

DÁIL ÉIREANN

AN COMHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH

JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH

Dé Máirt, 7 Feabhra 2017

Tuesday, 7 February 2017

The Joint Committee met at 4 p.m.

MEMBERS PRESENT:

Deputy Peter Burke,	Senator Rose Conway-Walsh.
Deputy Michael D'Arcy,	
Deputy Pearse Doherty,	
Deputy Michael McGrath,	
Deputy Sean Sherlock,	

In attendance: Deputy Richard Boyd Barrett.

DEPUTY JOHN MCGUINNESS IN THE CHAIR.

EU State Aid Investigations into Tax Rulings (resumed)

Chairman: Today the joint committee is continuing its consideration of the EU state aid investigations into the Apple tax ruling in the wider context of global corporate taxation structures. I welcome our witnesses today, Mr. Mark Redmond, American Chamber of Commerce Ireland; Mr. Brian Keegan, Chartered Accountants Ireland; Mr. Jim Clarken, Oxfam Ireland; and Dr. Jim Stewart, Trinity College Dublin.

Before we begin our proceedings I ask members and all those present to please turn off their mobile phones as they interfere with the sound quality and transmission of the meeting. I draw the attention of witnesses to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

I invite each witness to make a brief opening statement. If possible can they keep it to five minutes.

Mr. Mark Redmond: The chamber is very grateful for the opportunity to meet with the committee today. The American Chamber of Commerce Ireland is an Irish non-partisan, membership organisation. Our membership consists of the Irish operations of US multinational companies and Irish companies with operations in the United States of America, USA. We are a completely independent stand-alone organisation resourced by our membership in Ireland. Our role is to be the voice of our total membership and not that of any individual member company. Our advocacy work focuses on issues relevant to the wide spectrum of our membership and not on individual companies. We do not advocate for individual companies nor do we make public comment on them. Our vision is that Ireland will remain the global location of choice for US business investment.

In his letter of invitation the Chairman asked us to engage with the committee on the EU state aid investigation into alleged tax preferential rulings and the wider issue of corporation tax in a global context. The invitation is timely. We are concerned that these issues can be used to paint a highly inaccurate picture of the nature of US business investment in Ireland. In the current climate, with challenges including Brexit, and a changing world order for global trade, it is vitally important that every opportunity is taken to put on the record the real nature of this investment and how it has been to the benefit of Ireland and the United States.

On the role played by corporation tax policy, I need not make any specific comment on open legal proceedings regarding the EU Commission ruling on the Revenue Commissioners' interactions with Apple and the allegation of preferential state aid. I would like, however, to make the following points. The chamber fully supports the Government's decision to appeal the EU Commission's ruling. The chamber believes that Ireland's membership of the European Union

has been central to our country's social and economic development and critically important in retaining existing, and attracting future, US inward investment. The EU and the US are the world's largest trading partners. We believe that every effort should be made to ensure the EU remains a location where US business can continue to invest with certainty. That is why we believe Ireland or any other EU member state simply cannot afford to have its tax policy and administration second guessed in a retrospective fashion. Businesses cannot make investment decisions in such an environment.

Ireland is fortunate in having a robust and independent revenue authority that is recognised as operating to the highest international standards. It implements a rules-based tax code legislated for in a transparent manner by the Oireachtas. Any attempt to undermine the independence of our revenue authority and second guess how it does its work must be challenged. Any attempt to undermine the necessary process for taxpayers, including those in business, to seek clarification from the revenue authority of the application of the law to their circumstances must be challenged as a retrograde step that undermines the global move by all leading revenue authorities to a co-operative compliance model. The suggestion from an EU Commission spokesperson that "if you want legal certainty, then you need a Commission decision" does not help the case for investing in the European Union. Why do we believe this issue is so fundamentally important to Ireland? There are 150,000 compelling reasons, because that is the number of highly talented people who are working for US companies across Ireland, from Wexford to Ringaskiddy to Shannon to Letterkenny. Their jobs support a further 100,000 indirect jobs countrywide. Anybody who has visited these company locations cannot but be impressed by the passion and innovation of this talented workforce and the pride it takes in what it does. That pride is truly justified, because they are producing products and services at the cutting edge of global technologies that are saving lives and enhancing how people work and live around the world. Commentary about the nature of US business investment in Ireland and its substance is not credible if it does not reflect the contribution and performance of these people.

Four of every five medical stents used around the world are created in Ireland. One out of every two hospