023, p.132-3) .

The TCJA rules meant that the era of tax deferral was now over and that tax relating to offshore IP would be tracked down more vigorously by the U.S. Corporations could chose to re-shore their IP to the U.S. to avoid this.

Irish tax rules were however, an enticing competitor to the U.S. as a location. This is due to the **Capital Allowance in Intangible Assets.** However, by this stage the very generous cap was reduced from 100 per cent to 80 per cent. This meant that while corporations could write off very significant amount of their IP purchasing costs against their income, it was not as generous as the Apple 2015 era. These corporations had to pay an increased level of corporate tax. This adjustment is estimated to bring in about €1 billion in additional corporate tax into Ireland per year (interview 8).

While the closure of the stateless structures and the introduction of the TCJA forced U.S. corporations to rethink where to locate their IP. The principles underlying the BEPS reforms likely prompted the corporations to favour placing their IP in locations where they have substance.

Initiated in 2013, the G20 tasked the OECD secretariat to outline an action plan to tackle BEPS[68]. The resulting 2015 OECD report outlined areas of action to tackle a range of BEPS channels (OECD, 2015). This phase of reform, often termed 'BEPS 1.0' resulted in specific legal changes among signatory jurisdictions which sought to address gaps and mismatches resulting in BEPS. BEPS 2.0 (still underway) seeks to tax economic activity including activity without a physical presence i.e. digital activity (Pillar 1) and to ensure a minimum level of tax is paid by MNCs (Pillar 2). The fundamental purpose of both BEPS 1.0 and 2.0 is that profits of global corporations should be attributed to jurisdictions where the economic activity occurred that generated it and incur tax payments in those locations i.e. an aligning of profits with economic substance.

5.3.1.4 Discussion of the institutional elements on the Onshoring Game through the four dimensions of tax

Tables 5.2 and 5.3 lay out the tax dimensions of the Onshoring Game in the pre and post TCJA period. It shows that the IP tax games are somewhat simpler than the stateless games which is a response to the changed rules. The U.S. move to catch IP related taxation makes the dimension of **rate** and **return** busy and highly managed from the U.S. perspective. Instead of landing at the 0 per cent rate level as in the stateless structures, the rate on the Onshoring game ends at the 12.5 per cent level. This is however reduced due to the **return** dimension through the Irish capital allowances on intangible assets. The **jurisdiction** dimension highlights the effect of

[68] Base erosion refers to the reduction of the scope of profits which a jurisdiction can tax. Profit shifting refers to MNCs attributing greater amounts of profits in low tax jurisdictions to lower their global tax payments (Oats, 2021 p.44).

the BEPS reform principles, which emphasise linking economic substance with profit. This has arguably ensured that Ireland, with its entangled real-artificial FDI, continues to 'win' the tax games in the onshoring phase.

Table 5. 2:Tax Dimensions of Onshoring Game Pre-TCJA

Apple Onshoring			
Dimension	**Rule**	**Purpose**	**Tax effect**
Rate	US rate (35%) Irish rate (12.5%)	Rates compete with each other for profits. Jurisdictions with the lowest rates gain the most profits	Avoidance of U.S high rate, very little tax paid in the 12,5% low rate, profits end up on the 0% rate locations
Jurisdiction	OECD: BEPS principles	Profit should be booked where it is generated	Profits should be linked to economic activity (only very partially occurring)
Owner	US: CSA	Shares out the cost of investment, and risk, if any among affiliated companies in the development of IP	Justifies large profits being booked in no, or low, tax jurisdictions where there are cost sharing participants.
Return	IE: Capital Allowance on Intangible Assets (100 per cent)	Encourage capital investment in IP	Taxable income is reduced over a period of eight years based on expenditure on IP
	U.S.: Tax deferral	Allows U.S. MNCs to reinvest their earnings in the company	U.S. tax is deferred until profits are repatriated to the US

Table 5. 3: Dimensions of Onshoring Game Post-TCJA

Onshoring by other companies (including Apple)			
Dimension	**Rule**	**Purpose**	**Tax effect**
Rate	U.S. rate (21%) U.S. FDII rate (13.125%) U.S. repatriation transition tax (15.5%/8%)	Rates compete with each other for profits. New U.S. rate rules incentivise profit repatriation	Mixed, below tax collection expectations
Jurisdiction	OECD: BEPS Principles	Profit should be booked where it is generated	Profits should be linked to economic activity (only very partially occurring
Owner	U.S.: CSA	Shares out the cost of investment, and risk, if any among affiliated companies in the development of IP	Justifies large profits being booked in no, or low, tax jurisdictions where there are cost sharing participants.
Return	IE: Capital Allowance on Intangible Assets (80 per cent)	Encourage capital investment in IP	Taxable income is reduced over a period of eight years based on expenditure on IP
	U.S.: GILTI (13.125%) U.S. BEAT	Enforces payments on certain foreign income	Mixed, below tax collection expectations

5.3.2 Dynamics of the Tax Games

5.3.2.1 Double Irish Dutch Sandwich: how the game worked

The crux of the Double Irish Dutch Sandwich tax game is the shifting of profits between affiliated companies from low tax Ireland to a zero-tax (e.g Bermuda) environment using the placement of IP as the key tool. The ‘double’ feature of the ‘Double Irish’ refers to the establishment by a U.S. parent company of two different types of subsidiary companies in Ireland. One is an operational company, tax resident in Ireland and therefore liable for corporate tax payments in Ireland at the Irish corporate tax rate of 12.5 per cent. The second subsidiary is an ‘IRNR’ holding

company, registered in Ireland, but tax resident in a zero-tax jurisdiction, such as Bermuda. This holding company was generally not engaged in productive activity, it simply held assets, often IP assets, on behalf of the corporate group. Bermuda was often the chosen residency jurisdiction for the IRNR holding companies (Saez and Zucman, 2019).

Both companies had an interrelated tax purpose. The U.S. parent company placed IP rights in the IRNR company via a CSA. As noted above, once a company is a participant in the CSA, profits can be booked with that company proportionate to their cost contribution. The Irish operational company, which was engaged in substantive economic activity, paid royalty fees to this 'Irish-Bermuda' company. This was to enable production using the company IP. The very significant profits from sales in large geographical markets were then booked with the Irish operational company, to be taxed at the Irish corporate tax rate of 12.5 per cent. However, because this operational company used these profits to pay the Bermuda-resident company for the use of the expensive IP, it effectively shifted these large sums to Bermuda. This achieved two things. It greatly reduced the profits in Ireland which would have been taxable at 12.5 per cent and it hugely increased the profits placed in the Bermuda tax resident company, where there is zero corporate tax. These very large profits therefore went untaxed. Had the profits been repatriated to the U.S., the U.S. corporate tax on foreign profits would have been triggered. Instead, they were retained, untaxed in Bermuda, and recorded as reinvested earnings of the corporation.

In theory, the royalty payments made by the operational company to the IRNR holding company would trigger a tax liability in the U.S. under the anti-avoidance Subpart F Rules. However, by 'checking the box' the U.S. parent also circumvented anti-avoidance Subpart F legislation which would normally trigger the taxation of royalty

payments in the U.S. (Department of Finance, 2015). This tax payment was prevented by the mismatched treatment by Ireland and the U.S. of the Irish-Bermuda IRNR company. For the Irish revenue authorities, this company, where the bulk of profits were held, was outside of its jurisdiction (managed and controlled in Bermuda) and so not within the charge of Irish tax. For the US, this company was incorporated in Ireland so therefore tax resident there. Alternatively, the operational company was within the charge of Irish tax, but with very little profit there to tax at 12.5 per cent once the profits had been moved on to Bermuda. Because of 'check-the-box'[69], the IRS treated the operational company as the same entity as the IRNR, so the royalty payments flowing between them were ignored and untaxed in the US.

The 'Dutch Sandwich' aspect of the structure produced an added tax deduction. Ireland charges withholding tax on outbound royalty payments to countries which whom it has not signed a tax treaty (such as Bermuda). The payments between the two Irish companies (where one was Bermuda tax resident) would then have resulted in a tax charge in Ireland. However, the EU Interest and Royalties Directive, to which Ireland is a signatory, disallows EU Member States from charging withholding tax on royalty payments made by a company to an associated company that is a resident of another EU Member State. The payments were routed from Ireland to the Netherlands (i.e. between two EU member states) in order to avoid withholding taxes. In turn, the Netherlands does not charge withholding tax on outbound payments to locations such as Bermuda, so the Irish operational company avoided making withholding tax payments on the large royalty fees (Coffey, 2021).

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[69] The CFC to CFC rule, introduced, in 2009, could also work in place of check-the-box. As interviewee indicated 'if for some reason check-the-box does not get you the result, then you get the CFC to CFC rule which says that any payment from one CFC to another doesn't trigger and dividend to the United States' (interview 16).

We have now reached the endpoint of the Double Irish Dutch Sandwich tax game. The large profits have reached the ultimate destination in the Caribbean. The profits remain there, untaxed, recorded as 'deferred tax' by the IRS unless repatriated in later years. This repatriation of profits generally tends to occur when a 'repatriation tax holiday' is enacted by Congress as was done in 2004 and more recently in 2017 through the TCJA (discussed below) for example.

5.3.2.2 The Apple 'stateless' structure: how the game worked

As indicated earlier, the Apple Stateless structure is constructed upon the same core rules as the Double Irish Dutch Sandwich. We also have insight into Apple's production chain and its interaction with the Stateless structure due to official political and legal examinations of it (Senate, 2013, EC, 2016, EU General Court, 2020). As noted, the interaction of U.S. and Irish corporate tax residency rules were crucial to the establishment of 'stateless' entities in the structure. Apple Inc. established Irish branches called ASI and AOE. ASI and AOE were not managed and controlled in Ireland & not incorporated in the U.S. They were therefore 'stateless' companies from a tax point of view due to the mis match in Irish and U.S. residency rules and owed no tax in any jurisdiction until/unless profits are repatriated to the US (Parada, 2021, EC, 2016).

The initial CSA between Apple Inc. and AOE (then called Apple Computer Ltd) was signed in 1980. ASI joined the agreement in 1999. The agreement was amended several times over the period of investigation in response to changing regulations (recital 5, EU General Court, 2020)[70]. Under the agreement the parties agreed to share

[70] The EC (para 116) indicates the CSA was amended 16 times between 1980-2013

R&D costs and risks related to Apple product and service-related intangibles (recital 6, EU General Court, 2020). Apple Inc. remained the legal owner of the cost-shared intangibles, including IP rights. ASI and AOE held royalty-free licences which allowed them engage in manufacturing and sale of products to Apple's global market (excluding North and South America). Parties to the agreement also agreed to bear risks, namely the development costs relating to the IP rights of the Apple Group (EU General Court, recital 6). The General Court did not detail this shared cost as the case was concerned with pricing methods. However, the EC (2016, Table 6), in detailing the cost split, indicates that ASI and AOE together funded 37 per cent of Apple's global R&D costs in 2008, rising consistently to 55-60 per cent (representing approximately US$5 billion in costs) by 2014. These costs are determined based on a pooling of worldwide R&D costs, which are then portioned out based on each parties' operational areas. Profits from sales are then allocated accordingly (Escribano, 2017). Crucially, because of the CSA, enormous portions of Apple's global profits (excluding the Americas) could be booked with ASI and AOE Ireland, in exchange for the R&D payments from Ireland.

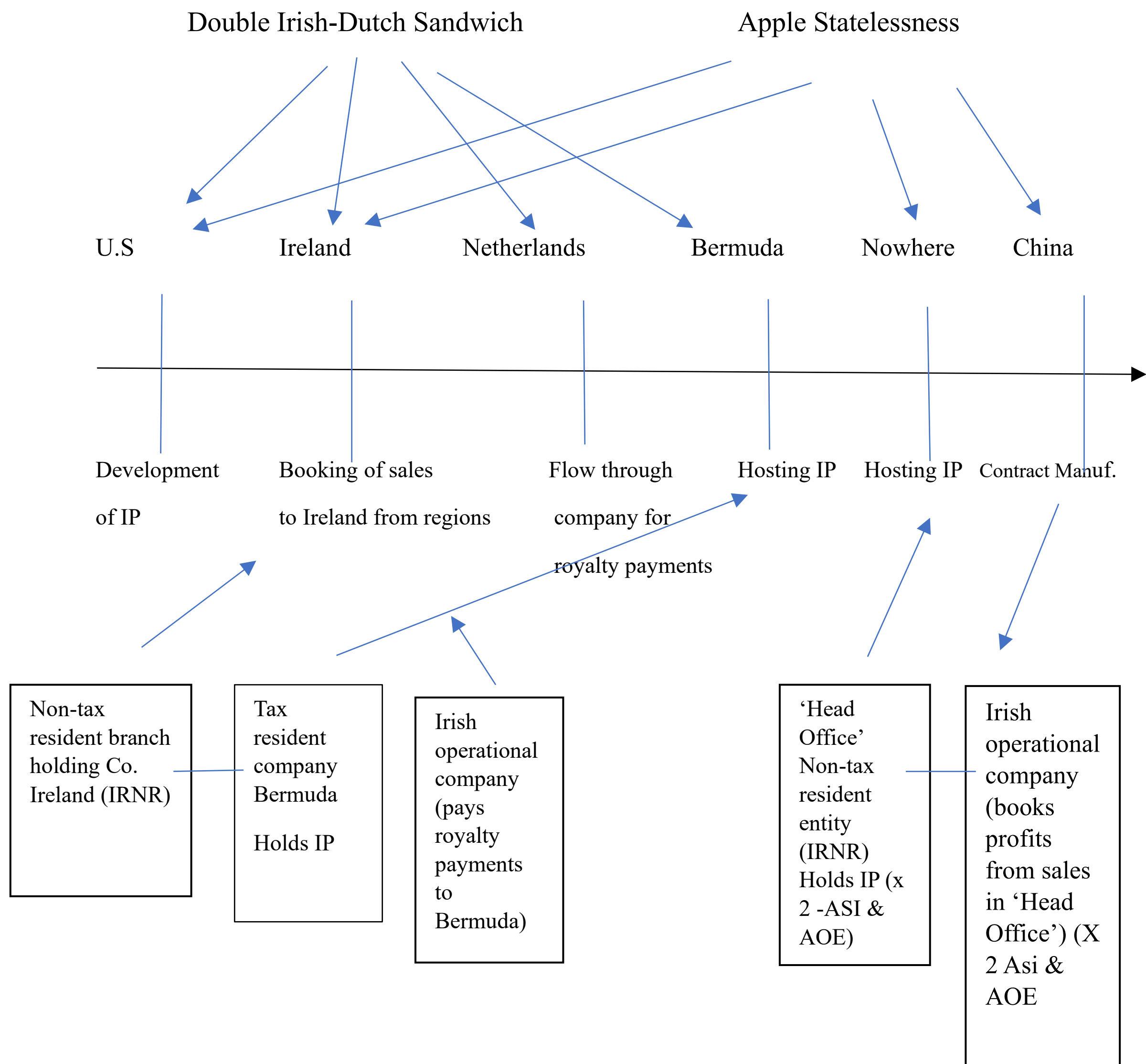
These profits were booked in the 'head offices' of the Irish ASI and AOE subsidiaries which had no address i.e. they were located 'nowhere'. As noted, this was a similar model to the DIDS IRNR company where the operational company held little profit and the bulk of profit was offshored – in the DIDS case to Bermuda, in the Apple stateless case to 'nowhere'. Apple 'checked the box' for its bottom three tiers offshore[71] which meant these companies were treated as 'see-through entities' and disregarded for tax purposes in the US (Ecribano 2017, p.54).

[71] These included the following entities: AOE, ASI, ADI, AS, Apple Retail Holding and all Apple retail subsidiaries (Escribano, 2017 p.52)

Up until the 1990s, Apple manufactured its products in-house (Escribano, 2017). However, in the late 1990s, Apple began to offshore its manufacturing production, retaining only limited manufacturing in the US and Ireland. Foxconn in China produces many of Apple's products via 'contract manufacturing' arrangements whereby Foxconn manufactures the goods for direct export to distributors around the world (Lee and Gereffi, 2015). ASI maintains ownership of the goods but does not distribute them. With contract manufacturing, the inputs remain in the ownership of the Irish company and once the sale of the product occurs in another country, a change of ownership occurs between the Irish company and the buyer. Because the Irish company maintains ownership until the point of sale, the profits from sales can be booked in Ireland. The goods are sold via internet sales, third party re-sellers and retail subsidiaries (recital 1, EU General Court; Escribano, 2017 p.56). Regarding retail outlets, ASI established '*commissionaire'* arrangements with retail outlets selling its products (Escribano,2017 p.56-7). This means that the retail outlets function as agents on commission for a service, minimising any taxable economic substance in those jurisdictions which results in the bulk profits from sales being booked with ASI.

Through the cost-sharing arrangement, ASI and AOE funded a very significant portion of the R&D costs of Apple. The Irish R&D tax credit, once introduced, would have provided a tax relief on the amount transferred into the US. Figure 5.1 provides an overview of how both stateless games worked.

Figure 5. 1:How the stateless games worked

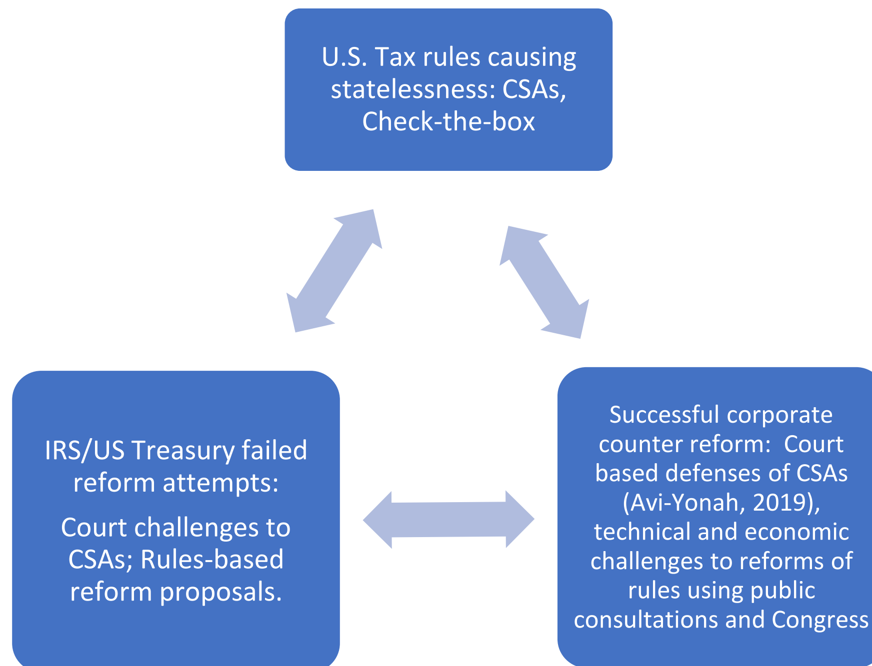


5.3.2.3 How actors adjusted and sustained the Stateless Tax Games

The tax games are sustained by ongoing adjustments by players of the games in response to each other and to external pressures. I will now identify key characteristics about the approach of three of the key players to the rules of statelessness (the U.S., Ireland and the EU). I turn to the U.S. first. In the U.S. we see a situation of poorly designed tax rules, which once in place, proved impossible to shift. Attempts to reform

the rules by the IRS and U.S. Treasury were carried out through policy formulation routes and challenges of CSAs in the courts. Corporations consistently successfully countered these challenges through legal, technical and economic arguments (Figure 5.2).

Figure 5. 2:Reform and counter reform efforts to U.S. rules causing statelessness



The stateless structures reveal the problem of embeddedness of weak tax rules in the U.S. The tax avoidance opportunities delivered by the two key U.S. rules - the CSAs and by check-the-box - were largely unforeseen by the IRS. In the case of CSAs, the importance of CSAs was not anticipated at their inception. In the growing knowledge of how central the CSAs are to statelessness, a range of attempts were taken by the IRS, with support from some elements of Congress, to strengthen the CSA rules against abuse. These were followed by counter efforts, driven by corporate lobbies in the U.S., to weaken them. For example, responding to rising concern over the transfer of intangibles to low tax jurisdictions, Congress amended Section 482 of the US Tax Reform Act 1986 (for the first time since 1924) which required that income from transfer or licensing of intangibles should be commensurate 'with the income

attributable to the intangible' (the 'commensurate-with-income' rule). A 'super-royalty rule' was also introduced into the tax code (367(d)) which means that transferees should pay increasing royalties to the transferor over time to negate potential for profit shifting. A range of more specific changes have also been made. Changes in 1992 and 1995 focused on increased guidance and transfer pricing methods (§1.482 Treasury Regulations). However, by 2009, Mutti and Grubert highlight the continuing low impact of these reforms,

> A tax haven entity can engage in a cost-sharing agreement with the parent in which it shares in the cost of an R&D project in exchange for the right to exploit the technology abroad. Once the technology is developed the tax haven company can license an operating sibling in a high-tax location, but with a hybrid structure the deductible royalty paid to the tax haven will not be subject to immediate U.S. tax. Companies have apparently been able to arrange favourable cost-sharing agreements that permit them to leave abroad in a low-tax location a greater share of the return to the U.S. R&D (2009, p.112).

Additional proposed and temporary regulations to the CSAs were issued in 2005 and 2008 with final regulations issued in 2011 (§1.482-7 Treasury Regulations). Notably, the 2005 changes focused on new transfer pricing methods under CSAs, especially relating to the valuation of arms-length buy-ins. These changes introduced an 'investor model' which sought to ensure that non-routine returns to foreign CSA participants could not take place without a contribution over and above R&D cash payments (De Simone & Sansing, 2018; Brauner, 2010; PWC, 2013). The changes in 2000s also sought to prevent below market transfers and increased IRS auditing and legal action (De Simone & Sansing, 2018). Also notably, the 2008 regulations included a 'periodic adjustment rule' which allows the IRS to adjust transfer prices retrospectively (PWC, 2013). These important features were included in the final U.S. CSA regulations issued in 2011.

However, these regulatory changes, enacted over many years, were significantly watered down from their original proposals due to the impact of opposition from business interests in public technical consultations (Brauner, 2010). For example, the IRS and Treasury Department 'White Paper' in 1988 proposed restrictions on geographic locations and on the marketing of intangibles. However, following public consultations, less restrictive regulations were proposed relying on anti-abuse tests rather than restricting cost sharing terms (Brauner, 2010, p.6). In 2005, again, via public consultation, the 'investor model' was strongly criticised by the business sector resulting in 'a much redacted version' of proposals in 2009 (Brauner, 2010, p.6). Despite the finalised 2011 regulations, since the 1970s, with a small number of notable exceptions, the IRS has borne consistent legal defeats, in its numerous challenges to the CSAs of major corporations (Avi-Yonah & Mazonni, 2020). These indicate a continuing serious problem of asymmetry of knowledge between the tax-payer and the IRS and the ability of the IRS to present legally compliant alternative valuations which challenge the CSAs (Brauner, 2010). The fundamental weakness at the heart of the CSAs is that they do not require evidence of substance in the offshore entity members. An interviewee commented on this fundamental problem while also noting that only the U.S. has the capacity to change the regulation, but is failing to do so. They commented,

> '[..] the basic problem is that there is nothing in the cost sharing regulation that requires anything to be done by the foreign [affiliate], it can be a pure shell for that matter and not have any employees or anything as long the money comes from it. And that money can be simply contributed by the parent. So, it is really totally meaningless. The only safeguard is the fact that you lose the deduction if the R&D is not successful and in Apple's case there was no way that that would ever happen. So, I just think that that illustrates how bad the law is and the IRS is bound by its own regulations' (interview 16).

Another interviewee indicated,

> There is no doubt that the CSA bears no relation to functions, assets and risks [of participating affiliates] but these are things that the U.S. has allowed. And, yes, it is what drives the profit figure in the Apple case. But neither Ireland, the European Union or the state aid or the [EC] Competition [Director General] DG can do anything about it in relation to the agreement between Apple and the IRS (interview 8)

The interviewee confirmed that the problem of CSAs is rooted in the US legal system and the intense US politics of corporate taxation. They said,

> All the [tax avoidance] structures have their origins in cost sharing agreements. [..] the key issue is to get the IP out of the US and, whether it is a stateless structure or a Double Irish structure, that is achieved with the cost sharing agreement. These are allowed under U.S. law. It is an approach particular to the US... [..] I think it is why we see that most of these structures are limited to US companies.

As we have seen, check-the-box was also a crucial regulation within the stateless games. Check-the-box was introduced by the U.S. Treasury under the Clinton administration in order to simplify entity classification which had become a major administrative difficulty for the IRS[72] (Hackelberg, 2020 p.59). Check-the-box quickly became a serious concern to the IRS. One interviewee argued,

> 'Check-the-box [..] proved to be a total disaster as you can imagine. [..] the Europeans of course are all convinced that check-the-box was a deliberate attempt to undermine Subpart F in order to give the US multinationals a competitive advantage. And that may have been true, but I don't think so. I think they [the IRS] really made a mistake. [.] Limited liability companies were invented in the '90s, it was a new creature and the IRS [..] litigated a lot of cases against tax payers about how to characterise them as a corporation or as a partnership which is not taxable for tax purposes. And so, the administration, I think, plausibly said, you know, 'there is no point in litigating this endlessly, let's just give tax payers a choice' (interview 16)

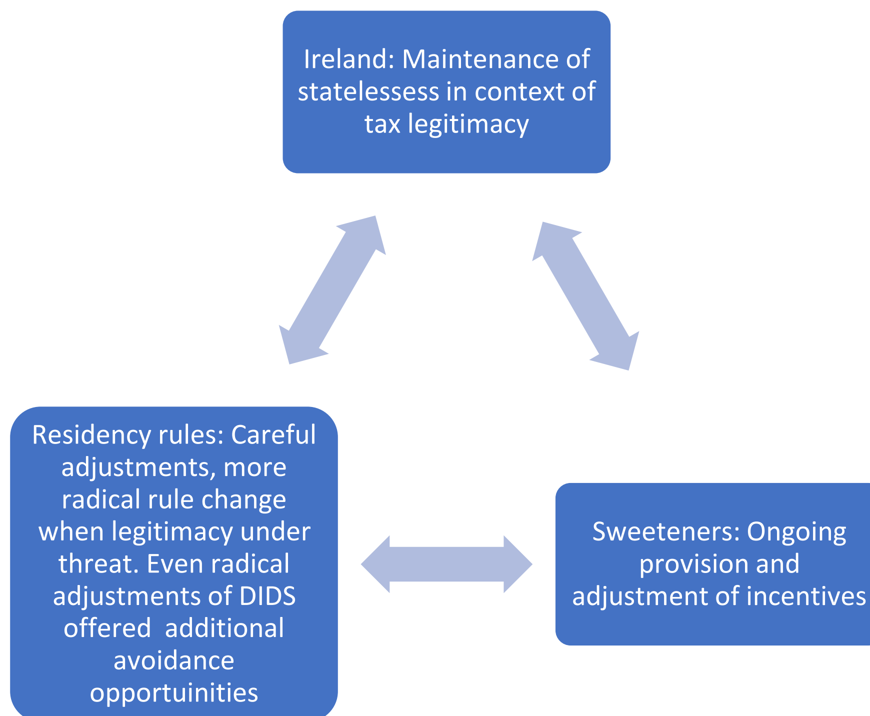
[72] Hackleberg (2020 p.59) explains, 'Until then, taxpayers and the IRS had used the so-called Kintner test to determine whether an entity was a corporation or a partnership, the latter being disregarded for tax purposes because partners—who also assumed full liability for the partnership's debt—were taxed on its profits at the personal level. With the multiplication of corporate legal forms at the state and international levels, however, determining whether or not a certain company passed the criteria of the Kintner test became increasingly cumbersome for tax authorities'.

In 1998, the IRS, recognising the abuses resulting from check-the-box, proposed new regulations. Hackelberg (2020 p.61) writes of 'devastating' opposition to the reform proposals from the business and tax services sectors. Through lobbying coalitions, the sector successfully secured support from the chairmen of the Senate Finance Committee and the House Ways and Means Committee who argued that the IRS was over-extending its legislative authority and that the proposals would damage U.S. global corporate competitiveness. A moratorium on the IRS's power to issue temporary Regulations was threatened. Six months after proposing the anti-abuse regulations, the IRS withdrew them.

For the Irish part of the stateless rules, the Irish State carefully maintained its residency rules which were central to the game. This was accompanied by ongoing adjustments or 'sweeteners' to buttress the benefits of the stateless structures (Figure 5.3). As we have seen, Ireland's residency rules were the key legal offering from the Irish side which upheld statelessness. Ireland's residency rules up till 2015 were a relic of its British colonial past. By 1988, Britain itself had changed its residency rule to include incorporation as an alternative test to management and control to prevent statelessness. However, Ireland maintained its older rule. As noted, this gave rise to the possibility of IRNR companies at the heart of stateless structures. Notably, an amendment to Ireland's definition of tax residence was introduced in the Irish Finance Act 1999 (Section 23 A). This amendment sought to narrow the range of companies that qualify to be IRNR companies. But companies from countries with whom Ireland had a tax treaty were excluded from this amendment, thereby protecting US companies setting up IRNR companies. Daly & Mason (2020) note that Ireland had tax treaties with only

seven jurisdictions, including the US, which had similarly mismatched residency rules which would enable IRNRs[73].

Figure 5. 3: Ireland: Maintenance of statelessness in context of tax legitimacy



After sustained political pressure Ireland eventually changed its residency laws that ended the possibility of hybrid structures such Apple statelessness (in 2014) and the DIDS (in 2015). The 2014 change involved Irish legislation stating that Irish registered companies cannot be "stateless" in terms of their place of tax residency' (Department of Finance, 2013). This immediately ended the Apple stateless structure (applied from 24 October 2013 (Section 23A(5) TCA 1997)). The change to the tax residency rules in 2015 were more ambiguous. The residency rule change meant that an Irish

[73] Estonia, Finland, France, Latvia, Lithuania, Sweden, and the United States

incorporated company is now treated as Irish tax resident if it is managed and controlled in another Treaty State or EU Member State *and* the company is not regarded as tax resident in any territory. The tax residency rule changes had two problematic aspects. Firstly, the new rule indicates that it will not apply if a firm is 'treated as a tax resident company in another country under a Double Taxation Agreement' (Revenue Commissioners, 2017). This allowance gave rise to a new structure, which the NGO, Christian Aid Ireland identified and termed the 'Single Malt' tax avoidance structure. The 'Single Malt' structure is a simplified version of the Double Irish-Dutch Sandwich which replaces the Bermuda and Netherlands subsidiaries with one in Malta. In 2018, after effective public pressure from Christian Aid, the Minister for Finance announced an end to the 'Single Malt' through a new agreement between Ireland and Malta (Irish Times, 27 November 2018). Secondly, simultaneous to announcing the new residency rule, the Irish Minister for Finance announced that 'grandfathering rules' would be applied to the phase out of the DIDS. This allowed the residence treatment of the old rule to survive until 31 December 2020, meaning the DIDS structure lived on for a further 6 years.

Ireland also maintained a set of important 'sweeteners' which bolstered the benefits of the stateless structures. The most important of these is the Irish R&D tax credit. At first, the credit was set as a relief on 20 per cent of eligible costs, applied to the corporate tax liability of the firm and the firm could carry it forward if not used in the current year. The R&D credit has been amended most years since its inception. Very significant amendments were made in 2009, 2012 and 2015. In 2009, the credit was increased from 20 to 25 per cent of eligible costs (i.e. for every €4 in R&D conducted, €1 could be retained from corporate tax liabilities by the firm). It became refundable, with no restrictions. If a company's corporate tax liability was less than the R&D claim

submitted, a cash refund could be issued by Revenue authorities over a 33 month period, starting in the current year of the claim. By 2014, the refundable credit accounted for half of public support to R&D in Ireland (Acheson & Malone, 2020). Following a review of the credit in 2013, recommended expansions to the credit, as lobbied for by companies through a public consultation, were implemented. These included the removal of the 'base year' requirement (whereby only expenses over the base year of 2003 expenditure level were eligible); the allowance of outsourced R&D expenses and the inclusion of 'key employee' provisions (whereby tax reliefs were granted to personnel focused on R&D) (Dept of Finance, 2013).

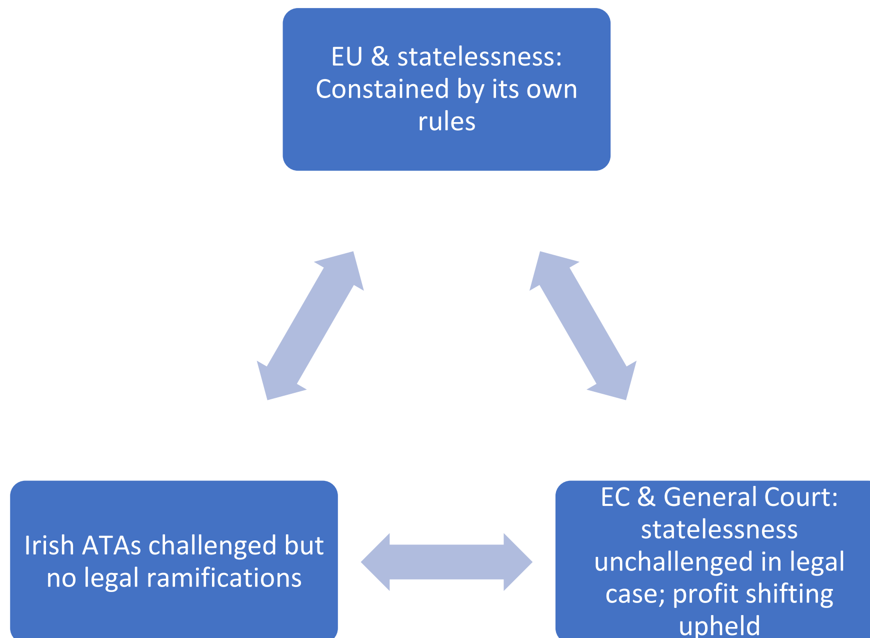
A subsequent Department of Finance evaluation (Dept of Finance, 2016) found the credit, while reasonably successful, to carry deadweight of 40 per cent (meaning the companies would likely have invested that 40 per cent of the amount even without the incentive of the relief). This means that public funds replaced private funding available to certain firms during the period studied. Subsequently the same authors (Acheson & Malone, 2020) indicated that 'additional' R&D associated with the credit was wholly associated with older firms, rather than younger firms, meaning it has been particularly ineffective in catalysing high potential start-ups. The credit is popularly availed of, rising from a cost of €70 million in 2004 to €626 million in 2019 (Revenue, 2021). While the credit is much less costly to the state in comparison with Ireland's other major tax allowance on intangible capital[74], the R&D tax credit is a significant 'sweetener' within the Irish tax games.

The third important actor in seeking to influence stateless rules is the European Commission (EC) through its legal ruling that Ireland had provided state aid to Apple[75]

[74] Which was used by Apple in its subsequent 'onshoring' tax game (discussed in later sections).
[75] The legal case, though lost by the EC is currently under appeal by the EC.

(EC, 2016) (Figure 5.4). The EC was however constrained by three things, firstly by the sovereignty of member states on tax matters, meaning that EU state aid rules were its only route into examining Ireland and Apple's tax relationship. 'Statelessness' therefore remained unchallenged. Second, the EU General Court, drew strongly on Irish case law relating to profit allocation and the capacity of entities to control the functions associated with profit (ultimately defending the non-allocation of the Apple profit to Ireland (and less directly, as opposed to 'nowhere')). Third, while the court criticised Ireland's shoddy approach to ATAs, its comments were not legally binding (Figure 5.4).

Figure 5. 4: EU, Ireland and Statelessness



The stateless structure itself was not challenged by the EC in its ruling. This is because state aid cases do not examine tax code mismatches such as occurred with the U.S. and Irish tax residency rules as this has no bearing on the issue of selective advantage,

which is a condition for state aid to be present (Bobby, 2017). The EC investigation into Ireland and Apple challenged the interpretation of profit allocation rules at the heart of the Apple stateless structure. The EC argued that because the IP licenses were held by ASI & AOE outside Ireland (i.e. at no address), with significant functions and risks associated, yet with no staff, the profits derived should not have been allocated there.[76] The EC argued, in an arms-length context, profits should have instead been allocated to the Irish branches. The EC termed this reasoning an 'exclusion approach'. However, the General Court ruled that this 'exclusion approach' is inconsistent with Irish law (Section 25 Tax Consolidation Act 1997) and with OECD guidelines. The General Court also cited Irish case law S. Murphy (Inspector of Taxes) V Dataproducts (Dub.) Ltd [1988] which found that property cannot be allocated to an Irish branch if it is not established that the branch controls it (recitals 178, 180, 186, 259, EU General Court).

The EC ruling also focused on two Irish tax rulings agreed by Ireland with Apple in 1991, and a renewed ruling in 2007. These were advance tax rulings through which the Irish revenue authority and Apple established the calculation of Apple's chargeable profit and tax rate in Ireland (recital 11, EU General Court, 2020). The EC argued that the rulings appeared to be retrospectively agreed between the Irish revenue authorities and Apple and potentially influenced by employment considerations on the part of the Irish state (recital 420, EU General Court, 2020). The General Court acknowledged that the rulings were 'fairly vague'[..] 'without [..] documented detailed analysis regarding the functions of the branches and assessment of those functions' (recital 344, EU General Court, 2020). The court viewed this as a 'methodological defect' in the

[76] The 'no address' is the mirror of the IRNR company structures in the DIDS. This means, instead of an Ireland (non-tax resident company)-Bermuda (tax resident company) arrangement, in this case it was an Ireland (non-tax resident) 'nowhere' (untaxable) arrangement.

application of Section 25 of the Irish Taxes Consolidation Act (TCA) 1997, but that this does not in itself prove an error in the profit allocation method or reduction of the tax base due to selective advantage (recital 349, EU General Court, 2020).

In their legal analysis of the case, Daly and Mason (2020, p.1330) agree with the view of the General Court that underassessment of tax by a tax authority should not, by itself, give rise to state aid concerns. Instead, they propose examination of whether there is a link between underassessment and unlawful administrative action. They define features of the latter as involving a tax authority taking into account irrelevant considerations, acting unreasonably or failing to properly discharge its duties. They argue that had the EC pointed to these kinds of rule-based flaws, they may have had the chance of winning a case against Ireland, but with smaller stakes involved.

Interestingly, there is no meaningful move to change the EC Directive on Interest and Royalties, despite an awareness with the EC that this rule had facilitated corporate tax avoidance (interview 7). It should be noted that as part of EU Anti-Tax avoidance Directives also prohibited hybrid structures (Avi-Yonah, 2022) which Ireland signed in 2019. Therefore, if Ireland has not acted to end statelessness, this EU legislation ultimately would have ended them eventually.

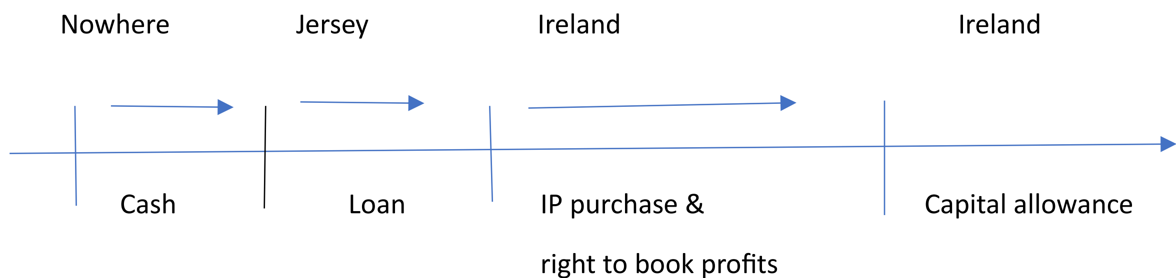
5.3.2.4 The Onshoring Game: How the game worked

As noted, Apple reorganized its tax structure subsequent to the decision by the Irish Government to outlaw the corporate option of 'statelessness' to the 'onshoring' game (Figure 5.5). The company relocated its non-U.S. sales and IP from 'nowhere' to a tax resident Irish subsidiary. Its undistributed cash was redistributed from its Irish subsidiaries to Jersey, where there would be no tax due as long as profits are not

repatriated to the United States. In order to finance the purchase of the IP, loans were then extended from the newly minted Jersey subsidiaries back to Ireland, where the interest payments were tax deductible (Stewart, 2018). Indeed, the Irish national accounts show a massive increase in incoming loans to the tune of €250 billion in the first quarter of 2015 (Coffey, 2018). The IP purchase contributed to an unprecedented 26.3 per cent rise in Ireland's real GDP in 2015 (OECD, 2016). Apple benefitted from a 100 per cent Irish capital allowance for depreciation of the intangible assets, which had been adjusted upward by the Government in 2015, coinciding with Apple's restructuring of its 'stateless' arrangement. The Government subsequently reduced this allowance back to the pre-2009 level of 80 per cent, as per Coffey (2017) recommendation. But that change would not have affected Apple, as its assets were brought onshore from 2015 to 2017 (Clancy and Christensen, 2018; IMF, 2019). There was a massive spike in capital allowances on intangible assets for that year—an increase from Euro 2.7 billion in 2014 to e28.9 billion in 2015 (Revenue Commissioners, 2018). Apple also has a contract manufacturing agreement with a company in China whereby the products manufactured in China are owned by the Irish subsidiary although never physically present in Ireland. The 2017 Irish Balance of Payments show a very significant 'change of ownership adjustment' to Ireland's export figures worth Euro17 billion (CSO, 2018). It is possible that this is a fee for manufacturing and for the purchase of goods in other countries by Apple's Irish subsidiaries and sent on to China (Coffey, 2018). This is because contract manufacturing involves the contracting subsidiary in Ireland retaining ownership over the inputs and end product by simply paying a fee for production work (Department of Finance, 2019).

Figure 5.5 describes the flow of funds relating to the Onshoring game. In summary, Apple moved its undistributed cash from 'nowhere' to Jersey. The Apple Jersey subsidiary extended a loan to a tax resident Apple subsidiary in Ireland. This enabled the Irish tax resident subsidiary to purchase the IP license from Apple (Coffey, 2018). This gave the Irish tax resident subsidiary the right to book profits. The income from profits is then significantly written down against tax based on the cost of the IP license purchase.

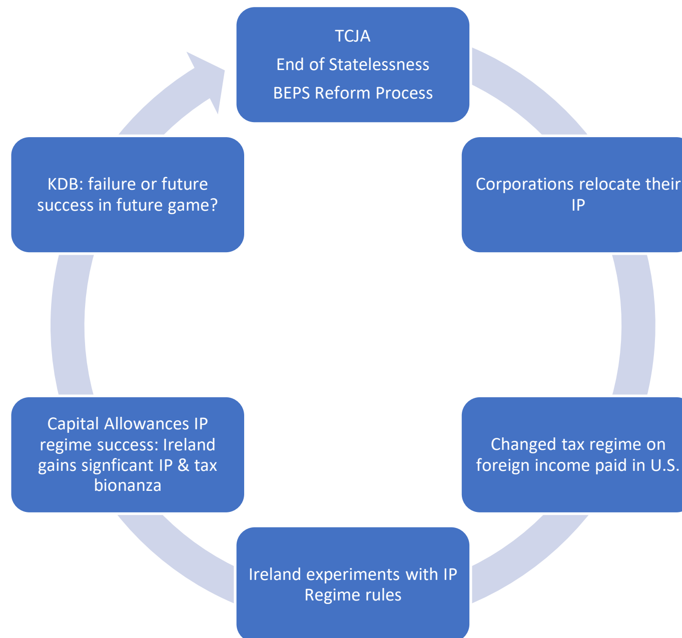
Figure 5. 5: The Onshoring Game: How the game worked



5.3.2.5 How actors adjusted and sustained the Onshoring Game

The combination of the TCJA, the ending of statelessness and the BEPS reform process have prompted a reconfiguration of IP decisions, and the Onshoring Game in Ireland. Firstly, corporations made significant decisions about where to re-locate their IP. Secondly, the TJCA was, at least in theory, intended to ensure the games were made less profitable for corporations through increased foreign income being booked in the U.S. Third, Ireland's experimentation with its IP regime achieved successes (in terms of attracting valuable IP) and failures (in terms of lack of take up of the KDB), for the time being at least. (Figure 5.6). We discuss each in turn.

Figure 5. 6: US, Ireland and IP location



Firstly, how do we know with some certainty that the DIDS actually ended and has been replaced by this new game? Coupled with the data on the use of the intangible capital allowance, Coffey (2021) has shown this by tracking the changes in direction of royalty flows in 2020 (the year the DIDS grandfathering period ended). Coffey finds that royalty payments from Ireland to the Euro area (which he indicates largely represent payments from Ireland to The Netherlands) collapsed in 2019/20. They also collapsed to offshore centres, i.e. the traditional DIDS payments to Bermuda/Cayman and massively increased at the same time to the U.S. This indicates that IP had moved from the Bermuda style locations to the U.S. in the case of some firm.

The increase in the use of the intangible capital allowances scheme in Ireland also indicates that very significant IP moved to Ireland. There has also been a rise in payments from the ICT sector in royalty payments (an increase from €28 billion to €52 billion since 2016), there has been a fall in payments from the pharmaceutical industry (down €10 billion (from €24 to €14 billion) since 2016) (Coffey, 2021 p.3). This indicates that while there is IP on-shored in Ireland, there also appears to be corporations in the tech sector reshoring their IP to the U.S. (though not Apple) with Pharma IP staying in Ireland. The sectoral decision-making on this is officially unknown, an interviewee indicated that it may be more mixed than this. What is not in doubt is that this was a period of important decision-making about corporate IP location. The Irish jurisdiction is now a significant location for U.S. developed IP. This was obviously not the desired effect of the BEPS reform process.

Secondly, some close observers assume that this IP will stay in their respective new locations, including in Ireland, not least due to the financial cost involved in moving it again (interview 13). Other sources emphasise the specific moment created by the BEPS reforms prompted the new decision-making on IP location. They argued that the days of locating IP in a shell company in Bermuda are now over and that companies are now engaged in a process of locating their IP with locations where they have employment (interview 14). This signals a potential major success for Ireland through the new Onshoring game. For example, an interviewee indicated that tax directors of MNCs wish to see the recently relocated IP remain in those new locations (be it in Ireland, the US or Singapore) (interview 13).

Third, the ‘carrots’ and ‘sticks’ contained in the TCJA were intended to reduce profit shifting by U.S. corporations. Although it is early to judge definitively, Overesch, Reichert, Wamser (2023, p.1) indicate that the TCJA ‘did not change the international

tax-planning behaviour of US MNCs'. Similarly Garcia-Bernardo, Janský and Zucman (2022 p.1) indicate that

> The share of profits booked abroad by US multinationals fell 3–5 percentage points, driven by repatriations of intellectual property to the US. The share of foreign profits booked in tax havens remained stable around 50% between 2015 and 2020. Changes in the global allocation of profits are small overall, but some firms responded strongly.

As a result of this tepid response, the Biden Administration continues to pursue further tax reform, aligned to the BEPS process. But as we shall see in Chapter Six, the U.S. has a self-interested or even hypocritical record on international tax reform whereby it may not follow through on reforms it itself has proposed internationally. This currently looks very likely to be the case as there is no unified internal support in Congress to proceed with further global reforms.

Fourth, Ireland's approach to its IP regime is characterised by the State seeking to capitalise on the global rise of IP through a kind of 'testing the water' approach with different tax-based IP incentives. Two regimes were introduced, the capital allowance on intangible assets (in 2009) as discussed, and the Knowledge Development Box (KDB). As mentioned in Chapter Four, the KDB incentivises R&D through a reduced tax rate (6.25 per cent, increased to 10 per cent from 2022). So far, there have been very different responses to each regime. The Capital Allowances on Intangible Investment is a case of unexpected success, or at least a case of success beyond the wildest expectations of its designers. The case of the KDB, has so far, had very little take up, and is viewed as something of a failure. At least so far.

The Capital Allowance on Intangible Investment is an interesting example of a case of unexpected 'success' of a tax rule. The allowance was introduced in 2009, long before the ending of Stateless income. The allowance was not initially taken up by

corporations after its introduction in 2009. The main corporations that would use it would continue using the DIDS up till 2020. As one interviewee indicated, Ireland did not have a tax regime for IP in place at that time, and was in need of one, given the trend intellectual property among MNCs (interview 2). Due to this lack of take up, the cap on the allowance was increased from 80 per cent top 100 per cent to make it more attractive. Once it was increased to 100 per cent, Apple entered the Irish market with its IP, causing an embarrassing explosion in Ireland's GDP as a result of the onshoring of such a huge asset. This rush on the use of the allowance caused it to be subsequently capped again, in 2017, back down to 80 per cent. Because the IP being claimed against is so valuable this cap resulted in significant additional profits being taxable in Ireland.

While a capital allowance is an ordinary aspect of any national tax system, it is the extent of its use by large US corporations in Ireland that makes it so remarkable (see tables 5.4 & 5.5). The users of the allowance are also important corporate tax payors in Ireland. These users represent 47 per cent of total payments in 2020 and 56 per cent in 2021 (Revenue, 2022). Revenue (2022) indicate that the corporate tax payments from this group is growing more rapidly than among other companies. This indicates that while these companies are presumably making significant savings as a result of the allowances in onshoring their IP, they are also booking increased profits in Ireland aligned with this IP.[77] This has resulted in the largest growth in Irish corporate tax receipts in the history of the State (See Figure 5.7).

[77] Revenue (2022, p.15) indicates 'It should be noted that not all CIT paid by companies with intangible capital allowances is arising from profit generated through intangible assets. One factor in this increase is that several large companies with no intangible asset claims previously have restructured and now have such claims for 2020 (but they still have non-intangible related incomes as well).'

Table 5. 4: Tax Payments of Companies Claiming Intangible Asset Capital Allowances

Tax Payments of Companies Claiming Intangible Asset Capital Allowances			
CT payments	2019 € millions	2020 € millions	2021 € millions
Claimants of intangible capital allowances	3,764	5,641	8,606
All companies	10,887	11,833	15,324
Multinational companies only	9,148	10,498	13,690

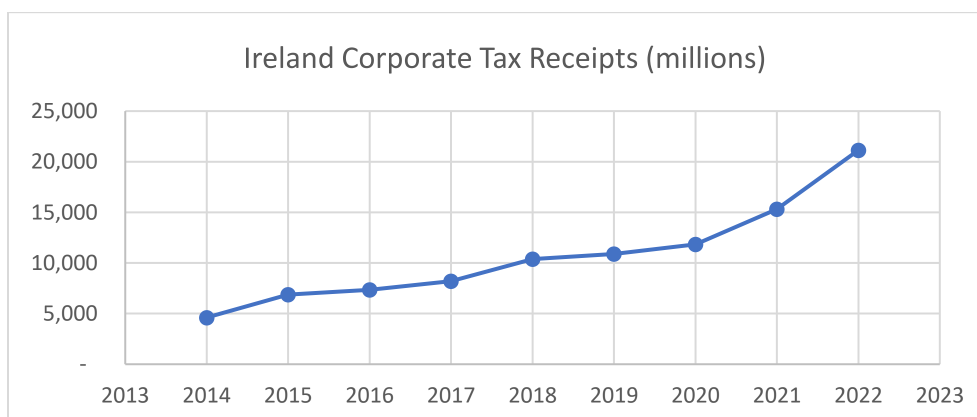
Source: Revenue Commissioners (2020; 2021; 2022)

Table 5. 5: Value of use of capital allowances by company type

Value of use of capital allowances	2019 € millions	2020 € millions
All companies	46,208	94,237
Multi-national companies	45,211	83,787

Source: Revenue Commissioners (2021;2020)

Figure 5. 7: Ireland corporate tax receipts 2012-22



By contrast, the take up of the Knowledge Development Box has been very low. One interviewee indicated that this is because OECD compliance makes the Box too restrictive in what in can offer to corporations (interview 2). Another interviewee indicated that the KDB may yet have its day as part of the next iteration of games (interview 5). There will indeed be another iteration of games, not least because the capital allowance on intangible assets only lasts for eight years. After that,

corporations will have to pay the 12.5 or 15 per cent rate (determined by their turnover) and so will be seeking new games.

5.4 Conclusion

This chapter shows IP as a central tool in the social technologies of tax games. The basic goal of each game examined is to move IP out of the U.S. as a route to profit shifting and the ultimately to lower taxes. Ireland is shown to provide a seamless sanctuary for U.S. tech and pharma firms to reduce tax payments on their foreign profits, from the 1980s, accelerating to more complex international structures with the focus on IP in the 1990s, up to today.

In examining the adjustments to the rules underpinning the games, it is striking that the two fundamental adjustments made to the IP games - the change in Irish residency rules and the introduction of the TCJA in the U.S. - both arose from external sources from the games i.e. from sources of politics surrounding the games. The games themselves never collapsed because of internal implementation or coordination failures, or from competition from other institutions, as may be expected in theories of networks (Schrank and Whitford, 2011). This suggests that tax games are robust, largely self-reproducing and stable.

However, it is also clear that the internal work to sustain the games is very actively managed in the U.S. and Ireland. In the U.S. active battles occur on the reform-counter reform battleground of rules, in the courts, in public-private consultations and in Congress. In the battles around rules in the stateless game, the corporations always win in the U.S. However, the TCJA , coupled with the ending of the DIDS, introduced a sudden challenge to the corporations, prompting the onshoring game. The TCJA should have resulted in an increased tax take for the U.S. but does not appeared to

have done so in a significant way. The menu of options across the four dimensions of tax are likely providing enough options for corporations to ensure this.

The chapter shows the Irish State, as carefully managing the rules to ensure the seamless provision of tax avoidance opportunities. It is notable that Ireland is also shown to be looking ahead, to ensure it is well placed for the transition from the stateless game to the onshoring game. However, it is clear that Ireland takes an approach which 'tests the water' to see how far to push the boundaries of its IP rules and it is not known to the Irish State whether the wider market environment will favour their approach. The Irish approach is one of testing the waters while seeking to maintain legitimacy (i.e. not to be perceived as too generous in terms of incentives) while also being successful (i.e. securing the next tax game).

Does the onshoring of IP mean greater alignment in future between R&D and profit generation in Ireland and in the U.S? Will the BEPS goals be achieved through the onshoring game? This is unlikely. As we have seen, while a range of corporations re-shored to the U.S. many did not. Ireland attracted significant IP during the Onshoring game. Does this mean Ireland may become a centre for R&D? Certainly, while capital flight is an ongoing reality for a state like Ireland, significant job announcements in the tech and pharma sectors have also been made in the 2020s. However, it truly is a case of the 'cart before the horse', whereby IP has 'landed' in Ireland disconnected from R&D capacity. I do note the unused presence of the KDB however. As the capital allowances run out in the coming few years, it will be interesting to see if the KDB is activated by these sectors.

Even if R&D in Ireland does increase in the coming years in Ireland, this chapter has shown that substantive FDI activity in Ireland is conditional upon the facilitation of

tax games. Given this embeddedness and the robustness of the tax games, they will likely continue to evolve in response to ongoing external pressures. It is of course possible that global tax reforms ultimately become more effective in shutting down the inter-play of games among the tax dimensions. Despite the faltering global reforms, the principle of alignment of profit and economic substance has been established in global tax, albeit weakly. Unfortunately, however, the tax games may simply shift to a different arena of FDI games (such as income tax or weak regulation). This is why understanding the politics of tax games is essential if lessons are to be learned in advance of any new forms of games.

Chapter Six: The Politics of Ireland's Corporate Tax Games

6.1 Introduction

This chapter makes three contributions. Firstly, it argues that national tax institutions are a central, but overlooked, driver of the politics of tax in national development strategies. Secondly it argues that examining these tax institutions reveal more about the relationship between industrial policy and the politics of tax. Thirdly, it makes three specific empirical observations about Ireland. These observations include, first, that Ireland's national tax institutions underpin the sustaining of Ireland's tax games. Second, that Ireland's tax games are simultaneously upheld and challenged by its international entanglements and sometimes different parts of the same institutions/states both support and challenge Ireland's tax games. Third, while Ireland's tax games have been threatened on occasion by internal incompetence to the games or loss of control, the challenges that actually drove the iterations of the Irish tax games have all arisen from external sources.

The literature on economic development and the developmental state generally discusses industrial policy institutions but focuses less on the institutions of taxation. This is despite the recognition of two important things. Firstly, the importance of taxation in terms of domestic contestation around distribution as a key factor in national development strategies. And secondly, a recognition of the intimate connection between taxation and the state which partially reveals the relationship between industrial policy and national politics. Meanwhile, in the tax focused literature, there is relatively little focus on the institutions of taxation policy and the administrative and political management of taxation. This neglect is surprising

because there is a very busy institutional world engaged in policy-making and 'everyday' rule making and organisational routines, all of which involve different levels of political contestation. This leads us to an additional, overlooked factor which is the nature of power in national tax politics and its interconnection with the international politics of tax. As discussed in Chapter Two, much of the day-to-day of tax management occurs through the quiet politics of tax consultations and the daily alignment of state-corporate interests. It also occurs through the slightly noisier politics of public lobbying or threats of exit by corporations. These are the typical avenues of instrumental and structural forms of business power. However, what is less theorised is what I define as 'infrastructural power' in tax, or *state maintenance of, and dependence upon elements of corporate organisational capacities and practice which reproduces business power*. I argue that the ways in which the Irish tax games reformulate themselves can be understood as a form of infrastructural power in tax.

6.2 Tax Institutions and the Developmental State

6.2.1 FDI and the Irish State

The primary goal of Ireland's FDI strategy, in both its 'real' and 'artificial' guises, is to attract employment to Ireland. The institution tasked with delivering this FDI-based employment is the Irish Industrial Development Authority (IDA). The IDA was, and is, the institutional beating heart of Ireland's national FDI project. Founded in 1949, the operational independence provided to the IDA from an early stage was central in bringing institutional leadership to the attraction of FDI to Ireland. This institutional dynamism, coupled with its capacity to provide practical re-location support, along with grant aid, was central to Ireland's early FDI success (Ó Riain, 2004). The IDA continues this kind of practice up to today. For example, a common perspective on the impact of the IDA was reflected by an interviewee who indicated 'the IDA is marvellous at attracting firms here, it holds their [MNC's] hand, [it] makes it easy'

(interview 18). As a result of its success rate, the IDA became very politically influential on FDI matters. This success is amplified in the context of the historical weakness in the Department of Finance in formulating industrial policy. The ‘Telesis Report’, which was commissioned to review Ireland’s industrial strategy in 1982, indicated that the Department of Finance had effectively ceded its responsibility on industrial policy to the IDA (Casey, 2022 p.144). This absence of leadership also meant that FDI strategy, and IDA leadership, became intertwined and disproportionately central to the Irish development model.

Several interviewees expressed concern about the level of political influence the IDA has attained. One interviewee indicated that, over time, the IDA has become politically ‘*untouchable’* (interview 17). This is tempered by another interviewee who indicated certain limits to the scope of IDA influence. They indicated that, in principle, IDA influence is not related to the interests of the specific companies it attracted, but to the preservation of the attractiveness of the FDI regime as a whole. Referring to the 1980s and ‘90s period, they indicated, ‘I don't recall the IDA coming in looking for specific tax concessions for particular companies’ (interview 3). While this is the general principle, in practice the overall FDI strategy was very closely tailored around the needs of specific sectors. The IDA did not hesitate to step in when it viewed these needs as under threat. For example, an interviewee recalled a policy announcement by the Minister in the budget in the late ‘90s relating to the provision of capital allowances in the tax code which was subsequently reversed as a result of IDA intervention (interview 9). The IDA also appears to have sustained the controversial ‘Section 84 lending’ (discussed in Chapter Four), which contributed significantly to the growth of the aircraft leasing industry in Ireland. An interviewee said,

> [..] you had the IDA pressing to give Section 84 loans in Turkish lire, they [the IDA] were really pushing it, because the interest rate is so high [meaning] the interest reduction is even higher [..] the interest rate on Turkish lire was maybe 18% (interview 9).

The IDA's scope did not always go unchallenged, however. In 1987, the IMF expressed concerns about IDA incentives to foreign corporations being excessive and argued that its budget should be reduced (Casey, 2022). There was similar sentiment at the Department of Finance which, according to archival research (Casey, 2022), expressed strong reservations in 1987 about the levels of IDA grant-giving to corporations. Casey (2022, p.146-7) documents a specific example which centred around concerns about the failure of a particular foreign electronics company to meet its employment expansion targets. The firm in question was receiving significant IDA grants and tax reliefs. Despite their concerns, the company - backed up by the Department of Industry, Trade, Commerce and Tourism - refused to agree to any guarantees or clawbacks to State authorities. Casey indicates that by the time the company applied for another IDA grant in 1989, the Department of Finance supported it as the company had significantly improved its performance, crucially through the use of Irish suppliers. The department of Finance was therefore placated. This seems to be a trend whereby, the Department of Finance provides an internal critique on certain issues, such as the provision of grants, to the IDA and to corporations, but, after certain adjustments, ultimately supports the IDA position.

6.2.2 General approach to business taxation

The cornerstone of Ireland's approach to business taxation is its low corporate tax rate. However, Ó Riain (2014 p.199) points out that, by the time of the financial crash, Ireland had become reliant on a number of business-related 'bubble taxes'[78]. These

[78] The property related bubble taxes in the early 2000s enabled the government to cut income tax thereby unwisely narrowing the tax base. Much of these cuts had to be subsequently reversed during

include corporate tax as a growing portion of the tax base but also capital gains taxes and stamp duty taxes (a tax on a percentage of the value of the price of a property purchase). Ó Riain points out that capital gains tax had been cut from 40 per cent to 20 per cent in 1998 (contributing to the pre-crash property bubble). Stamp duty, introduced as an initial attempt to dampen the property market, had instead become a very significant source of income, also further fuelling the property market.

Ireland's treatment of tax expenditures[79] also 'fits firmly with the liberal countries[80], and particularly with those that added to their property bubbles through tax expenditures'[81] (Ó Riain, 2014 p.196). This 'liberal' approach to tax expenditures reflects a mistaken perspective among Irish governments of their meaning. According to Collins and Walsh (2010 p.2), tax expenditures in Ireland have traditionally been viewed as essentially 'invisible', as 'revenue forgone' and 'as a consequence often perceived as costless'. This is in tune with the weak place of taxation in the national social compact, reflecting part of the 'liberal' form of 'state intervention' (Ó Riain, 2014, p.196). This lax approach to tax expenditures remained in place and indeed remains in place to this day, despite periods of social partnership between government, business and unions. Current estimates of tax expenditures place Ireland in the mid to high range in terms of globally comparative data available. In 2020, Ireland cost itself almost 11 per cent of its GDP in revenue foregone as a result of its tax expenditures (Global Tax Expenditures Lab, undated).

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the 2008 onward austerity period. The point is that bubble taxes should never be used to cut taxes elsewhere. In practice they tend to facilitate unsustainable policy decisions.

[79] Collins and Walsh (2010) define 'Tax expenditures as 'a formal method for taxpayers, individuals or companies, to reduce their tax liability below that which would otherwise apply.'

[80] Ironically there is nothing 'liberal' about tax expenditures as they amount to state induced distortions of the market.

[81] Ó Riain draws on comparative statistics and analyses from OECD, 2008 and Collins and Walsh, 2010),

As noted in previous chapters, Ireland's corporate tax system features a small number of important tax reliefs. The most important in the FDI regime today is the R&D tax relief. Introduced in 2004, the credit is a good example of the problems in Ireland's approach to tax reliefs. An interviewee indicated,

> what tends to happen in Irish tax policy is something starts small, and it grows and grows. So, R&D was quite narrowly defined initially and then it has grown (interview 5).

In a study of the evolution of the R&D relief over time, Qualter (2022) found that an elite group of business actors have shaped the R&D tax credit. This is characterised by consistency in the private sector groups submitting their views to public consultations on how the credit could be adjusted and changes made by government which then mirror those requests. The quality and independence of evaluations carried out of Ireland's tax reliefs were also questioned by some interviewees (interview 6, 10).

'Dead-weight'[82] is a challenge with R&D incentives in particular (for example, one interviewee indicated that large percentages of deadweight are fairly normal). A larger question relates to how the provision of such tax credits fit into a wider system of innovation in R&D. Casey (2022 p.163) argues that Ireland's low corporate tax rate discouraged R&D. This is because R&D costs can generally be written off against tax, so corporations can choose to do that against higher corporate tax rates elsewhere (and presumably where there may be better innovation supports).

As also noted in previous chapters, an income tax relief for expatriate FDI workers as part of Special Assignee Relief Programme (SARP) was introduced in 2012. The stated purpose of the relief was to attract high calibre expatriate employees through

[82] An wasted cost (i.e. the activity would have happened without the state expenditure)

income tax relief. An interviewee described the relief as one of the most 'egregious' ever in terms of equity considerations. They also implied a link between the use of the SARP programme and salary inflation, which was flagged by Revenue to the Department of Finance. They said,

> Revenue would have seen the growth in SARP and Revenue would have seen the growth in salaries and you can see that in the reports that have been produced. And Revenue would have drawn that to the attention of the Department of Finance (interview 6)

The interviewee also implied a potentially inappropriate, repetitive use of SARP by executives and objected to it on principles of equity,

> Supposedly it is non-residents [who use SARP], people who [are] foreign executives being brought here [..] But there was a growing proportion of people coming back and availing of SARP who were formally [previously] Irish residents. So I pose the question: is there a bit of a merry-go-round here? You know, we will send some of the lads off wherever for the foreign stint and when they meet the non-resident's requirements [..] they are brought back and then the avail of the relief. Or more likely the company avails of the relief because of the net pay arrangements. So I was quite cynical about it. But my overall objection to the relief is on the grounds of equity. I think it is outrageously generous when you consider the levels of income which people are paying the higher rate of income tax (interview 6).

It should be noted that SARP is only applicable to the FDI sector and the R&D tax credit is disproportionately used by FDI companies. Some interviewees indicated frustration in relation to what they viewed as a prioritisation of the FDI sector over local businesses in business tax policy. For example, an interviewee indicated that Irish SMEs perceive FDI as getting 'greater policy attention' and 'policy certainty' than the indigenous sector. The reason they thought this is the case is because the Irish state doesn't 'see a flight risk' for the indigenous sector' (interview 11).

6.2.3 Key 'tax institutions'

In the 1960s and '70s Ireland had a very narrow tax base with notably disproportionate treatment of different groups[83] and suspicion of largescale tax evasion in the country, especially in cash dominated sectors. The trade union movement reflected the growing frustration among the population 'pointing to a crisis of confidence in the administration of the tax code' (Casey, 2022 p.100). The Revenue Commissioners, the institution tasked with tax administration, in this period 'privately attested to this growing public dissatisfaction with inequities in the system, emphasising the need for a clampdown on tax evasion and privileges for specific groups' (Casey, 2022 p.100). However, the perception of tax unfairness in the state continued deep into the 1980s, and has arguably never fully evaporated (Killian, 2013a). Various tax amnesty schemes were introduced by Revenue in an attempt to draw a line under tax evasion. These were viewed with public scepticism, not least because they were extremely favourable to well-known business people evading taxes in the country (Irish Times, 20th November 2001). The scandal relating to Deposit Interest Retention Tax (DIRT) whereby tax evasion was facilitated by the major Irish banks from the late 1980s, further deepened public distrust. The basis for this lack of faith in the tax system was confirmed in 1999 when the Comptroller and Auditor General issued a report on the matter indicating that Revenue, along with the Department of Finance and the Central Bank of Ireland were all aware of this tax evasion but failed to act to end it (Casey, 2022, p.200). Despite internal scepticism about the various tax amnesties, they resulted in far greater revenue collection than expected (Irish Times, 20th November 2001). For example, the 1988 amnesties which were accompanied by a nation-wide

[83] Farmers, for example, were exempt from income tax until 1974 and even then new charges only targeted a small number of the farming population (Casey, 2022 p.100)

public campaign, resulted in a windfall of IR£ 497/€ 631 million (IR£ 30/€ 39 million was hoped for) (Casey, 2022, p.149). The level of collection is also, of course, an indicator of the high prevalence of tax evasion in the country at the time.

Observing the returns generated by its enforcement power in action may have marked a shift in perspective in Revenue. Certainly, in 1989, a number of important initiatives were introduced. A Charter of Tax Payer Rights and Voluntary Compliance, and a press office were established indicating efforts to restore trust with the public (Revenue, 2023). The launch of the Tax Advisory Liaison Committee (TALC), also established in 1989, indicates a strengthening of the organisational process around tax administration in Ireland. TALC became an important forum of dialogue between Revenue and the tax practitioner, legal and accounting bodies on a wide range of tax administration issues. Its establishment was viewed as a significant change at the time. Interviews with policy decision-makers, tax practitioners, and administrators, all viewed TALC as a useful forum on administrative tax matters. An interviewee explained the thinking behind the formation of TALC,

> The idea was that rather than the tax practitioner community being the enemy and constantly fighting with each other, [..] that having a partnership or a cooperative arrangement with them was beneficial for everybody (interview 9).

There was apprehension initially among regulators that practitioners could abuse the forum to advance specific interests. An interviewee indicated a distinction made at the TALC between administrative and policy matters, where influence on policy matters was not permitted. They indicated,

> [..] if there was a question of policy. Revenue would have a view on it [a given policy], but [Revenue] would always tell bodies like the Institute of Taxation and CCAB [the *Consultative Committee of Accountancy Bodies]* 'that is a problem for the Department of Finance' (interview 6).

Another interviewee indicated what is likely a more realistic description of ongoing negotiation of this administration-policy boundary. They indicated that it wasn't always clear cut, but that navigating this fine line between administration and policy was necessary due to the complexity of translating tax policy into tax law and practice. They indicated,

> You will have people trying stuff on, you will. Not everybody, but you will have some people. But that is what public administration is about, you know. And I think they [Revenue] are pretty good at it, they are quite good at saying no, certainly in my experience. They are not a pushover. But sometimes if you have a reasonable point, sensible people take it. There is a lot of unintended consequences and stuff, or can be. [That's] how the things work in practice, you know (interview 9).

There is also a view that this was a contested, but an ultimately robust, dynamic, with an awareness among all parties of their intertwined relations. An interviewee described this as the government functioning as 'the gamekeeper' to the tax advisory community who act as 'the poachers' in taxation (interview 2).

While Revenue sought to protect its administrative, non-policy role in TALC, as noted in Chapter Five, the ruling of the EU General Court cast aspersions on its administration practice regarding Advance Pricing Agreements with Apple. Despite winning the case so far, a lack of integrity in Ireland's approach to Advance Tax Agreements was badly exposed in the decision of the General Court. The General Court was critical of Ireland's approach, calling them 'vague'. Regarding this, an interviewee indicated how thinking about Advance Tax Agreements only really began to emerge in Ireland in response to official international discussions in the 1990s. They conveyed a lack of awareness of Advance Pricing Agreements, indicating perhaps that they were a minority activity, or at least, not necessarily discussed within Revenue in terms of a need to align with international standards. They said,

> the tax competition debate took off in the late 1990s [..] people were saying, it is not just the tax code that gives unfair advantages to somebody, it is also tax rulings. So I remember being at many meetings [..] discussing tax rulings and the first thing you had to do was find out what these tax rulings were (.

The interviewee also indicated that once international research began in this area, many EU countries, 'including some of the biggest countries were found to be giving rulings that were a little bit suspect'. The interviewee commented that Irish Revenue has improved its practice in this area (and implied, that Revenue perhaps needed to), but in a context whereby other jurisdictions also needed to improve,

> Revenue have to be cognisant that they can't make the rules up as you go along, but there is no question that now the whole thing has been completely tightened up. There now is exchange of information and rulings, and this is a good development. But if you were to look back then at the practices in Ireland versus the practices in other jurisdictions you would feel that, and certainly that was an eye opener for me, that the Irish situation was far more limited [in terms of scope for abuse], if you like, than some of the other jurisdictions (interview 5).

This comparative view is largely based on the fact that Ireland's approach to codifying tax law limits discretion of interpretation much more so than in some other jurisdictions. The interviewee indicated that in Ireland's tax practice 'everything is codified, or as much as possible is codified'. Revenue had a reputation among domestic institutions for strict lawfulness. One interviewee indicated,

> I would be totally amazed if the Revenue Commissioners had done a deal with Apple. We [the Irish State] don't do these things. So if the Commission win this case I will be horrified. We tend not to do individual deals, general deals all right, but not individual ones' (interview 3).

While this is a common view of Irish Revenue, the fact that the ATAs with Apple were not reviewed indicates a very lax approach and indicates a high level of trust and cooperation between Revenue and Apple. The previous interviewee may be correct

that this would not happen in Revenue now, but Revenue did fail in competently administering the ATAs with Apple in the 1990s.

While the role of Revenue is strictly tax administration, for example, in issuing briefings to taxpayers on new tax rules, they also negotiate tax treaties and agree Advance Tax Agreements with corporations. An interviewee indicated that Revenue, through their negotiation of tax treaties 'had their finger on the pulse' regarding international tax practices and could brief the Department of Finance on potential developments in the market, what the reaction might be internationally and how these developments might affect Ireland's tax treaty position.

6.2.4 Tax-Regulatory Policy: The case of IFSC

The International Financial Services Centre (IFSC) was established in 1987 as a hub to attract financial sector and financial services companies into Ireland. As noted, in Chapter Four, the IFSC was also provided with a special tax rate of 10 per cent on its establishment which matched the special rate provided to manufacturing companies. This provided the IFSC with special tax treatment, initially in a partial geographical area of Dublin, in a similar strategy to that of treating Shannon as a special export processing zone. High political expectations underpinned the establishment of the IFSC, and low regulation was part of the political strategy of catalysing the project. Initially, the project was simply a pet project of well-known businessman Dermott Desmond who 'sold' the idea to the then Taoiseach (Prime Minister) Charlie Haughey. While it was something of a solo run by these individuals, the project continued to be led from the Taoiseach's office after its establishment (interview 3, 6). The Department of Finance had serious concerns about the IFSC on its establishment, fearing it would brand Ireland as a tax haven (Casey, 2022).

The IFSC was not robustly regulated in its early period. Despite the concerns of the Department of Finance, and its institutional responsibility for the IFSC, the IFSC was permitted to undercut other regulatory jurisdictions. For example, an interviewee indicated an insurance product which was not approved in other jurisdictions but was allowed into the IFSC. Once regulatory permissions were withdrawn, those companies exited Ireland (interview 1). Casey (2022, p157-8) describes alarm in the Department of Finance regarding a number of ‘astonishingly brazen’ applications by corporations for licenses to establish in the IFSC. Casey describes a particularly sharp example, whereby a US financial corporation proposed bringing a $1.5 billion investment from Bermuda to Dublin with three staff to manage the project and the Central Bank responsible for its regulation (with questionable capacity to do so). Casey writes, ‘[The Department of] Finance ultimately agreed to the proposal, but on a basis of twenty jobs, warning that failure to meet that target would automatically invalidate its certificates.’ So, while serious reservations were voiced by the Department of Finance, it, predictably, ultimately supported the venture. An interviewee reflected on the high influence of the threat of capital flight over policy making and legislation in the early days of the IFSC,

> There were obviously things being done in finance bills .. [..] .. different concessions, that would have been sought by the multinationals, non-Irish companies. I saw it more on the IFSC side than on the general business side but undoubtedly it was happening [..] International companies were saying, ‘listen we need better structures here and we can get them elsewhere if you don't give them to us’. So we did them. But I think that certainly wasn't the primary purpose of our corporation tax regime, it was just something that happened or evolved (interview 3).

The IFSC grew very rapidly. By 1995 it held offshore funds of $21 billion surpassing Jersey and Guernsey (though remained far behind Luxembourg, holding $350 billion). Its success involved a certain amount of employment, albeit only 1 per cent of total

employment by 2005. While Ireland's low tax regime no doubt attracted many financial and financial services companies into the IFSC, the big attraction appears to be low regulation (interviews 1, 3 and 4).

This lax approach to the regulation of the IFSC is something of a puzzle, given the well-founded, reservations about it in the Department of Finance which was tasked with approving certificates of practice for IFSC financial institutions. Part of the explanation is that Ireland was in search of *any* route out of its protracted underdevelopment. An interviewee explained, 'it was the mid-'80s, things were bad, it [The IFSC] was an idea that, with some tax driven incentives, you could build something' (interview 5). The prime ministerial backing of the project, combined with the IDA and other Departments, appears to have been very influential in introducing the IFSC but also making it into a flagship project recognised internationally. The interviewee explained,

> there is no question that as a policy initiative it [The IFSC] was a remarkable success in showing what you can do with [..] focus of the Taoiseach's Department which took ownership of it. [..] when you get the weight of the prime minister's department behind an initiative [..] in terms of dealing with issues and not just tax issues, but planning issues, and opening doors and getting things done and getting the weight of government behind that policy initiative. It is actually a sort of a case study in [..] a most remarkable success in a very short period of time (interview 5).

The IFSC in effect became a high-profile sign of Ireland's commitment to FDI, to its 'ease of doing business' and to low taxation, all of which were part of Ireland's outward facing communications to the corporate sector. However, the regulatory failures of the IFSC[84] had an effect on the corporate tax side of FDI. As Casey (2022 p.158) indicates, international concerns mounted among European countries about the regulatory risks of the IFSC. This he argues, 'almost certainly hastened the demise of

[84] e.g. such as the near collapse of the German Depfa Bank in 2008 (Scally, 2013)

the 10 per cent corporation tax rate' and the arrival of 12.5 per cent rate by putting EU focus on *both* the corporate regulatory regime and the tax regime. In a sense, the lack of regulation at the IFSC was putting the tax games under threat by drawing attention to them. This perhaps prompted the move to a more politically managed approach to the IFSC, which, with the introduction of the 12.5 per cent rate for all companies, ended the 'special zone' of the IFSC, thus equalising its treatment with other companies, at least at the level of tax rate. This normalisation was extended further through shifting to a more institutionally managed approach that is in place today.

6.2.5 National Tax Politics

In the 1980s, as today, the Irish tax system was driven by political over economic considerations. Casey (2022, p.137) writes that within the Department of Finance at the time, 'the whole [tax] system was viewed as imbalanced and illogical, a consequence of maximising tax revenue while at the same time introducing over generous special tax concessions to satisfy interest groups.' The influence of the Department of Finance was clearly tempered by the rising star of the IDA. While it was always clear that the Department of Finance was the policy maker and Revenue the administrator, the Department depended upon the legal guidance of Revenue in policy design. So while Revenue was technically advising on rules, it was heavily involved in discussions on the effects of rules i.e. in the grey area where administration meets policy. This is also because technical expertise was generally sorely lacking in the Department of Finance right up to the financial crash. This was partially addressed during the post-financial crash period. For example, an interviewee indicated that the Department hired ex-'Big Four' staffers which increased their technical expertise in tax accounting.

Public and transparent examinations of Ireland's tax system are rare overall, in the words of one interviewee, reviews of Ireland's tax system are 'occasional and haphazard'. In the history of the State, four Tax Commissions have been appointed by Ministers for Finance to examine the tax system[85]. While Tax Commissions are appointed at the behest of Government, their findings are independent of government. The weakness of the Commissions has been the lack of legal status of their findings. Tax Commission reports tend therefore to function more as an analytical backdrop to tax discussions in the State. Importantly, while there are representatives on the Commissions from various interest groups, ranging from business to trade unions, representatives with heterodox views tend to be a minority of members on the Commissions.

The rare occasions when Tax Commissions are established in Ireland is to diffuse pressure, either public pressure around taxation, or from within Government coalitions. For example, the 1980-85 Tax Commission was established largely under pressure, as a result of mass protests over the tax system, amidst widespread perceptions of tax evasion and preferential treatment for certain groups. An interviewee also highlighted that the 2009 and 2022 Tax Commissions occurred mainly because the (junior) Green Party in the coalition governments of the time insisted they happen (interview 10). This was presumably due to the long-standing concerns of that party about Ireland's low tax model and approach to carbon taxation. Notably, the 2009 Tax Commission was explicitly prevented by the Government of the time from examining alternatives to the corporate tax rate of 12.5 per cent in its

[85] In 1957, 1980-85, 2009, 2022

terms of reference[86], this remained outside of the remit of the Commission (Tax Commission, 2009).

The policy influence of the findings of the extensive work of the various Tax Commissions is notably low. For example, the Tax Commission which stood from 1980-85 recommended a widening of the tax base, a flat tax rate of 35% on personal and corporate income and abolition of most tax exemptions and reliefs, among others. Casey (2022 p.138) writes 'even the most modest proposals by the Commission were largely ignored, and many of the inequities survived for decades'. This Commission strongly recommended the Government shut down Section 84 lending. But the influence of the IDA outranked that of the Tax Commission. An interviewee describes how, at the time, 'the IDA wanted it' [the Section 84 lending]. The Department of Finance rhetorically discouraged the use of Section 84 lending, yet, failed to take steps to end the abusive practice (interview 9). Section 84 was eventually closed, but after a long period of concerns having been raised by the Tax Commission, and others, both in parliament and in the labour movement (interview 18). The slow pace to match rhetoric with action is notable, where political interest appeared to override policy discourse. The interviewee said 'if you are waiting for quick results don't go into writing reports for the government' (interview 9). While it is not true that no action at all is taken in relation to Tax Commission recommendations, the results of any action relating to redistributive tax changes can almost be pre-determined. For example, the most recent Tax Commission (Commission on Tax and Welfare, 2022) recommended a review of the treatment of investment funds in Ireland. The current Government is carrying out this review at time of writing (Department of Finance, 2023). However,

[86] The 2009 Tax Commission were required to have 'regard to the commitments on economic competitiveness and on taxation contained in the Programme for Government [including] the guarantee that the 12.5% corporation tax rate will remain' p.1

the review is based on a public consultation which, as public consultations on FDI matters in Ireland go, will inevitably be dominated by representatives of the Funds sector and so is likely to result in unbalanced feedback. Overall, this lack of influence of Tax Commissions appears rooted in a combination of governmental use of Tax Commissions to release political pressure; and a lack of intellectual openness and freedom within the Tax Commissions on the issue of corporate and capital taxes. For example, unusually, the most recent Tax Commission (Commission on Tax and Welfare, 2022) recommended increases in capital taxation. This seems to have occurred as a result of the presence of broader expertise on this more recent Commission. These recommendations led to significant coverage in the Irish media. The Tánaiste (vice-prime minister) scathingly responded to the coverage in the Irish media by indicating that this Tax Commission, which his government had established, was 'straight out of the Sinn Féin [opposition political party] manifesto' (The Journal, Sept 14th 2022), implying that the Commission was party political.

Another tax institution is the 'Tax Strategy Group' (TSG) and was established in the early 1990s. This group, like TALC, remains important and active today. The group, chaired by the Department of Finance, is comprised of 'senior officials and advisers from several governmental departments and offices' (Department of Finance, 2023)[87]. The group meets annually in order to lay out options in advance of the national budget. The Tax Strategy Papers produced for the group by the Department cover a list of options and issues relating to the tax system for the group to consider and make recommendations on. The group has sub-groups dealing with a range of taxes, including corporation tax. Historically, the content of the TSG papers was often

[87] The Department of Finance describe the TSG as a non-decision-making body, which functions 'to set out different options and issues to be considered as part of the annual budgetary process' (Department of Finance, 2023)

redacted, whereby the notes from meetings was released, but with excluded text. This is unsurprising as this was during a period when national budgets were largely made in secret. In more recent years, the published papers have become more detailed, with less redactions. However, while the papers are more detailed, an interviewee indicated very careful editing around discussion of sensitive issues, such as corporate tax avoidance structures, in advance of their publication. This emphasises the carefully, politically guarded nature of Government treatment of debate around the corporate tax issue. The careful editing also indicates both the 'sacred cow' status of corporate tax historically in Ireland and importantly, the potential silencing effect of critique of Ireland from within or outside government.

A more formalised grouping in national tax politics was at the IFSC. The Department of the Taoiseach chaired what was known as the 'Clearing House Group', formed in the late 80s when the IFSC was established (Irish Times, 2013). Little is known about the Clearing House Group, except that it was comprised of regular meetings between the Department of the Taoiseach, other government departments, the IDA and IFSC interest groups. The group came under public fire when it was revealed and that there are no public documents to identify the nature of its meetings. It subsequently began releasing limited minutes from around 2012 (Irish Times, 2013). The Clearing House Group appears to have been disbanded around 2014. The collaborations between the actors involved have continued and evolved into other institutions, including IFS Ireland (International Financial Services Ireland). IFS Ireland, is a public-private forum, including government departments and the IDA, leading the national strategy on the development of financial services. This group meets regularly and has a public action plan involving actions in response to market intelligence shared at these

meetings. 'Ireland For Law'[88] is another group, involving private legal practitioners, and several government departments and the IDA, and was also later established (around 2019) to promote the legal certainty provided by Ireland in hosting financial services and corporate assets. The IFS and Ireland for Law initiatives indicate a strong focus on public-private collaboration in the area of sharing market intelligence and opportunities. While they do not have a legally binding status, they serve an important function of ongoing and detailed communication between the State and key FDI sectors, including legal and accounting practitioners.

Business groups and their representatives also provide regular input to Government and seek to influence Finance Bills in response to changing competitive FDI conditions of other countries. A responsive and highly engaged approach by government to communication with MNC business interests has evolved. Pre-budget submissions, public consultations on tax reform, and the opportunity to have lobbying meetings are the key official mechanisms for interest groups to influence government policy. With some consistent exceptions from the NGO and trade union sectors, the majority of submissions are generally from business representative groups, and professional tax and accounting firms and associations. This is not least because of the significant complexity involved in making changes to tax legislation, which results in the requirement of a high level of tax expertise to participate effectively. The pre-budget period in Ireland is traditionally busy with a wide range of interest groups seeking to influence the budget outcome. This works alongside ongoing lobbying, which since 2015 registers lobbying engagements on a public database[89]. The database shows regular meetings occurring between FDI companies and government officials

[88] comprised of a range of government departments, the Attorney General, the Bar of Ireland, the Law Society and the IDA: https://www.irelandforlaw.com/about-us, accessed 9th August 2023
[89] www.lobbying.ie

and ministers. High level government officials also travel to the U.S. to meet companies there. These appear to be opportunities to strengthen relationships and discuss specific difficulties and concerns, often quite specific in nature (interview 2). While the public database does not document these bi-lateral meetings, the concerns of U.S corporations are publicly documented by their association in Ireland, the American Chamber of Commerce (AmCham). These submissions range from views on Ireland's education system to data regulation to taxation. The large accounting and law firms also have a very significant level of influence, both through public consultations and even close interaction with Ministers and top officials (interview 13, 2). This combined lobbying appears highly successful. Lobbying submissions of the tax advisory groups tend to mirror the policy goals of AmCham. However, they also provide detailed submissions relating to the workings of potential changes to specific tax rules. While the Big Four are viewed with caution from some Government representatives, they are also noted for their expertise and for being 'very adept' at spotting market opportunities (interview 5).

In general, corporate lobbying requests are often successful, transformed into government policy in subsequent budgets. For example, in a study of Ireland's R&D tax credit, Qualter (2022) indicates that there is a close relationship between lobbying submissions relating to the R&D tax credit and government action. The link between these two things is not quite as smooth as it appears - it is not a case of complete alignment - however, the general pattern is one of very strong policy alignment.

In summary, Ireland's business taxation model extends particular supports to the FDI sector, for example through the R&D tax credit and other incentives such as SARP. These expenditures are crafted within Ireland's tax institutions but with very significant external input from the FDI and tax advisory sectors. The FDI sector is

generally represented at the policy level by AmCham. However individual corporations have ample opportunities to engage with top government officials both in Ireland and in the U.S.. In addition, the FDI corporate sector and the tax advisory sector tend to mirror each other in their lobbying points, providing a strong common front of action in relation to tax rules.

6.3 The International Entanglements of Tax Politics

An attention to tax directs us to where contemporary industrial policy confronts other states. This occurred through trade in the past, when protection was a major issue, and which is perhaps re-emerging to a degree, particularly in the U.S. But in recent decades with free trade more of a norm, tensions arise around taxation and tax competition. These tensions have historically been handled through the tax treaty system (Rixen, 2011). The legal terrain is critical to dealing with these tensions, but as indicated in previous chapters, national and international laws have also become both a tool and preventative measure against tax avoidance. This legal terrain is internationally complex and operates in the shadow of power (Pistor, 2019). In this section I examine Ireland's international entanglements in tax in relation to its management of legal boundaries, the relation with the EU and the US and countries of the Global South.

6.3.1 Ireland's management of legal boundaries

As discussed in previous chapters, Ireland's pre-2015 residency laws gave rise to IRNR companies which were key corporate entities in the construction of the Double Irish and the specific 'stateless' structure used by Apple. As noted, the IRNR companies were a historic legacy from British rule. The rule was effectively based on the British colonial patterns of businesspeople living in British colonies while managing and controlling their original homes in Britain. In the Irish tax system, there

was an awareness that the IRNRs functioned in the context of an outdated approach to tax residency and of the controversial possibilities of the IRNRs. An interviewee said,

> The IRNRs were a topic of conversation within Revenue. Looking at it now [..] you have to remember where our tax system largely came from, it came from the British. [..] And they are very dated concepts [..] going back to British colonialism when [British] people were in India but they were always [going] back home in England [..]. And the same with companies, [there was] the tradition that a company would be regarded as resident where it was controlled and managed. Life has moved on, you know, companies can be controlled and managed anywhere. And the very fact that we did not have registration as a basis for residents for tax purposes. Certainly, in my view it ended up giving people a stick to beat us with, albeit that we weren't alone in that (interview 6)

Another interviewee however indicated that by maintaining IRNR companies, Ireland was maintaining a longstanding standard in tax law,

> [..] the traditional view in Ireland was that we were doing something that was internationally recognised for 100 years, in that our tax system evolved from the UK. So we didn't tax anybody that was on the Irish company register just because they were on the Irish company register. You had to actually be managed and controlled here, you had to have your board meetings here etc. And that was [..] the international standard (interview 5).

However, even when the UK itself updated its tax residency laws in 1988 (Daly & Mason), Ireland did not follow suit. An interviewee defends this inaction by indicating that anti-avoidance can be tackled in other ways and is also a responsibility of the resident jurisdictions of MNCs that were engaged in avoidance. They indicated,

> But, of course, over the years things had changed and particularly, let's call it the mother ship of the idea, the UK, changed the rules [..] but we didn't follow their model. We were saying, look this is the way we have operated for years, the management and control. So if there is a problem with that, then you have opportunities in your domestic law to make sure that any skulduggery that is going on around that... But it wasn't ever contemplated that this was in some way some sort of 'smart alec' provision. It was the standard for many years. So that was the attitude at the time. It wasn't something that was facilitative, it was an international standard. It just so happened that other countries had changed gradually and we had just stuck with that old standard. So that was the issue at the time, it wasn't like it was our problem, it was a matter for other jurisdictions to resolve it. It wasn't as if they didn't know about these [avoidance structures] to some extent. Obviously, a lot of the congressional

> hearings around Google and Microsoft [..] and all this stuff brought a lot of this to the fore. But I don't think there was any illusions in the US treasury, or whatever, with the structures.

The interviewee indicated how political attitudes changed due to public criticism about the suspected abuse of this rule in Ireland by Russian companies,

> [..] in 1999 [..] there was a tremendous storm over these IRNRs. The IRNRs were mainly Russian companies that had been set up, and some of them were associated with some money laundering activities [..]. You had ads in the Economist Magazine saying 'why not set up a company in Ireland?' [..]. And there was a tremendous reputation issue (interview 5).

The targets of the 1999 tax residency rule change were indeed Russian and/or Eastern European owned companies which were using the IRNR structure as a result of the change mentioned above in UK residency rules (interview 5, 6, 8). This of course indicates the 'merry-go-round' nature of tax avoidance, whereby a tightening of rules in another country funnels problematic practices from that jurisdiction to a new one (in this case from Britain to Ireland). Ireland, getting significant bad press on this, decided to act and adjust its residency laws. Crucially, the way in which the 1999 amendment was made, ensured that only companies from those (non-treaty) jurisdictions were affected, and not U.S. corporations or other treaty partners of Ireland. An interviewee explained,

> So the target [of the rule change] was these, let's call it, refugees, from the UK because they had actually been located in the UK until the UK changed their rules. So when they [the UK] changed their rules the problem was a knock on in our situation. So it was targeting those bad companies that were damaging our reputation and it was a question of doing so without doing too much collateral damage to the good activities. So the target was clearly that narrow focus so it was a question of how you do it with the least collateral damage. That was the thinking at the time.

This attempt to target certain companies is also reflected in an observation from another interviewee. They said,

> So we could have done the UK approach and just went to a blanket test of incorporation and said 'if you establish a company in Ireland and no other country comes to say this company should be resident with us, that company is resident in Ireland'. But we [Ireland] didn't do that. [..] but in this instance something was actually done: a carefully crafted finance act that kept certain companies [..] in this test of management and control and, in all other companies under the more objective test of incorporation (interview 8).

Based on the above, it seems that the 'bargain' struck between the Irish State and US MNCs was that if those corporations were carrying out activities of substance in Ireland, they could also benefit from the Double Irish and statelessness.

Despite this – i.e. what appears from the above to be a clear understanding in official Ireland of the use of IRNR companies by US MNCs - there is a sense that since that adjustment in the '90s, that the rules simply remained, untouched, requiring no additional rule-based changes and presumably were therefore normalised to an extent. An interviewee indicated,

> I don't recall [..] actual decisions that were leading to things like the Double Irish, I don't recall that sort of thing happening at all (interview 3).

This was, of course, because the necessary rules were already in place, requiring no further adjustments. An interviewee described an awareness within the Revenue Commissioners about structures like the Double Irish and that any in/action around them was guided strictly by Irish tax law and the requirement to protect the confidentiality of all taxpayers,

> Remember [..]the focus of the Revenue Commissioner is to make sure that these companies comply with Irish corporation tax rules. [Revenue didn't see themselves] as policemen for other jurisdictions. [..] I mean you have to be aware that everybody's tax affairs are confidential, it doesn't matter if you are a big company or a small company or a corner shop, so that confidentiality is maintained. While Revenue would be aware, of course, of general structures the idea that you would talk about individual taxpayers, even if they are big taxpayers, outside of Revenue, even with the Ministry of Finance, wouldn't be contemplated because everybody is entitled to confidentiality. [..] Revenue [..]

> would be [..] making sure there was no threat to the Irish Revenue and the Irish law. So that would be the focus naturally.

The interviewee did indicate that general trends may be discussed with the Department of Finance, but taxpayer confidentiality remained a major consideration,

> But in so far as there are structures [..] then of course there is no difficulty in [Revenue] talking about them in a general way with the policy makers in the Department of Finance. And, certainly, there would be no detail of any of these structures shared with anybody else.

Another interviewee indicated that the limits to institutional capacity in Revenue also meant that resources were prioritised to areas where breaches to Irish law may exist. Crucially, they indicate that this only changed when global tax norms changed. The interviewee indicated,

> The company's structures and the global structures were undoubtedly complex and Revenue's large cases division, their prime concern would have been the Irish tax exposure based on the law as it pertained to the companies within the Irish charge of tax. What happened afterwards [the exposure of the DIDS etc], there would have been a broad awareness perhaps to it, but [..] We would have had enough to do managing the entities that were within the charge of Irish tax. The Irish registered non-resident entities, they would have been well-known, but that was the reality. But it didn't really change until [..] the global became a particular focus in terms of broader corporate responsibility [..] (interview 6)

This presented a highly domestically focused, legal perspective also working under certain capacity constraints. However, it also reflects a lack of political responsibility around eroding the US tax base. An interviewee echoed the views of many others, that losses to the U.S. were simply a problem of the U.S. and not Ireland's problem,

> The fact that it [tax revenue] doesn't end up in the coffers of the U.S. is immoral, it is wrong, but it is not our business. I know how that sounds, but that is the way it works (interview 2)

Despite the organisationally fragmented information on the Double Irish, a number of interviewees indicated that the structure was actively promoted both by the IDA and the Big 4 accounting firms (interviews 2, 13, 6). As we will see, it was during the next

phase, where the ethics of the Double Irish and Apple's statelessness were questioned publicly, and the politics of invisibility was punctured, that the state acted to close them. In the meantime, as one interviewee indicated, as long as jobs and tax revenue were coming in, posing difficult questions internally in Ireland was avoided (interview 7).

In 2008, there was a further development. As noted in Chapter Four, US companies began to redomicile into Ireland, mostly from the U.K. Again, this is an example of the 'merry-go-round' of corporate tax, whereby rule tightening in the U.K. resulted in capital flight to Ireland. Redomiciled firms were viewed by the Department of Finance as an unwanted spillover resulting from tightening up of U.K. CFC rules, and an explicit 'tax play'. A number of interviewees indicated that redomiciled firms were actively discouraged by the Irish State, including the State advising the tax planning industry not to engage with them, even extending this hostility to (privately) chastising an MNC CEO for publicly stating their redomiciling was tax driven (interview 2, 13). Redomiciled firms indicated the dilemma of the Irish State - that of keeping out unwanted, reputationally damaging investment, while protecting the possibility of attracting employment-based investment. An interviewee indicated,

> [..] all that [tax] stuff around the edges is not that big an issue, it is all the other things we do, consistency, professionalism, ease of doing business, education, investment and infrastructure. All those things that we have done that support those sectors directly or indirectly have become a much, much bigger part of the equation than tax ever will. It doesn't mean that there aren't entities, there aren't investors who, it is a tax play and a tax play only, but actually we make it quite clear we don't want them [..] .

Whether this active discouragement by the Irish state influenced the reduction of redomiciling firms is unclear. It is clear, however, that the legal actions of other concerned states made a big difference. For example, several companies returned to

the U.K. once the U.K. eased its CFC rules again, under corporate pressure (Everett, 2012). This is an example of corporations forming a successful counter movement against U.K. tax reform. The Obama administration in the U.S. also halted the planned (enormous) merger and redomiciling into Ireland of Pfizer and Allergan by changing its laws (Irish Times, 2016b).

In a sense redomiciling happened despite the Irish State. It is a case of the unintended consequences of legal changes in other jurisdictions, in this case in the U.K. Redomiciling indicates the importance of collective multi-lateral action on corporate tax to reduce 'merry-go-round' options which enable them. It also indicates that low tax environments also come with a certain loss of regulatory control. For example, one interviewee expressed the somewhat helpless feeling of the Irish state at the time. They indicated that there was a sense in government that if Ireland took action to halt the entry of redomiciled companies, it would raise both political and legal questions about Ireland's treatment of all companies. Interestingly, while the advent of redomiciling firms was an initial cause for significant embarrassment in the Irish State, due to the naked tax driven agenda attached to redomiciling, many of these firms have now in fact become large employers in the state. This is a further example of the development of Ireland's real-artificial FDI project. In this case, it was artificial at the outset, but became substantive over time.

A further example of negotiating legal compliance is the example of the Knowledge Development Box (KDB), introduced in 2016. As we have noted in previous chapters, not all initiatives were instantly effective and this was the case with the KDB. Some observers explain its introduction as a response to competitive pressures from the UK. An interviewee indicated,

> We would have seen [in] '13, '14, '15, the UK getting very aggressive in some of the same FDI areas that we were playing in. There would have been a couple of high-profile developments, and the UK would have been an early mover around the Knowledge Development Box (interview 11).

An interviewee implied that the KDB introduction was more politically important than economically important at a time of intense pressure on Ireland over its regime. They indicated, 'there is an element of, sometimes you do things for a little bit of window dressing that keeps certain people happy for a certain amount of time and then you move on'. Part of the low take up of the KDB was described as the state trying to walk the line of maintaining patent box compliance with OECD rules, versus a tax avoidance loophole. An interviewee indicated 'you see, I think to make KDB work, it starts to look like the rest of the IP regime', implying that its parameters, if they are to be OECD complaint, are too narrow to be attractive to large firms (interview 2, 12). As signalled in Chapter Five, another interviewee speculated that the KDB could have been put in place to be ready for when the capital allowances on intangible assets run out for the companies using them (which run over a fairly short time period of 8 years, so in the near future). This would allow companies to avail of the lower tax rate on the surge in profits that would be in the charge of tax once the capital allowances run out, i.e. a further tax reduction method when the previous method of capital allowances had expired. This is interesting, as it would align with the emerging strategy of the Irish state of lining up new gaming options in advance of others closing down. However, this may not be the case and there are new issues relating to how the KDB would interact with the new global minimum tax of 15 cent per cent (the KDB was increased to 10 per cent in 2023 due to this), though that was not necessarily known at the time of its introduction. While the motivation for the KDB is unclear it has recently been granted an extended life for a further period up till 2024 (recommended by the Tax Strategy Group). This indicates that there may be a possibility the KDB

will play a role in the next iteration of tax games after the Onshoring game ends. If so, this would represent the smooth shift from statelessness to onshoring to a KDB game.

6.3.2 EU and ECJ

Form the late 1990s onward, the EU saw increased challenges to legal decisions on corporate tax issues which were heard at the European Court of Justice (ECJ)[90]. ECJ decisions in this area carefully focused on the protection of the freedom of movement of capital in the EU. A range of important cases were heard during this period. For example, in the notable *Cadbury's Sweppes Vs Commissioners of Inland Revenue* case in 2006, the ECJ decided that because a low tax arrangement by the UK company - of establishing 2 subsidiaries into Ireland - was not '*wholly* artificial' (my italics), U.K. CFC rules did not apply (which would have enabled the UK authorities collect tax on those profits). The ECJ also indicated that motivation to reduce tax by a company could not constitute relevant criterion for the UK tax authorities to impose their CFC rules either (Healy-Rae, Barry and De Buitléir, 2007 p.29). An interviewee observed, the ECJ tended to indicate what states could *not* do, rather than what they could (interview 7). Rulings such as *Cadbury's Sweppes* were monitored closely by the tax practitioner world in Ireland and clearly provided a high degree of legal comfort in their promotion of Ireland's tax environment to foreign corporations. In a study of the ECJ rulings of that period, the Irish Tax Institute judged,

> while some [Irish provisions] may need to be amended [in light of ECJ decisions], the general effect of ECJ action in the field of corporation tax is likely to be beneficial to Ireland, in that it will lead to better functioning of the European Single Market' (Healy-Rae, Barry and De Buitléir, 2007, p.viii).

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[90] ECJ decisions concerning direct taxes increased from the single digits annually up till the late 90s to double digits by 2005 (16 decisions were issued in 2004)

This indicates that the ECJ decisions were basically in support of the constitutional freedoms of the EU (as is required of the Court), including the free movement of capital. The case of Cadbury's Sweppes also indicates that the court was not willing to enter into defining what constitutes different degrees of 'artificiality' when it came to FDI. This is not surprising as global reform efforts have revealed the difficulties in formulating and achieving consensus on legal definitions in this area. In the face of the political vacuum on addressing global tax, the ECJ largely refused to step in.

The EU member states also play a role in facilitating tax avoidance. As we have seen, the DIDS was facilitated by a set of international rules. These included, in the EU, the withholding of royalty payments on transactions between companies in member states. This was aimed at facilitating ease of business in the EU. But as one interviewee indicated, led to the unforeseen consequence of the Double Irish (interview 7).

On the other hand, the EU has also played a proactive role in anti-tax avoidance work. The case for greater tax harmonisation within the EU[91] has long been on the agenda of the EC, blocked by Ireland among other low tax states. The EU also acted quickly to enact legislation from BEPS 1.0 and Pillar 2 as part of BEPS 2.0 (discussed further in Section 6.4.4). The EC Competition Commissioner Vestager has implemented state aid rulings (though mostly unsuccessful) against several EU states in relation to their tax treatment of large corporations. These contradictory realities indicate that the EU is simultaneously the partial architect of tax avoidance, while also possessing partial solutions to the problem. The context of these contradictory realities cannot be fully understood without also discussing the U.S. which I will do next.

[91] The current iteration of the proposal from the EC is 'Business in Europe: Framework for Income Taxation (BEFIT)'. BEFIT aims to have a) Common rules to compute the tax base at entity level b) Aggregation of the tax base at EU group level and c) Allocation of the aggregated tax base https://taxation-customs.ec.europa.eu/taxation-1/corporate-taxation/business-europe-framework-income-taxation-befit_en accessed 30/10/23

6.3.3 U.S.

As discussed in Chapter Five, the additional necessary rules to build both the Double Irish and the Apple Stateless structure came from the U.S. The lack of consensus within the U.S. to address its flawed tax laws has already been discussed. Chapter Five has outlined how numerous attempts by the IRS and U.S. Treasury to change these weak rules have been curtailed by the close alliance between corporate interests and the U.S. Congressional political system. And as one interviewee indicated, the IRS is (albeit grudgingly) 'bound by its own regulations' (interview 16).

Notably, even when there was an opportunity to end check-the box, a key priority of the Obama Administration, it failed to happen, it appears due to deference to corporate interests. An interviewee indicated,

> when the Obama Administration came in in 2009, they proposed to reverse check-the-box, to repeal check-the-box [..]. And this was the biggest revenue raiser in their budget on the international tax front. And then, within six months, they reversed themselves and dropped it. And this was definitely Larry Summers' fault. [..] He was the chair of the National Economic Council, but he essentially controlled everything because the Secretary of the Treasury was his protegé. He sided with the multinationals on this one, a big lobbying effort. So since then we are kind of more or less stuck with it (interview 16)

Regarding the IP Games discussed in Chapter Five, the IRS has challenged a number of IP valuations as part of their legal actions against CSAs. However, despite some exceptions, the IRS has largely been unsuccessful. An interviewee indicated that the IRS is far less resourced than the large corporations they challenge in court, in terms of funding and experience of their lawyers. An interviewee indicated,

> For a very long time the IRS lost all of its cases and it is my judgement that they were basically outlitigated [..] The litigators are inside IRS people, they are lawyers for the IRS in the chief counsellor's office and they don't get paid very well and they are civil service people. [..] And it is the same when it is on appeal, it is the Department of Justice people that are the litigators and they also are civil servants so you never get to the really top people unless it goes to the Supreme Court where it is the Solicitor General of the United States and that is an outside appointment, it is political appointment and usually is a really

> good litigator. But the Supreme Court essentially never takes these cases because they have the leeway to take any cases that they want and they are not particularly interested in tax even if it is a lot of money. So, it lands in the Court of Appeals and in the Court of Appeals (interview 16).

The interviewee continued to indicate that expert witnesses in court cases is also a matter of poor resources. They said,

> In my opinion they [the IRS] don't use their experts very well. [..] the experts on the other side, maybe it is a money issue, are usually much more qualified and seem much more sophisticated than the experts of the IRS, the economists, that is (interview 16).

In theory the problems, at least those relating to check-the-box, should be less pressing with the end of statelessness and the Tax Cuts and Jobs Act (TCJA) in 2017. The TCJA is slightly politically puzzling as it effectively ended some of the worst elements of U.S. foreign tax rules, most notably tax deferral. Why did this happen under President Donald Trump? Economic nationalism certainly appears to play a role, but also, as an interviewee indicated, the reduction in rate from 35 per cent to 21 meant that additional revenue raising rules were necessary to plug the gap (such as the GILTI and others, discussed in Chapter Five). U.S. Republicans wondered how to plug the gap. A European tax policy maker expressed surprise when in 2017, a few months before TCJA was enacted, they began to receive phone calls from U.S. Republicans asking about the BEPS reforms (interview 23). Many of the elements of the TJCA rules have their roots in BEPS. However, as noted in Chapter Five, given the underwhelming effects of TJCA in raising additional revenue, it is clear that the TJCA has not been as successful as it could have been. An interviewee believed that two things were happening politically with the TJCA. Firstly, the TCJA represented a genuine policy stance to address profit shifting by its global corporations, albeit through Trump's populist lens. And secondly, and furthering Trump's populist goals, a focus on rules

that would address the most politically salient examples of tax avoidance e.g. Apple's use of statelessness. So, while statelessness is over (as a result of TCJA, Ireland's rule changes, and BEPS hybrid legislation in the EU), the game was still allowed to continue, this time through pitting headquarter countries such as the U.S, against conduit countries, such as Ireland, as seen in the Onshoring Game. This has helped corporations, the U.S. to a degree, and Ireland very much. But it has not helped lower income countries (interview 24). The serious concerns of Global South states are discussed below (in Section 6.3.4).

It is worth considering where the Onshoring game and the games that proceeded it leave the U.S.-Ireland relationship. As noted in the earlier discussion on the politics of the IRNRs, a strong perspective in 'official Ireland' is that U.S. corporate tax avoidance involving Ireland is ultimately a problem of the U.S.. Interestingly that is also a perspective of many analysts of U.S tax rules and U.S. policy-makers. As one interviewee indicated, referring to the huge revenues shifted into Ireland, 'the income clearly does not belong to Ireland and it is up to the countries that the income does belong to' [to collect it]. This echoes the Irish official position exactly. However, the full placement of responsibility by Irish officials on the U.S. for their part in constructing the legal rules of these structures was highly politically convenient. Irish officials and tax advisors knew that the US would sustain the necessary rules because it consistently demonstrated that it could not reform its own tax system. This allowed Ireland to continually blame U.S tax rules and be factually correct in this critique. However, the placement of blame on the U.S. was made in the full awareness that the U.S. was unlikely to change the rules in a fundamental way, which so far has proven to be correct. This provided convenient political cover to Ireland when under pressure.

It is likely that this political cover will continue in some form because there is an ongoing contradiction within the U.S. approach to global tax - of committing to end profit shifting out of the U.S. on the one hand, while simultaneously undermining that possibility through its own in/actions. As one interviewee indicated

> the U.S. initiated BEPS. Obama lost the majority soon after and was unable to do anything [.. the whole continuation of the BEPS project was [then] led by [names senior U.S. advisor] whose role was to support incremental changes on the one hand, and resist fundamental changes on the other hand' (interview 23).

This appears to be reflected in the approach of the U.S. to negotiations on the Pillar 2 of BEPS 2.0, the global minimum tax. In addition, the U.S. Biden Administration appear pivotal to narrowing down the scope of Pillar 1 in the BEPS 2.0 reforms (these are discussed in Section 6.4.3 and 6.4.4). In addition, an interviewee indicated that the U.S. used their influence with the OECD Secretariat to ensure that the voting design in Pillar 1 will ensure that the U.S. will, on its own, be a blocking minority. An interviewee reflected the view of several others, that 'the U.S. has taken everyone down this road [..]for something that they are now single handedly responsible for it not being delivered' (interview 24).

6.3.4 The Global South

The strongest critics of the Irish corporate tax regime in Ireland have been internationally focused NGOs, focused on the significant impact of global tax avoidance on Global South states (outlined in Chapter Two). Specific evidence of negative links between Ireland's model and Global South states have been put forward by ActionAid (2013). ActionAid outline a case of a British food company reducing their tax payments in Zambia through intra company financing via the Ireland. NGOs such as Christian Aid highlighted the existence of the 'Single Malt' structure as a

replacement to the Double Irish (as noted in Chapter Five, it was subsequently closed down by the Minister for Finance as a result of its public exposure). In addition, Christian Aid highlighted unfairness in Ireland's negotiations of a tax treaty with Ghana relating to withholding tax arrangements. In response to pressure from Christian Aid, and, concerns voiced by the IMF, the Irish Government carried out a 'spillover analysis' of the Irish regime on Global South states. The report found that Ireland was not facilitating significant negative spillovers on developing countries due to its tax regime (IBFD, 2015). However, subsequent analysis indicated that the Irish Government study was too narrow in its scope (Lusiani and Cosgrove, 2017).

Global South states have signalled unhappiness with the current BEPS 2 negotiations, expressing a lack of influence in the negotiations (Christensen, Hearson and Randriamanalina, 2020) and double standards by the OECD, not least in the latest concerns about the OECD pressuring to reduce transparency relating to country-by-country financial reporting in Australia (FT, 2023). Dereje Alemayehu from the Global Alliance for Tax Justice indicated a perceived double standard in the OECD led process because it is likely that the US will not sign up. He indicated,

> Kenya was one of those countries which refused to agree to the OECD two pillar solution. On another topic they were negotiating a trade agreement with the U.S. The U.S. insisted they are not going to sign a trade agreement with them until Kenya withdraws its Digital Services Tax. And the funny thing is, of all the countries in the world, it is the U.S. which is not going to sign this Agreement. They want to hunt third countries for laws that do not apply to themselves. This is the OECD process (Global Alliance for Tax Justice, 2023[92])

Notably, Nigeria refused to sign up to BEPS 2.0, citing that its domestic arrangements, including a Digital Services Tax will generate greater revenue domestically (Mureithi, 2021). A coordinated move in late 2022 among African states succeeded in winning a

[92] #HLPF2023 side event on Reforming the Global Tax System

U.N. vote to strengthen U.N. involvement in tax policy as a route to gaining greater influence, and to re-opening discussions about the proposed reforms. The ultimate goal of some key representatives of Global South states is to achieve a higher minimum tax rate and unitary taxation based on formulary apportionment (ICRICT, 2018). Unitary taxation means firstly, ending the use of the arms-length principle of pricing between different fictionally independent entities within global corporate groups. Secondly it means moving to a global approach of apportioning of corporate profit among jurisdictions of corporate operations based on where sales, assets and employees are located for the purposes of taxation.

Table 6.1 indicates the meaning of the proposal of a global minimum tax, combined with unitary taxation in relation to the corporate tax dimensions outlined in this thesis. It shows that by combining these two options, all four dimensions are more unified in their treatment, indicating a robust approach which would undermine the possibility of gaming across the dimensions. Table

6.2 indicates a critique of the proposed Pillar One (under negotiation, unlikely to happen) and Pillar Two (currently being implemented) based on the tax dimensions. We can see that Pillar Two does provide a unified approach to the dimension of rate. However, because there are different options available on the formula for the rate, potential loopholes may emerge to undermine it. Pillar One, breaks with the arms-length principle through proposing partial unitary taxation by taxing 'residual profits' or corporations. This is a proposed shift away from the arms-length principle to the treatment of profits as a whole, apportioned based on sales. This is the first time that any shift away from the arms-length principle has been conceded in tax negotiations. However, only a small portion of residual profits and corporations are in scope. In

addition, if countries sign Pillar 2, they cannot implement digital taxes, thereby giving up an important return upon which taxation can be imposed.

Table 6. 1: Global minimum tax and unitary taxation in terms of tax dimensions

Elements of more fundamental reform	Relation to tax dimensions
Minimum tax	Rate and jurisdiction
Unitary taxation	Jurisdiction, Owner and Return

Table 6. 2: Critique of BEPS 2.0 from the perspective of tax dimensions

Proposal: BEPS 2.0	Current proposal	Critique based on tax dimensions
Pillar One	Residual tax on a portion of profit of very large corporations	*Jurisdiction*: market countries favoured *Owner*: Only small no. of corporations in scope *Return*: does break with arms-length principle through partial unitary taxation; only residual profits in scope; if countries sign Pillar One they cannot implement digital taxes
Pillar Two	15 per cent minimum tax in different iterations	*Rate*: unified minimum across states, is relatively low and not robust in design (different options available)

Seeing unitary taxation as the end goal of many Global South states, Ireland abstained from the vote mentioned above at the U.N along with EU member states and has been categorical that it supports the OECD as the leading Global tax organisation. An interviewee indicated,

> If you go into the UN, the IMF, the rules start to change. They don't have the expertise [..] there is a whole range of reasons not to do it [support the UN]. That is why the OECD is a far safer place for Ireland to be (interview 2)

In many ways, it is the internationally focused NGOs in Ireland that have shown the clearest understanding of global tax within the irish NGO community. In contrast to many activist groupings in Ireland, these groups have not called for U.S. corporations

to pay more tax in Ireland but have focused on the need for a global solution[93]. Irish governments have defended their positions by insisting that Ireland does not directly negatively effect developing countries. This is interesting as it presents a misconception that solving the problem relies on solving bi-lateral tax relations when the whole basis for BEPS reforms is to initiate a global solution. There is a campaigning gap in the noisier side of tax politics in Ireland, which is the missing voice of trade unions, which, unlike internationally focused NGOs, do have a stronger mandate to pressure on this. As we will see in Section 6.4.2, the trade union movement has dissented overall from the low corporate tax model, but have in times of crisis, largely supported it, and overall have been low key in their opposition to it.

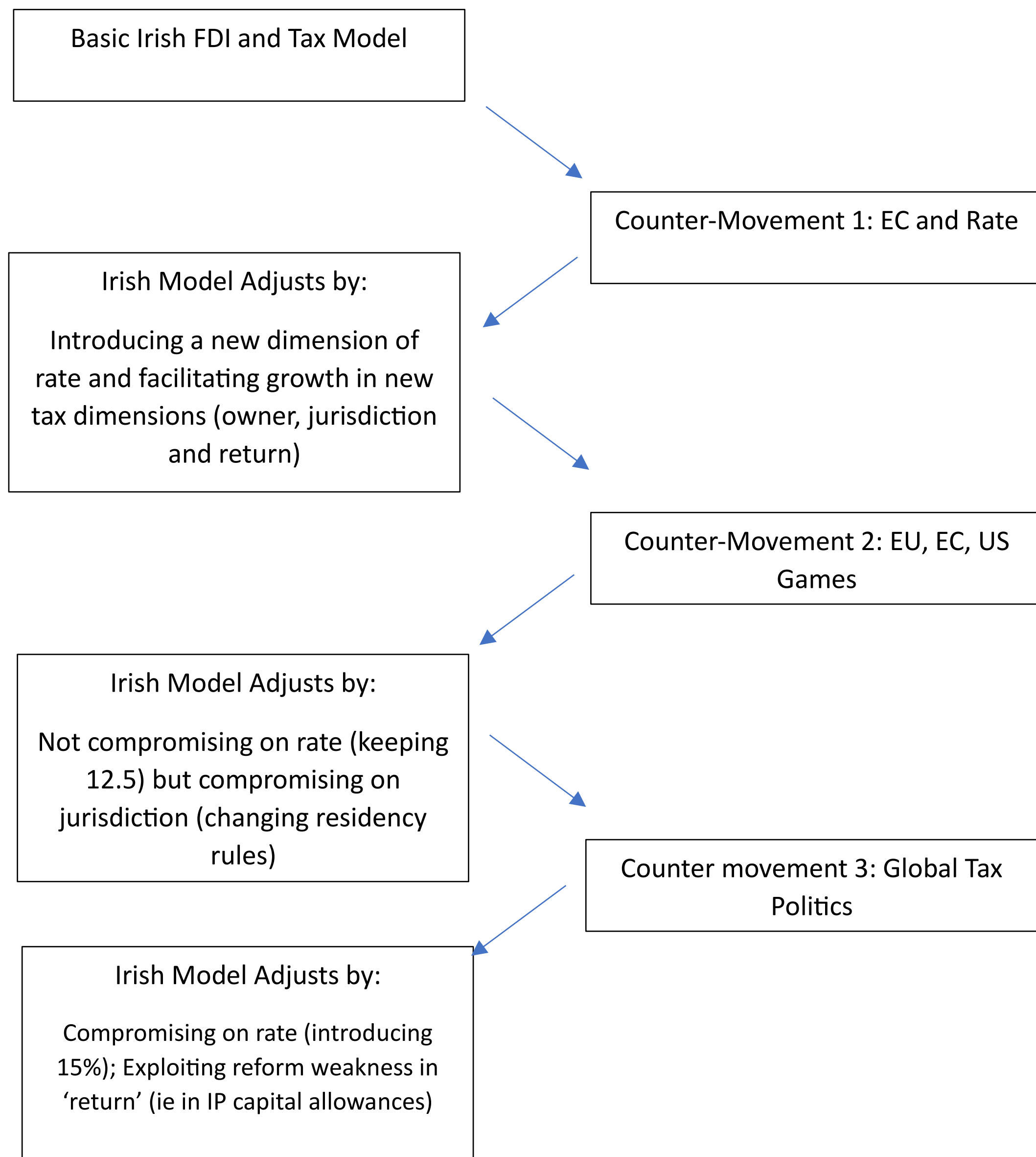
6.4 Movement and Counter-Movement in the Politics of Corporate Taxation

6.4.1 Overview

This section explores the politics of the counter-movements against Ireland's tax games and Ireland's response to them. It outlines three counter-movements (Figure 6.1). The first counter-movement is from the EU, and was focused on the tax rate. Ireland's response was to develop a new dimension of rate and facilitate the growth in the use of new tax dimensions of jurisdiction, owner and return. The second counter-movement was from the EU and U.S. on the various dimensions of the games. Ireland's response was not to compromise on the rate but to compromise on jurisdiction (by changing its residency rules). The third counter-movement arose from the global tax reforms. Ireland's response was to compromise on rate (introducing 15 per cent) and exploit global reform weakness in the dimension of return (i.e. its IP capital allowances).

[93] A common misconception on the part of the political left in Ireland is that corporations pay too little tax in Ireland.

Figure 6. 1: Three Counter-Movements



6.4.2 Counter-Movement I and the Irish State Response

It was a requirement of the European Community that Ireland end the special arrangements on tax rates. This was triggered in 1994 by a complaint of unfair competition against Ireland by U.K. growers in the mushroom industry against the 10 per cent rate (which had been awarded to mushroom growers in Ireland). This also brought a focus on special treatment of manufacturing and financial services and resulted in a review of the regime (Casey, 2022 p.196). The lead up to the decision to

introduce a 12.5 per cent rate was contested domestically. Interviewees indicate differences of opinion between the IDA, at the time, aligned with the Department of Industry and Commerce, and the Department of Finance (interview 5, 8, 9). While some commentators indicate the Department of Finance was advocating for 15 per cent, one interviewee indicated 'ideally, they were looking for 17.5 per cent' (interview 8). Casey (2022) indicates that a meeting occurred in February 1997 where the Department of Finance advocated for a 15 per cent rate. The Revenue Commissioners advocated between 15 to 20 per cent. Casey (2022, p.198) indicates that the Department of Finance and Revenue both feared that too low a rate would put Ireland 'on an international hit-list of countries involved in harmful tax competition'. The IDA and the Department of Industry and Commerce supported a 12.5 per cent rate. Research interviewees generally viewed the IDA as strongly influencing the choice of 12.5 per cent rate (interviews 3,4,9). Interestingly, the Department of Foreign Affairs does not feature in these debates. The institutional lines drawn during the debate appear to show the arms of the state focused on corporate clients (the IDA and the Department of Enterprise) on the side of a lower rate option and the Department of Finance and Revenue on the other, more tempered side, seeking a slightly higher rate. The IDA appears to have been the decisive voice in the end. But how? This was possibly through a direct channel to the Finance Minister who listened more to the IDA than his departmental officials. Some interviewees, indicated that the final 12.5 per cent decision was settled upon, not through a documented institutionalised process, but as a decision between the relevant Finance Minister and the head of the IDA .

Interviewees outline that the considerations around the level at which to pitch the rate related to weighing up the differentiated impact on the manufacturing sectors of tech and pharma as important employers on the one hand, and the IFSC firms on the other.

A choice was made to prioritise manufacturing, in the expectation that this would not damage relations with financial service firms. An interviewee indicated,

> there was a lot of stuff in the mix but, as to the fundamentals, it was a debate on what [..] the pharma and IT sectors in particular could bear, without damaging further inward investment and expansion, versus on the IFSC side. [..] It was felt at the time that the amount of money we were going to lose from bringing down the tax on the non-manufacturing was worth it to keep the low rate on manufacturing on the foreign enterprises coming in (interview 5).

An interviewee outlined the key ingredients of the strategy around its introduction. These included the provision of significant advance notice of several years; allowing companies that were availing of the then current 10 per cent rate to continue to do so through a long 'grandfathering' period; and the provision of certainty that the 12.5 per cent rate would be the long-term rate. The interviewee indicated,

> We [Ireland] did that very unusual thing, we set up in legislation over a period of four, five, six years, grandfathering the 10% for the duration and then reaching the rate in the year five or six. [..] the grandfathering for the companies that had the 10% rate was very important. You gave them [MNCs] certainty in that five-year window and then it was a small step [up to 12.5] after that. You legislate in advance. So again, it is [about] consistency, certainty and so on and so forth (interview 2).

The EEC, however, did not expect the new rate to be so low (Killian, 2013b). The EEC was also concerned that the level of the rate was too low to be viable in terms of revenue generated, a somewhat quaint view in retrospect, given how lucrative it eventually proved for Ireland in combination with other tax dimensions. An interviewee explained their take on the European expectations,

> [..] the expectation of the EU [..], in that period in the '90s, was that we would have equalised up from 10 to something like 25, and of course we did [equalise], and they [the EEC] never quite forgave us, quite frankly. We brought the 30 down to the 12.5 and the 10 up [to 12.5] (interview 2).

However, EEC dissatisfaction was somewhat assuaged by an important, strategic compromise on the Irish side of applying the rate nationally to all companies, therefore

treating their domestic companies in the same way as foreign companies (interview 7).

The countermovement by the European Community against the 10 per cent rate was slow coming, but ultimately forced the hand of the Irish State to change its rate. However, Ireland strategically responded through something of a sleight of hand – by ensuring the new rate was within state aid rules (by applying it to all companies) while also maintaining its position as one of the lowest rate regimes in Europe. This happened as a result of Irish politicians responding to corporate interests (as reflected to them by the IDA) and by weighing up the potential reactions of the financial versus manufacturing sectors. They decided to favour manufacturing, particularly tech and pharma sectors. The shift to 12.5 per cent was not of course where the real action would be in the future. The 12.5 per cent rate, with all the political certainty invested in it, would function as an important, steady and consistent tax dimension. The other dimensions of jurisdiction, owner and return would take on growing importance in the next round of tax games. It is against Ireland's facilitation of these tax dimensions that the next counter movement was mounted.

6.4.3 Counter-Movement II and the Irish State Response

Pressure mounted on Ireland after the 2008 financial crash where EU politicians in higher tax states expected an increase in the Irish corporate tax rate as a quid pro quo for EU loans issued to Ireland to save its beleaguered domestic banking system. The Irish state successfully resisted this in their 'bailout' negotiations, where, according to an interviewee, Taoiseach Enda Kenny was unwavering on the issue at a crucial EU Council meeting . Public support from Irish MEPS (Irish Times, 2010) and the strong EU business lobby which supported the continuation of Ireland's 12.5 per cent rate presumably also influenced the outcome in favour of the Irish position (interview 7).

Of course, the legal requirement of unanimity on tax matters in the EU meant it was impossible for the larger states to force Ireland's hand. Still, it is striking that Ireland managed to be so successful, given its weak political position at this time. One interviewee indicated that Germany often ultimately supports Ireland at the EU Council. Another indicated Ireland's success is because, from a large-state EU perspective, Ireland is highly pro-European and so politically useful (interview 19). This is despite the high irritation in the EU circles at the time about Ireland's low tax model and more recently in relation to how profit shifting into Ireland not only distorts Irish national macro-economic statistics, but also those of the EU. Some corporate tax concessions were made by Ireland around the time of the financial crisis, however. Under this political pressure, long absent transfer pricing rules were finally introduced in Ireland 2010. However, they were viewed as weak by tax practitioners, not least because they did not apply to investors already established in Ireland pre-2010 (Collins and Mulligan, 2014).

The devastation of the economic crash resulted in even less critical engagement domestically with Ireland's low tax model. Strikingly, part of the trade union movement reversed its opposition to the 12.5% rate in support for the model. An interviewee indicated,

> prior to [the crash] for several years the Congress of Trade Unions had a very firm position on corporate tax, every pre-budget submission we called for corporate tax to be increased [..] and the whole edifice around that. [After the crash, the trade union movement decided to] abandon that policy in favour of reiterating a commitment for the 12.5% and everything else that went with it, which as you know extends a lot below 12.5%. [..] we had nothing going for us and the people that [the trade union movement] represented were on the bottom, they were the people who were going to, and did, suffer the most (interview 19).

The interviewee noted that it brought the Irish trade union movement uncomfortably out of step with its European counterparts. It should be noted however, that trade union

representatives did not endorse in full the Tax Commission reports of 2009 and 2022 due to objections to the low corporate tax rate and model. However, opposition to the low tax model from the trade union movement was not hugely visible, not least because of the high-quality jobs available in the FDI sector (interview 19). This interdependency was not lost on either side (though as a general rule, the pharma sector are more unionised in Ireland than the ICT sector, with the notable exception of Apple whose workers are unionised in Ireland). An interviewee indicated that a shop floor representative conveyed back to their union that a senior executive in a large foreign company was not impressed by union agitation against the low tax model, asking workers if this meant that the union were not interested in accepting their business (interview 19). During the period of the crash, there was an almost generalised position that the 12.5 per cent was about defending the next generation of investment decisions into Ireland. This was as much about projecting an image of national economic stability as much as it was about protecting the 12.5 per cent rate. In a sense both things had merged. The commitment to 12.5 per cent represented a commitment to FDI. An interviewee indicated,

> did 12½ contribute to the recovery? It actually doesn't matter. [..] The real risk was if we had degenerated into Greece, let's say, the investment decisions that were being taken, the next generation of decisions taken may well be Intel [deciding] 'let's take our production out of Leixlip and let's go out to Tel Aviv or whatever, or consolidate it back in the US, this is just too much'. It is that thing that we were able to stand over our system and defend our system and so on that gave them [MNCs] certainty (interview 2).

In 2010, political pressure mounted on Ireland once again, this time following a high-profile Bloomberg article describing the workings of the Double Irish structure. An interviewee indicated EU level dissatisfaction increased to focusing on the Irish regime, beyond the low rate at this point, as the Double Irish involved sending profits on to zero tax havens (interview 7). These are jurisdictions long condemned by EU

states for their tax haven characteristics. This was followed by exposure of the Apple 'stateless' structure, at a hearing of the U.S. Senate in 2013. In response, and as discussed in Chapter Five, the Irish Government outlawed the possibility of stateless tax structures the same year and, in 2014, changed its residency rules with a phase out the Double Irish Dutch Sandwich structure.

Although we have seen strong similarities in the rule-based workings of the DIDS and the Apple stateless structures, awareness of the Apple structure seems to have been fragmented in official circles at the time. 'Statelessness' was clearly understood by the IRS in the U.S. which adopted 'stateless' categories in their tax return system if companies did not register for income tax (interview 8). But it appears statelessness was less understood on the Irish side, partly because it was not a widely used structure, or at least the understanding of it was more institutionally fragmented. An interviewee explained intelligence gathering on MNC activity requires significant state capacity, 'if one [MNC] was specialising in this [statelessness] it doesn't necessarily mean we have enough intelligence to know' . The interviewee continued,

> [..] [public officials] were shocked by the stateless piece, and I mean quite genuinely. Until it was explained to you how they could do it, none of us really conceived that it was possible [..], Revenue may be slightly less surprised, but I don't think it was generally understood in Revenue [either].

While the Apple structure was viewed as unacceptable, the Double Irish was viewed as a somewhat more complicated case. It may be that there was also unhappiness with the Apple structure which the Irish State (rightly) realised may bring a state aid case upon them. An interviewee indicated,

> So statelessness was condemned almost from the start and we abolished it, almost with nemesis. We gave them precisely one year to reorganise themselves. [..] The Double Irish on the other hand, was it uncomfortable? Yeah, it probably was an uncomfortable place to be in the modern world. But the real difficulty, the back end of it was the U.S. had a different form of residency and it was still going to be open [..]. But at the end of the day we

> gave up on that very flimsy defence, so to speak, and just did it [closed it] anyway [..]. But the stateless, no, the stateless was quite significant.

The Irish state therefore responded much more harshly in its closure of the Apple 'stateless' structure than it did to the companies using the DIDS. In contrast to the closure of the DIDS, Statelessness was closed with no grandfathering period. The exposure of the stateless structure also appears to have had the effect of expediting the closure of the Double Irish and signalling the need for a new political strategy. An interviewee indicated,

> once statelessness happened, we knew we were on a journey, and we started to socialise that. And the message we were socialising for the investment community and then eventually for the wider community was: we either change on our own terms, or change is forced on us. The message was clear, the Double Irish is over, but we do it on our terms [..].

An institutional process surrounded the ending the stateless structures, the interviewee continued,

> we had to bring industry with us, we had to bring the IDA. Bringing the IDA is nearly more difficult than bringing the companies, you know, because it has been their sales pitch [..] for years and years and you are fundamentally changing. They are very good when you get them there, but it is a journey with them .

The process of ending the Double Irish also involved a political negotiation with the EC whereby the Irish government indicated a transition plan out of the Double Irish to the EC and agreed a timeframe so that Ireland would be 'seen to be doing it on our own' .

The tax advisory community also had to be persuaded, unwilling to concede on their function in Ireland which as we have seen in Section 6.2.4, is to effectively represent the tax interests of U.S. corporations. The interviewee indicated a moment of shock among the tax professional community when they realised in a meeting with the Department of Finance that the Double Irish was over. However, changing attitudes among the large corporations occurred at different paces. The U.S. based management

adapted to the change more quickly than their local CEO counterparts in Ireland. In the closing of the DIDS, the grandfathering period of 6 years provided was unusually generous. An interviewee commented on ‘grandfathering’,

> when you were introducing something you would introduce it gradually. Well, what was done there [in closing the DIDS] was more akin to ‘great-grandfathering’, they [the MNCs] got a very generous lead in time (interview 6).

Another interviewee indicated the somewhat different responses from companies to the closure of the DIDS, depending on how tax aggressive they were. They indicated that some companies reversed out of their Double Irish structure immediately and some of the companies ‘that were, let's say, more interested in the tax advantages, did it later’ and also complained about the timeframe being too short. It appears that most US MNCs accepted the ending of the DIDS, though a small number of more aggressive firms (about 3) campaigned against it ending.

Acceptance of the end of the DIDS by MNCs was bolstered when questions of responsibilities shifted from the Irish state to the companies themselves. Companies began to be named in the press. An interviewee indicated ‘they weren't very happy to expose themselves. And that did start to change attitudes [..]’ (interview 2), indicating that when the focus was on the Irish state, corporations were willing to continue with the structure, but once public focus was directed at them, they decided to change. The reputational damage to Ireland was a huge concern among officials in Revenue. The delays by the state in taking action to shut down the Apple arrangement and the Double Irish structure were also viewed by several interviewees as hugely damaging to Revenue, the Department of Finance, Foreign Affairs and the political standing of the Irish state internationally in general (interview 3, 5, 4).

The next threat to Ireland was when the EC ruled that Ireland had provided state aid to Apple through its tax system. An interviewee indicated how the ruling was viewed in the Irish political system. The political threat to Ireland of the EC case was viewed as existential. An interviewee indicated 'when the Commission took the state aid case [..] we stood up and we didn't defend Apple, we defended the Irish tax system' (interview 2).

While the tax community globally generally viewed the case as unwinnable by the EC (in the form taken by the EC) (Daly and Mason, 2020), there was still uncertainty on the Irish side. An interviewee indicated,

> The risk for us was always that they would find some strange, bizarre piece of state aid and they would get a hook on that and that is where the damage is done .

The Irish state responded to this uncertainty by recruiting renowned litigators to build as watertight a legal defence as possible along with recruiting strong tax experts (interview 2, 16). Despite winning the case (it is currently under appeal by the EC) there was a view that Ireland's political standing internationally had been seriously damaged, not least because of the length of time Ireland took to end both the Apple stateless and Double Irish structures (interview 2, 5).

In the meantime, Apple was implementing a new game. As we have seen in Chapter Five, Apple was among the quickest to make its move in onshoring its IP to Ireland. There has been speculation that the generous 100 per cent cap provided for in the capital allowances regime was in place to serve Apple's new structure (Clancy and Christensen, 2018). However, an interviewee indicated that the cap was increased from 80 per cent to 100 per cent because of the lack of initial take up by corporations, again signalling, as mentioned in chapter Five, a 'testing the water approach'. The cap was reduced from 100 back to 80 per cent because the rush to use the allowance by Apple

was unanticipatedly high, so the 100 per cent cap was viewed as a mistake and reduced to 80 per cent in order to slow down the rapid inflow of IP.

Coming directly on the heels of the closure of the stateless structures was a new set of pressures. Ireland's real GDP experienced an extraordinary increase (of over 26 per cent) in 2015. This was caused by the onshoring of IP to Ireland by Apple as a result of its restructuring post-the closure of 'statelessness'. It was believed in Government that Apple would do the onshoring in two steps i.e. they would move from resident 'nowhere' to forming a 'Double Irish' and then onshore it. However, Apple audaciously made the transition in one step, 'they did it all in one package', hugely exposing the move via the level shift in Ireland's GDP. An interviewee indicated that state agencies are part of the advisory process in MNC decision-making on corporate structuring decisions whereby companies consult the IDA and perhaps the CSO before making a big financial move (interview 2). A certain naiveté was exposed in Apple's game playing skills, worsened by their lack of consultation with state agencies. This indicates an important, hidden dynamic of the games – that of information sharing, along certain restricted lines, between state agencies and companies regarding the effects of major movements of capital. The interviewee indicated a potential alternative approach that Apple could have taken, which would have been to buy the IP into Ireland in segments over time which would have shown trade differences in the national accounts, but not the enormous, headline grabbing 26 per cent GDP increase. Indeed, Apple's miscalculated move was instructive to other companies which subsequently onshored their IP partially, and in segments, rather than in totality (interview 2).

Once the damage was done, Apple scrambled to ensure that they were not named as the company responsible, a strategy which included legal monitoring of public media

activity on the topic to ensure they weren't named. Apple were never specifically mentioned by the Irish state in relation to the GDP spike, although various documentation indicates Apple's clear involvement (Coffey, 2018). The 'politics of invisibility' therefore remained somewhat intact due to the consistently upheld legal obligation in Revenue and the CSO to protect company confidentiality. However, a realisation had dawned on the Irish Government - that hosting large companies also brings with it very large risks (interview 2 & 4). One company had now, twice, brought Ireland into global disrepute through the 'statelessness' public scandal and the impact of IP 'onshoring' on Irish GDP. The Government were not happy, which was communicated back by the minister at the time to Apple's management in the U.S. Further intense communications, ultimately between the Taoiseach and Apple's CEO, followed in order to establish an unprecedented method to transfer €16 billion (the potential amount to be paid by Apple to Ireland pending the outcome of the legal case) from a private corporation to a nation state via an escrow account, no doubt an intensely uncomfortable arrangement between both parties.

6.4.4 Counter-Movement III and the Irish State Response

Since the inception of its FDI strategy, the Irish state engaged in strategic inaction on corporate tax rules. For example, for a long time Ireland lacked a range of anti-avoidance rules in its tax code which, among others, included transfer pricing rules, Controlled Foreign Company (CFC) rules and thin capitalisation rules until this period of pressure[94]. It was particularly unusual for a developed state not to have transfer pricing rules in place (Collins and Mulligan, 2014). PwC described the pre-2010

[94] CFC rules aim to deter companies from locating certain types of operations in low tax jurisdiction . Transfer pricing rules are rules guiding the pricing of the sale of goods and services between affiliated companies. Thin capitalisation rules limit the amount of debt that can give rise to tax deductible interest expenses.

situation as characterised by an ‘absence of local regulations and scrutiny prior to the 2010 Finance Act’ (Cosgrove, 2019).

A plethora of legislation has since been enacted as part of the global tax reforms, launched in 2013. This period involved something close to a ‘psychic shift’ by the Irish state to align with the BEPS 1 and 2 reform processes. An interviewee described the strategy, of seeking to align with international good practice so that Ireland would not be seen as an outlier. Several interviewees also indicated a sense that, given that this represented a global shift in tax norms, with all states (at least at the beginning) expected to participate, that it may not be too damaging to Ireland at this stage of the games to support it. Of course, as noted in Section 6.3.4 focused on Global South perspectives, the Pillar Two rate is viewed as very low and Pillar One is unlikely to come into effect, so Ireland ultimately had little to worry about, though the state was not necessarily aware of that from the beginning of negotiations.

A central strategy to managing this shift was ongoing, intensive communication between government, corporations and tax advisors through formal public consultations on global tax reform. A ‘Corporate Tax Roadmap’ was launched by the Department of Finance and periodically updated with ongoing tax reform changes, including signalling of proposed, or potential, changes. This was part of a wider shift in Government, post-2014 of signalling policy changes relating to the budget in advance. The fragmented and under-resourced nature of Irish civil society (Murphy, 2011), and the highly technical nature of the international tax reform proposals, meant that the participants in the consultations were predominantly from private industry and the tax advisory world, with a small number of exceptions from the NGO and, on occasion, the academic sectors.

Long absent anti-avoidance legislation is now in place in Ireland (including updated transfer pricing rules). It is too early to judge their full effect, however, critiques have been put forward, focused on certain choices or reservations made by the Irish state in the reform negotiations which limit their effectiveness (e.g Oxfam, 2018). It is clear overall that the reforms which were mostly part of BEPS 1.0 have not had the fundamental desired effect of aligning profits with taxation. There is evidence of continued profit shifting (see Chapter Five). For Ireland, the relocation of IP has been a major outcome of BEPS 1, along with increased booking of profits and the associated surge in tax revenue. This was not the intended outcome and the OECD did not appear to envisage it. An interviewee indicated an interaction with the OECD for example. They said,

> I said [to a senior OECD official] a huge amount of IP is going to come to Ireland, not all, but a huge amount. [The official said] 'Oh no, no, nothing will go to Ireland, that is not what it is about'. And I tried to explain to him for first principles if I am on a sandy beach somewhere and I am paying zero tax and I want to move onshore then I am definitely going to consider somewhere that offers me 12½% or a variant thereof. And he was very put out when he was proven to be wrong.

Another highly involved interviewee confirmed that the onshoring of IP to Ireland was indeed 'inadvertent' (interview 23).

Corporate decisions on IP placement are highly significant and a number of interviewees indicated that the re-locating of IP is there to stay, at least in the medium term. This is very significant for Ireland, perhaps positively impacting the long-term economic substance of FDI and the value of corporation tax receipts. This reflects perhaps the most apparent impact of BEPS One, indicated in discussions with interviewees, which is the emergence of a larger acceptance among firms that booking of profits should align with economic substance (interview 2, 5, 13, 14). The fact that

there is significant employment in Ireland, alongside the Irish IP regime, presumably forms a significant part of what prompted many corporations to locate their IP in Ireland. This IP was of course developed in the U.S. and not in Ireland. However, a number of interviewees viewed the IP location decision as a critical 'once off' decision by those firms (interview 13, 14). What may now occur, and as noted in Chapter Five, is that further economic substance may be brought onshore to Ireland to match the location of the IP, though this is speculative. If Ireland has in a sense 'won' the games so far, officials are not celebrating too loudly. For example, the surge in corporate tax payments discussed in Chapter Five which is a partial outcome of the onshoring game was viewed by a number of interviewees as 'almost embarrassing' (interview 3).

There is of course still an ongoing contest, that of the afore mentioned proposed Pillar One and Two (termed BEPS Two). Pillar Two has been agreed and is at implementation stage, due to come into effect in 2024. Pillar One is viewed by the Irish state as a much greater threat than Pillar Two as it would tilt taxing rights toward states with large numbers of consumers (interview 5). Pillar One is still under negotiation and, as noted, is unlikely to come into effect due to the requirement of U.S. support to activate it. This support appears far from forthcoming. However, it is worth noting that Pillar One is viewed as a genuine threat by the Irish Government to its position in global tax (interview 6). Despite serious critique of the limits of the design of Pillar One, it should also be noted that it is viewed as having introduced a break with the arms-length principle in global tax and a move toward unitary taxation, at least at a conceptual level (interview 24).

The process leading up to the Irish decision to agree to Pillar Two, the 15 per cent minimum rate, was very carefully managed. The Irish Minister for Finance initially refused to engage with Biden's proposal of 21 per cent, then refused to support the

language of ‘at least’ 15 per cent, moving to finally acquiesce to ’15 per cent’ in October 2022. Despite the Ministers’ public strategy, the move to a different rate in the context of global reforms was long anticipated by MNCs and mediators. An interviewee conveyed significant groundwork by tax advisors to prepare the MNCs for the shift to 15 per cent in the year. This indicates a strategic approach whereby it appeared that Ireland publicly delayed the agreement, which had the effect of making 15 per cent the ceiling figure, while allowing the private sector, at a distance, prepare for 15 per cent. This also had the effect of signalling to MNCs that, despite the likely inevitability of an international minimum tax, Ireland would seek to keep it as low as possible, thus maintaining Ireland’s position as a leading low tax competitor (interview 13). An interviewee sums up the impact of this dual strategy - of appearing to contain the level of rate, while preparing firms for the change,

> I thought [Minister for Finance] Donohue played that game well, you know, he didn't move too early, he didn't move too late. [..] And I don't get any sense from the people I talk to that this is going to cause huge disruption (interview 9).

Another interviewee views the move to 15 per cent as a signal of moving on from tax driven FDI activity, they said,

> The 15 per cent [..] is not something that majorly concerned us. There is a certain levelling of the playing field to a degree, but it means then that the other non-tax issues become much more important (interview 11).

Another interviewee indicated the institutional desire to reform Ireland’s political reputation as the push behind the 15 per cent decision,

> now the attitude has changed and the attitude is, look we have had such reputational damage that really the logic here is that your regime ticks all the boxes for the international standards [..] But the attitude now appears to be, you know, we have even accepted the 15 per cent because you don't want to be at the fore there and it is good news that Viktor Orbán is now the main target rather than Ireland (interview 5).

While these insights tell the story of the new minimum tax from the perspective of 'official Ireland', a higher-level game was being played out. This is, according to an interviewee very familiar with the U.S. strategy. They indicated that despite the Biden Administration pitching for 28 per cent corporate tax and 21 per cent minimum tax, the U.S. administration never believed this was actually achievable. The interviewee indicated, that the U.S.

> thought the landing spot [on the rate] would be between 15 and 16. That is why the [OECD] took a two-step approach. One was [..] with the G7 where we [introduced] 'at least' 15 per cent to keep the option open of 16. Then, very quickly we knew it would be 15 per cent but we kept the 'at least' so that we could negotiate other things. More than 15 was never really contemplated [..] But there was a game to play, particularly for Pascal Donoghue [the Irish Finance Minister] to come back to parliament and say 'I managed to get rid of the 'at least''. So it was very tactical.

Despite the applause for the Irish Finance Minister at home, the interviewee indicated,

> Ireland had no influence [in the Pillar 2 negotiations] of any kind. Except maybe in the internal Ireland-US discussions[..] The way Ireland does effective lobbying has been through U.S. Congress [..] Ireland did not twist the arm of Biden. If the arm of Biden was twisted it was by Congressmen and Congressmen who may have been convinced by Ireland that 15 was too high (interview 23).

The interviewee did acknowledge however a kind of background impact of Ireland's 12.5 per cent rate on the framing of Pillar 2 at the OECD, where there is a high awareness of the popular embeddedness of the 12.5 per cent rate in Ireland.

The counter-movements indicate the strong influence of external pressure on Ireland's model, especially from the U.S. and EU. However, Ireland shows great skill in navigating its responses to these pressures by ensuring new forms of games are possible, simply through shifting emphasis to tax dimensions. Difficulties did arise internally in the games, in particular when Apple stepped out of line by onshoring its

IP to Ireland in one radical step, facilitated by Ireland's possible misjudgement on extending the cap on the IP capital allowances.

However, this section also indicates that the fundamental power in global tax lies with the U.S.. The U.S. holds the power to end the games but does not use its power to do so. Ireland is therefore in a strange cooperative-competitive game with the U.S. whereby both governments on either side of the Atlantic want tax games but are in competition with each other to win them.

6.5 Conclusion

This chapter effectively asks the question, what difference does tax make to how we understand the national politics of development? In terms of the shaping of corporate tax, the chapter has shown that national tax institutions are central to making corporate tax 'work'. This is in relation to building expertise within the state of market possibilities and of rule-based implementation needs. In Ireland's case, its tax institutions were closely intertwined with the national politics of tax. The scope of analytical options in corporate tax is strongly, and narrowly, controlled by the state. The key influencers of the state on corporate tax are generally corporate interests, through direct company lobbying and through their business associations which were also closely aligned with the tax advisory community. These relations are highly structured, though legally non-binding, through public-private fora. Overall, this shows a highly developed and multi-layered institutional tax architecture which quietly works on the technicalities of tax to ensure smooth implementation, while also signalling potential future policy actions which ensure uninterrupted continuation of the games, at least so far.

This chapter also explores the impact that international tax politics makes to tax and national development in Ireland. The forms of power that are visible are not simply stable Irish tax games which are directly challenged by external pressures. While there are indeed challenges, the deeply stable tax institutions in Ireland reacted to each of the three counter-movements strategically, conceding on some dimensions while simultaneously opening up other dimensions. The counter movement that follows, then reacts to the Irish response.

Any threats to the Irish games have generally arisen externally, not from within, though we do see occasional internal failures and limits to the levels of competence and control of the Irish state, for example in the redomiciling of firms and Apple's onshoring of IP. The most analytically consistent internal challenges from civil society have come from global justice NGOs. However, they are lacking in a large social base and domestic mandate.

Successful challenges to specific Irish games are driven less by domestic societal actors and more by international organisations and rivals in tax competition. These have arisen from specific elements of these organisations and states, including from the EC, the U.S. Senate and the U.S. Trump Administration. Yet these blocs are in a strange cooperative-competitive dynamic with Ireland. For example, the EU's constitutional framework has facilitated tax games by upholding the movement of capital and national tax sovereignty of member states. However, it is also a source of counter-movement through the EC's focus on state-aid policy and challenging of national tax sovereignty through its proposal of tax harmonisation. The U.S. has facilitated Ireland through its own weak tax rules, but more recently has challenged Ireland through the TCJA which is a 'BEPS reform style' legislation. However, the TCJA did not go far enough to really hurt the U.S's own corporations. Instead, the

U.S. is now involved in a new onshore-offshore dynamic, a competitive game regarding IP onshoring with other states, and notably with Ireland. Neither of these external challenges have been successful in ending Ireland's tax games, however, they did challenge the configuration of the games which indicates a route to potential further change. While the focus in this chapter is on this empirical story of politics of Ireland's tax games and counter-movements against it, an interesting parallel with the notion of Polanyi's 'double movement' (Polanyi, 1944) arises here. Polanyi's theory of double movement is that where state driven marketisation becomes too forceful, a double movement, focused on social protection, emerges from civil society. This is the principle of self-protection aiming to preserve human relations and relations with nature through productive organisation.

In the case of Ireland's tax games, while civil societies have indeed played a role in challenging the Irish games, the more decisive action has come from 'state level' or state associated politics (the U.S. Senate and the EC). However, these state level/associated institutions are themselves internally contested on the limits or 'self-protection' that should be imposed in global tax. In light of this, routes toward change worth considering may include building upon these partial sources of external power within larger power blocs such as in the EU and the politics of the U.S. Domestic critique should also be strengthened, through the trade union movement aligned with NGOs which has been relatively low key so far. Growing impatience from Global South states has also, more recently, resulted in the activation of the U.N. as an arena in the politics of global tax (ATAF, 2022). These latter two arenas of contestation have a much weaker history in the games, but combined with the influential but fragmented sources of power in the EU and U.S. may offer a potential route to change.

Chapter 7: Conclusion

7.1 Introduction

The thesis has sought to contribute toward an improved analysis of the tax driven aspect of Ireland's FDI model. It sought to achieve this by responding to the research question 'how does Ireland win the tax games?' The short answer is that Ireland is winning the tax games through the strategic management and configuration of the four dimensions of corporate tax with ongoing care and responsiveness as to how they matter to the MNCs. There are two further, sub-questions posed by the thesis. Firstly, 'why is Ireland's tax haven-like character legal?' The short answer is that Irish domestic, EU and global tax rules continuously confirm Ireland's tax-haven like character to be legal. This suggests that the rules are not fit for purpose. The second sub-question is 'what, if any, are the non-legal conditions that uphold the Irish tax haven-like form?' The answer is that Ireland's tax institutions, its national tax politics, and the ability of the state to evolve in response to and beyond counter-movements against its model, have buttressed and upheld the Irish model. Responding to these questions requires an understanding of the dynamics of corporate tax dimensions, tax rules and tax politics relating to Ireland and the international tax network of which it is a part. This concluding chapter outlines and brings together the empirical findings in these three areas. Finally, it discusses the theoretical contributions of the thesis, and suggests implications of the thesis findings for potential change in corporate tax and for future research.

7.2 Empirical contribution of the thesis: Dimensions, Rules and Politics

At its core, the thesis explored three things empirically: a) the interaction and evolution of the corporate tax dimensions of the games (Chapter Four), b) the interaction of tax rules in specific games (Chapter Five), and c) the politics of those two things (Chapter Six). The key findings in relation to each of these are discussed in turn.

The thesis traces the terrain upon which the games are played through the interaction of four dimensions of corporate tax in Chapter Four. It found that the **dimension of rate** has been a key anchor in the configuration of Ireland's tax games. It was a dominant dimension up until the current rate was fully phased in at the level of 12.5 per cent in 2003, replacing the targeted zero and ten per cent rates. In the case of Apple, Advance Tax Agreements (ATAs) added additional certainty to achieving a low tax rate. It is not known how many other companies gained from these largely ungoverned APAs in the 1980, 90s and '00s. Once the 12.5 per cent was fully in place in 2003, and given that it was higher than the previous rates, U.S. corporations shifted their attention to other dimensions as routes to reduce their overall tax payments on foreign profits.

Alongside this shift in relative importance to other dimensions, Ireland adopted a political mantra that the 12.5 per cent rate would never increase. It became a signalling device with symbolic relevance and was the first line in a number of budget speeches. Even now that Ireland will adopt the 15 per cent global minimum rate (at least nominally there will still be carve outs) for larger companies from 2024, the 12.5 per cent rate will be maintained for the majority of companies to which the 15 per cent rate does not apply. A future 'unknown' about the rate dimension is the role of the Knowledge Development Box (initially set at 6.5 per cent, more recently increased to

10 per cent) as it is currently largely unused. However, as flagged in Chapters Five and Six, this mechanism may be waiting in the wings to offer tax deductions on the profits relating to the now very large IP assets in Ireland. This would fit with Ireland's 'testing the waters' approach to having other dimensions available for when current ones in use run out. Whether a revised KDB becomes significant or not (KPMG, 2022), it is clear that the state commitment to providing corporations certainty on a low tax rate was a central part of the state's 'market talk'[95] (Ó Riain, 2014) about the tax regime as a whole. Given Ireland's entangled real-artificial FDI, it is likely that in or around 12.5 per cent was paid on profits relating to some components of FDI but far less or none on other components within the same companies due to the use of Ireland's other tax dimensions. The provision of a certain rate around which to strategise provided corporations with the comfort to shift their focus to managing their engagement with the more hidden tax dimensions of jurisdiction, owner and return.

Once the level of the rate was marginally increased to 12.5 per cent, and was signalled as secure, tech and pharma corporations turned their attentions to the **dimension of jurisdiction**. New jurisdictions in addition to Ireland and the U.S. were introduced to the games in order to avoid the 12.5 per cent rate and maintain an overall low global rate of tax payments. A large part of this tax avoidance resulted from Ireland's maintenance of outdated tax residency rules for as long as the state judged this was politically tenable. Ireland's very partial approach to the legislative changes to its tax residency law in the 1990s, and its more fundamental change in 2014, indicates that it

[95] As outlined in Chapter Two, 'market talk' is defined as 'rationalities and justifications of action that actors draw upon in making and interpreting conditions and decisions. In a liberal market system, these rationalities rely heavily on market talk – justifications that give a central position to the autonomous effects of market processes' (Ó Riain, 2014, p.112).

wielded significant legal control over the stateless games that were enabled by this law. In contrast, a lack of control by Ireland is indicated by the wave of redomiciled firms into Ireland from 2008, a reminder that other jurisdictions can both cause and, as in the case of redomiciled firms, close down games by taking legal action to make the game unworkable or less worthwhile.

Arguably the most opaque dimension of the games is that of the **dimension of owner**. The growing complexity in this dimension occurred through its extension over time to include larger numbers and types of entities. Many of these entities served purely financial functions such as holding intellectual and financial assets. In addition, those entities involved in holding IP were participants of U.S. approved Cost Sharing Agreements (CSAs). While the financialisation of the owner dimension is a more recent aspect of the games from the late 1980s onwards, the CSA entities have been a consistent characteristic of this dimension from the beginning of the games. The CSAs became more important over time simply because the valuation of the IP of the firms using them increased so significantly in recent decades. The high valuations of IP made these assets the vehicles of tax avoidance for the tech and pharma firms because shifting their ownership and licensing rights out of the U.S. enabled the shifting of the profits associated with the IP out as well. The CSAs, as the legal vehicles for decision-making therefore became more important as IP valuations increased.

A major feature of the **dimension of return** features capital allowances (both tangible and intangible relating to the IP flows mentioned above) provided in the Irish tax code, along with other tax reliefs, notably the R&D tax credit. The ongoing adjustments to the R&D tax credit by Ireland indicate a highly engaged and responsive approach to the requirements of foreign corporations. Ireland's membership of the EU was also crucial to this dimension. It enabled US firms avoid withholding taxes due to the EU

Interest and Royalties Directive via the DIDS game. Cutting across the games is placement of debt, the reasons for which are eclectic and opaque. As noted, high levels of profit shifting are a central feature of the games, including flows of finance relating to IP. These include royalty payments, asset purchases and profits from IP related sales. The capital allowances on intangible assets are fundamental to the current Onshoring game that has been prominent since 2015 and signal the forward planning of the Irish State in sustaining the games alongside developing market trends and the principles of 'alignment' between profit and substance underlying the global reforms. These capital allowances for intangible assets, along with the productive elements of activity by the relevant corporations, combined to position Ireland in a highly competitive location for the onshoring of valuable U.S. developed IP and potentially for greater real FDI in future.

The interactions of the tax dimensions with each other to form the games indicates an increasing complexity over time which reflects the literature on the global fragmentation of multinational corporations and the financialisation of non-financial corporations. The evolution of the games also indicates that the games are unpredictable, never fully certain, and so require consistent maintenance and refinement by the Irish state and forward planning. This forward planning involves having additional options available in various dimensions which are ready for corporations to activate when other options are closed down. Whether these dimensions are activated or not is of course the decision of the corporations. Ireland's sophisticated management of the games through rules and politics ensured that Ireland was often their location of choice in the global games. I turn to the empirical findings of the rules and politics of the games next.

Chapter Five explored the **rules** underpinning the IP tax games in the pharma and tech sectors. A strong productive-tax driven entanglement is apparent in the activities of these firms, although this entanglement evolved in different ways depending on the firm. The rules that uphold the three IP games examined in Chapter Five, originate in the U.S. The basic goal of each of these games was to move IP out of the U.S. as a route to profit shifting. The U.S. provided the foundational rules that enabled this. The stateless games (the DIDS and Apple's structure) required CSAs which allow the sharing of IP related profits in low tax jurisdictions, the check-the-box rule which undermines US anti-avoidance rules (Subpart F), and the option (until 2017) of deferring tax payments to the U.S. In the U.S., the problematic impact of these rules was not necessarily foreseen by Treasury and the IRS initially. However, once introduced, the rules became extremely difficult to change due to the enormous power of corporations in sustaining them in the U.S. political and legal system.

Despite the foundational importance of the U.S. tax rules to the stateless games, in order for them to work, the games also depended upon Irish and other jurisdictional rules. This is a crucial point, as Ireland's long-standing political defence for involvement in the stateless games has been that tax avoidance by U.S. corporations is the responsibility of the U.S. While it is true that the roots of the IP tax games lie in long standing U.S. rules, state participants in the IP games can choose to pull the plug on them if they are key players, as indeed Ireland was and did by ending statelessness in 2013. The emergence of the onshoring game after the closure of the stateless game highlights the robustness and creativity of the tax games. This robustness should be understood as a function of Ireland's forward planning which ensured its regime of capital allowances on intangible assets was available to become the dominant element in the dimension of return in a new configuration of an IP game. The success of this

onshoring game for Ireland is also an indication of the weaknesses in the design of other jurisdictional rules - the Tax Cuts and Jobs Act (TCJA) in the U.S. and the OECD BEPS reforms, in addition to the BEPS reforms. Had these reforms been more robust, more IP assets would have returned to the U.S. Instead, Ireland has become the host to significant IP assets, for the time being at least. This indicates the importance of politics in sustaining or challenging the tax games which I turn to next.

The **politics of Ireland's tax games** is governed domestically by a strong public-private institutional fabric which provides institutional support to the games. This is in the area of administration and policy making. The administration of the games has always involved the Industrial Development Authority (IDA) as a central institution. The IDA's outreach to corporations and its grant giving supports has had a strong impact on sustaining the tax games. From the 1980s onward, a wide set of organisations became important to the institutional management of the games, including tax practitioners and industry representatives. These organisations formed a loose, elite-based public-private coalition, restricted to a relatively closed group, partially guided by Ireland's tax institutions, and strengthened by its sharing of technical expertise. This loose network has been strengthened over time and operates in a way that, without explicit coordination, ensures smooth administration of the games. There is also a link with the administrative work and the provision of market intelligence by the private sector to government departments. This is perhaps where administration influences policy making in those networks.

Tax policy making is governed by the Department of Finance. In addition to the administration and promotion of the games, the IDA has strong tax policy influence in government and therefore a strong impact on sustaining the tax games. Domestically,

both institutions[96] sustain the tax games through close communication and relationship building with corporations and their mediators; strategic decision-making about legislative in/action which allows the low tax, low regulatory environment to evolve. This strategy includes the maintenance of very narrow boundaries on policy and public discourse relating to national corporate tax and adherence to maintaining certainty of tax rules for foreign corporations, even in a changing global tax environment. As noted, Ireland's studied inaction in relation to changing legal rules is a common feature of Ireland's management of the games. This involved Ireland taking a legally narrow approach which did not include reference to the global effects of its tax laws. This approach was legally upheld from an EU perspective by the European Court of Justice (ECJ) and the EU General Court (so far) on the State Aid case against Ireland regarding Apple. While this also reflects the failure of global reforms to address the domestic rules of individually problematic jurisdictions, Ireland took advantage of these failures to sustain its tax games.

With the notable exception of mostly internationally focused NGOs, the Irish state faced little domestic opposition to this strategy from wider Irish civil society, including little opposition from trade unions and major political parties. It is striking that, counter movements which resulted in concrete changes to the Irish games all arose from external sources. These were the EC challenge (in 1994), to the early special rates which prompted the introduction of the 12.5 per cent rate; the U.S. Senate and EC challenges to the Apple stateless structure which resulted in the ending of Ireland's residency rules (2013 and 2016) and the BEPS reform challenges to tax competition and misalignment of profits which have resulted in a great many legal changes but which are, so far, weak in their impact. While ultimately acquiescing to these counter

[96] Along with Revenue in the case of Apple's ATAs

movements, Ireland's strategy was to ensure changes were kept to a minimum and its responses were highly managed in collaboration with corporations and tax advisors through the mechanisms of public consultations. For example, the shift to supporting the 15 per cent rate in Pillar Two involved a strategic parallel strategy whereby the private sector was prepared for the change through ongoing mediation, signalling the closeknit relationship between the government, tax advisory community and corporations. While Ireland signalled sensitivity to Global South concerns about the reform process, it failed to take any meaningful steps to incorporate those concerns. Ireland did not support requests of Global South states for a fairer overall agreement on the global distribution of taxing rights, a higher minimum tax rate than 15 per cent, and a move to the U.N. for further tax negotiations. The overall reform process was controlled by powerful Global North states, in particular by the U.S.. Ireland's place in this politics is marginal overall, perhaps most present through a sort of cultural presence in the minds of OECD states of its fierce commitment to its 12.5 per cent tax rate (interview 23). However, while Ireland features strongly as a node in the global tax games, its power largely evaporates when in contact with the global politics of tax. This is a reminder that Ireland's presence in the global tax games ultimately sustains itself as a result of ongoing permission from U.S. politics.

7.3 Theoretical contribution of the thesis

The thesis seeks to shift the gaze of the reader from a focus on states competing in markets to the transnational socio-legal world of tax. The picture that emerges is one of entangled, politically complex and carefully negotiated multi-jurisdictional tax rules which are ultimately negotiated along a 'two-way' street between the Irish state

and U.S. corporations, both highly engaged in global tax politics. It also shows a dynamic between the multiple jurisdictions involved in the games that shifts uncomfortably between tax competition and cooperation. By charting complex, networked interconnections in tax in relation to the specific case of Ireland, the thesis provides a number of contributions to the literature.

The thesis strengthens **understanding of inter-jurisdictional entanglements in global tax.** The tax games framework tracks the relations between jurisdictions via rules. This outlines the specific legal points of connection between jurisdictions that facilitate games. This also supports an improved **understanding of 'actorness'** (Seabrooke and Wigan, 2022). The framework outlines a wide range of actors, including states, corporate entities and institutions that are involved in the games and in what way they are involved. So while tracing interjurisdictional entanglement show the rules are territorially fragmented, key actors assemble them into strategic forms of action. The fragmentation itself acts as a key enabler. The framework facilitates examination of the differentiated roles which together form the games. We can also see the differentiated yet intertwined nature of the Ireland-U.S., offshore-onshore relations more clearly. Through strategic in/action in the making of specific rules, Ireland provided a seamless haven, especially for U.S. tech and pharma firms. U.S. tax rules facilitated the use of Ireland, sometimes initially through error, then enforced by the political strength of corporations in the U.S. political and legal systems.

The thesis supports an improved understanding of **power among actors.** Infrastructural power is defined, as *state maintenance of, and dependence upon elements of corporate organisational capacities and practice which reproduces business power*. The Irish tax games are reproduced through everyday 'entanglements' between market participants and public sector actors, which make markets work in

particular ways. Crucially, efforts to ensure the operation of everyday interactions in economic life reinforce the power imbalances that underpin these interactions. The operations of infrastructural power in the tax games are found to be rooted in the institutionalisation of the games, Ireland's tax rules, and their entanglement with other jurisdictions. Counter movements challenging this power tend to arise externally and have done so due to clear catalysts. These are states acting unilaterally or collectively through political bargaining, to protect the tax bases of higher tax jurisdictions, especially when the politics of corporate tax becomes too visible and noisy among domestic and global publics to be sustained. Understanding the tax games as infrastructural power is a method of exploring the question of how the *structure* of corporate tax games (the four dimensions) interact with the *political coordination* of the tax games. This enables an exploration of the varied and non-uniform patterns of power between states and corporations. The structural and instrumental power of U.S. corporations is very evident in the Irish tax games. For example, Ireland's choice of the 12.5 per cent rate, which went against European trends of the time, and its careful signalling of potential rule changes both point to the power of U.S. corporations in tax games. However, there are cases where corporations do not always win, such as Ireland's shutting down of Apple's statelessness without a transition period and where limits are placed on corporations by states, such as by the U.K. and U.S. actions against redomiciling firms. Both the power and weaknesses of states are on show. For example, the U.S. has the legal power to curtail the games significantly. However, its polarised and corporatised politics also make U.S. tax institutions weak in solving the games[97].

[97] We should not assume however, that there are not other, less visible, benefits to the U.S. of the tax games (e.g. as noted in Chapter Five in relation to the benefits to the US Treasury of corporate reinvested earnings). Another benefit to the U.S. is that their corporations are able to have a competitive advantage

The thesis also proposes **the treatment of tax haven-like states as 'tax states'**. Tax havens and tax haven-like jurisdictions are understudied in tax literature (Christians, 2010). They can also be treated in the literature as something close to empty boxes serving corporate interests. The games framework enables richer descriptions of these states through examination of their inter-state and state-corporate interactions, in addition to deeper institutional studies of the 'two-way street' of infrastructural power at state levels. This includes moving beyond descriptions of 'Bermuland' (Saez and Zucman, 2019) and 'leprechaun economics' (NYT, 2016). For example, when examining misalignments in macro-economic statistics, Saez and Zucman (2019) found it difficult to parse out the data on financial flows in relation to Bermuda and Ireland. This prompted him to invent a new conceptual location 'Bermuland', indicating the absurdity of Ireland's macro-economic statistics. This absurdity was echoed in public discourse by economist Paul Krugman (Irish Times, 2016a) when he coined the term 'leprechaun economics' to describe Ireland's measure of GDP. These descriptions are important in identifying the high-level trend of profit and asset shifting into Ireland. However, the tax games framework extends and deepens this analysis significantly by identifying the underlying processes and mechanisms that enable and sustain these trends in different ways.

7.4 Implications of the thesis findings

The thesis has four high-level findings. Firstly, as is well documented, misalignment of profit from employment, facilitates tax avoidance. The thesis outlines how this

Vis-à-vis comparable corporations from other jurisdictions. This could be seen as a form of industrial policy.

misalignment occurs in Ireland through the mobilisation of the four dimensions of corporate tax in different ways. As discussed, this form of power is both structural (i.e. embedded in the four tax dimensions) and politically coordinated in deeply institutionalised ways across a range of different jurisdiction. This reinforces the well-recognised point that effective reform of corporate tax rules must be multi-laterally achieved. It also signals the need for reforms to be more robust than currently proposed under BEPS Two. Unitary taxation and tax rate harmonisation are, at least in theory, the only routes to achieving this outcome. The proposal of unitary taxation was noted in Chapter Two. This idea proposes that global corporations should be treated as single units (rather than the current 'legal fiction' of collections of separate entities). Once corporations are treated as single units, internationally fairer inter-state taxing rights can be agreed involving the allocation of profit across jurisdictions based on productive activity (e.g. based on profit generated from assets, sales and employees). This unitary approach would end the distinction between the dimensions of jurisdiction, owner and return. This could then be backstopped by a global minimum effective tax rate that is sufficiently high (i.e. ideally higher than 15 per cent and without the availability of carve outs) which would unify the treatment of the dimension of the rate globally. This is not a new proposal but one that has been pursued for many years in different forms – within the EU through the various iterations of a proposal for a common corporate tax base, the Common Consolidated Tax Base (CCCTB)[98], and at an international level in the early stages of the global reforms (Cobham, Jansky, Jones, Temouri, 2022). The outline of the workings of the tax games offered here, which continuously reconfigure across the different tax dimensions,

[98] The CCCTB has evolved into a current legislative proposal 'Business in Europe: Framework for Income Taxation': https://taxation-customs.ec.europa.eu/taxation-1/corporate-taxation/business-europe-framework-income-taxation-befit_en accessed 30/10/23

reinforces the theoretical sense underpinning these proposals for a unitary treatment of the corporate tax base.

The second key finding of the thesis is that counter-movements to the games that resulted in concrete changes to the tax dimensions all arose externally and mostly threatened the legitimacy of Ireland's tax games rather than their legality. The counter-movements that resulted in change at the level of tax dimensions arose from the EC (on the rate in 1994), from the U.S. Senate (on jurisdiction in relation to Apple's stateless game), again regarding Apple from the EC (2016), and from the OECD BEPS reforms (across the dimensions from 2013 until the present day). Regarding these counter movements, it was only in 1994 that Ireland was actually legally obliged to adjust its special tax rates due to EU state aid rules. The other counter-movements did not ultimately threaten the legal basis of the games, but rather confronted their legitimacy. It should be noted that there were also threats to Ireland's tax legitimacy that arose internally from the games for example, through Apple's incompetence in onshoring IP in 2015; Ireland's lack of control over redomiciling firms; and through a certain level of internal dissent mobilised by campaigners. However, while some concessions were made to campaigners e.g. notably the closing of the Single Malt game, these did not result in strong adjustments to Ireland's tax dimensions, unlike the external challenges. This indicates that strengthening this kind of externally sourced pressure is an important route to change. However, in a complication of a Polanyi-style 'double movement', the thesis also finds that institutional counterparts of these external sources of pressure are the partial architects of tax avoidance. For example, while the Competition Directorate of the EC has been a strong countermovement party, the ECJ has supported a legal environment that facilitates avoidance due to the constitutional rules of the EU. Similarly the U.S. Senate publicly exposed the Apple

stateless structure, but U.S. Congress has thus far withheld its support for robust tax reform overall.

The third key finding is that tax expertise conveys power upon those who wield it. Tackling the public-private tax coalition in Ireland requires an institutional challenger of equal technical ability and political power. On the technical ability side, there is a longstanding (and unanswered) proposal for a permanently standing independent National Tax Commission in Ireland (Burton, 2017) or indeed the equivalent at EU or U.N. levels would be worthy of consideration. At the very least this would provide transparency around mapping Ireland's corporate tax system, ideally along 'tax games' style research methods. This would require acceleration of ongoing reforms around publishing country-by-country financial reports of MNCs. Tax design for such a Commission can follow the generally accepted design principles of vertical and horizontal equity[99]. Such a permanent Tax Commission could add an additional guiding principle to these two, that of international equity (Genschel and Seelkopf, 2016). A standing Tax Commission in Ireland would also strengthen the fragmented position of potential oppositional civil society actors. If such a Commission is not forthcoming, as is likely, international research alliances on this kind of research approach would be helpful.

However, while expertise wields a certain level of power, infrastructural power in tax games is where the real power in corporate tax lies. This relates to the fourth key finding of the thesis which is that tax games are a form of infrastructural power. As noted, this form of power is both structural (i.e. embedded in the four tax dimensions)

[99] Vertical equity means taxes paid increase as income increases. Horizontal equity means taxpayers with similar income and assets should be taxed the same. Notably, tax expenditures violate both of these principles.

and politically coordinated. This is therefore a very difficult form of power to disrupt. What seems different about this form of power (e.g. from instrumental and structural business power) is that it involves an embedded and routinised public-private approach to managing tax and FDI within the fabric of the developmental state. As global tax reforms make corporate tax reform more difficult, other areas of taxation become open to attack by corporations, such as mounting campaigns for income tax cuts for their workers for example. The Special Assignee Relief Programme (SARP) is an example in Ireland of income tax cuts for highly paid MNC workers.

Does infrastructural power have relevance beyond tax claims? It may have relevance in relation to wider FDI issues in Ireland, simply due to the expectations established among U.S. corporations in Ireland as a result of the routinisation of infrastructural power of the tax games. The wider FDI issues of interest to foreign corporations in Ireland relate, for example, to data regulation in the tech industry. As a result of the normalisation and success of Ireland's tax games, corporate influence on this matter may take on a level of influence beyond the usual norms of business power (interview 13). Another area of U.S. corporate influence is its role in keeping collective bargaining rights weak in Ireland (interview 26).

While recognising the very significant benefits to Ireland as a result of employment created by 'real FDI', the thesis explored the hidden, tax driven side of Ireland's FDI model. At its worst, this model contributes to privileging corporate profits over tax claims, leaving more vulnerable states to increase taxes on less influential groups or alternatively to reduce provision in public services.

Finally, such radical departures as signalled here require further analysis such as the potential impacts of unitary taxation and tax harmonisation on Ireland. It would be

naïve to expect that such moves would not pose risks to real FDI in Ireland. Even so, Ireland has never been in a stronger position to engage with these proposals. In addition to exploring more radical corporate tax reform, a research focus on sustainable, productive work that is not as dependent on FDI is warranted. There is no shortage of proposals for innovation around other forms of domestically driven work in Ireland (e.g. ICTU, forthcoming 2024; Murphy, 2023). This is an important research agenda. Its goal would be to reorient Ireland's FDI model from the real-tax driven FDI dynamic of the tax games, to a far more preferable entanglement – that of sustainable, high value work, underpinned by tax justice.

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Appendix

INFORMATION AND CONSENT FORM FOR RESEARCH PARTICIPANTS

Information Sheet

Purpose of the Study. My name is Nessa Ní Chasaide, a PhD candidate in the Department of Sociology, Maynooth University. As part of the requirements for my PhD, I am undertaking a research study` under the supervision of Professor Seán Ó Riain. My research funded by the Irish Research Council.

This research seeks to understand the the evolution of Ireland's corporate tax policy and explore future options for Ireland in a rapidly changing global tax legal order.

What will the study involve?

If you decide to participate in this study, you will take part in an interview and be asked questions exploring your experiences and attitudes to Ireland's corporate tax policy. Your data will be securely stored and only the interviewer will have access to your interview responses. Your details will be anonymized in all publications.

Who has approved this study?

This study has been reviewed and received ethical approval from Maynooth University Research Ethics committee. You may have a copy of this approval if you request it.

Why have you been asked to take part?

You have been asked because your input will form a valuable part of the picture about how Ireland's corporate tax policy has developed and how it might evolve in future. Your experience and views are very important in gathering information showing how policy changes are affecting Ireland's corporate tax strategy.

Do you have to take part?

No, you are under no obligation whatsoever to take part in this research. However, I hope that you will agree to take part and give me some of your time via a one-to-one interview. It is entirely up to you to decide whether or not you would like to take part. If you decide to do so, you will be asked to sign a consent form and be given a copy and the information sheet for your own records. If you decide to take part, you are still free to withdraw at any time without giving a reason and/or to withdraw your information up until such time as the research findings are anonymised by December 2022. A decision to withdraw at any time, or a decision not to take part, will have no consequences.

What information will be collected?

Name, personal email (optional) and professional position.

Interviewees will be asked to share information, and their opinions, on Ireland's corporate tax policy. Some sample interview questions include: How does/did your work relate to Ireland's corporate tax policies? What do you think are the goals of the Irish State in formulating its corporate tax policy? How do you think stakeholders (corporations, trade unions, others) in Ireland have responded to the policy? Do you think Ireland's corporate tax policy has been / is effective?

Will your participation in the study be kept confidential?

Yes. If you decide to participate in this interview, we will anonymise your answers and your privacy will be protected. Your interview responses will be audio recorded, coded and your contact details will be stored separately to your responses, in an encrypted secured file, so your details will remain confidential and your privacy protected. All hard copy information will be held in a locked cabinet at the researchers' place of work, electronic information will be encrypted and held securely on MU PC or servers and will be accessed only by the researcher.

No information will be distributed to any other unauthorised individual or third party. If you so wish, the data that you provide can also be made available to you at your own discretion.

It must be recognised that, in some circumstances, confidentiality of research data and records may be overridden by courts in the event of litigation or in the course of investigation by lawful authority. In such circumstances the University will take all reasonable steps within law to ensure that confidentiality is maintained to the greatest possible extent.

What will happen to the information which you give?

All the information you provide will be kept at Maynooth University in such a way that it will not be possible to identify you. On completion of the research, the data will be retained on

the MU server. After ten years (or a shorter period on request), all data will be destroyed (by the interviewer). Manual data will be shredded confidentially, and electronic data will be reformatted or overwritten by the interviewer in Maynooth University.

What will happen to the results?

The analysis will be presented at conferences, in academic publications, in presentations to stakeholders, in the final copy of my PhD thesis, and will ultimately be archived. The final PhD thesis will be submitted to the Irish Qualitative Data Archive (IQDA) at Maynooth University, Ireland. The IQDA is a national archive for qualitative social science research. It is a central access point for such research created in or about Ireland. However, your identity and personal details will remain confidential. A copy of the research findings will be made available to you upon request.

What are the possible disadvantages of taking part?

I don't envisage any negative consequences for you in taking part in this research.

What if there is a problem? At the end of the interview, I will discuss with you how you found the experience. If you experience any distress following the interview you may contact my supervisor Prof Seán Ó Riain [sean.oriain@mu.ie] or if you feel the research has not been carried out as described above.

Any further queries? If you need any further information, you can contact me: Nessa Ní Chasaide, +353 1 708 7168 / 087 7507001, nessa.nichasaide@mu.ie, Department of Sociology.

If you agree to take part in the study, please complete and sign the consent form overleaf.

Thank you for taking the time to read this

Consent Form

I…… agree to participate in Nessa Ní Chasaide's research study on Ireland's corporate tax regime.

Please tick each statement below:

The purpose and nature of the study has been explained to me verbally & in writing. I've been able to ask questions, which were answered satisfactorily. ☐

I am participating voluntarily. ☐

I give permission for my interview with Ms Ní Chasaide to be audio-recorded ☐

I understand that I can withdraw from the study, without repercussions, at any time, whether that is before it starts or while I am participating. ☐

I understand that I can withdraw permission to use the data right up

to anonymization, December 2022 ☐

It has been explained to me how my data will be managed and that I may access it on request ☐

I understand the limits of confidentiality as described in the information sheet ☐

I understand that my data, in an anonymous format, may be used in further research projects and any subsequent publications if I give permission below: ☐

Select as appropriate

I agree to quotation/publication of extracts from my interview ☐

I do not agree to quotation/publication of extracts from my interview ☐

I agree for my data to be used for further research projects ☐

I do not agree for my data to be used for further research projects ☐

I agree for my data, once anonymised, to be retained indefinitely in the IQDA archive ☐

Signed…………………………………. Date……………….

Participant Name in block capitals

I the undersigned have taken the time to fully explain to the above participant the nature and purpose of this study in a manner that they could understand. I have explained the risks involved as well as the possible benefits. I have invited them to ask questions on any aspect of the study that concerned them.

Signed Date

Researcher Name in block capitals

If during your participation in this study you feel the information and guidelines that you were given have been neglected or disregarded in any way, or if you are unhappy about the process, please contact the Secretary of the Maynooth University Ethics Committee at research.ethics@mu.ie or +353 (0)1 708 6019. Please be assured that your concerns will be dealt with in a sensitive manner.

For your information the Data Controller for this research project is Maynooth University, Maynooth, Co. Kildare. Maynooth University Data Protection officer is Ann McKeon in Humanity house, room 17, who can be contacted at ann.mckeon@mu.ie. Maynooth University Data Privacy policies can be found at https://www.maynoothuniversity.ie/data-protection.

Two copies to be made: 1 for participant, 1 for principal investigator

Appendix 2

Interview Guide

Sample guide questions on Ireland's Corporate Tax Regime

1. What is your professional role?
2. How does your work relate to Ireland's corporate tax policies?
3. What do you think have been the main factors that have shaped Ireland's corporate tax model? (What do you think have been the most important changes to the corporate tax regime historically?)
4. What do you think are the goals of the Irish State in formulating its corporate tax policy?
5. How do you think corporations in Ireland have responded to the policy?
6. Do you think Ireland's corporate tax policy has been / is effective? (What are its achievements? What are its weaknesses?)
7. How is corporate tax policy made in Ireland? Who are the key stakeholders that shape the policy? How influential are they?
8. What do you think of the recent changes to the international tax regime via the OECD, EU and in the US?
9. How do you think these changes will affect Ireland's model?
10. How has Ireland engaged with international stakeholders, including other states and multi-lateral institutions? How effective has Ireland been in this?
11. What do you think is the biggest threat is to Ireland's current approach?
12. Ireland's corporate tax policy has been challenged internationally in recent years. What do you think of these criticisms?
13. What kind of corporate tax model would you like to see in Ireland? What changes would you propose?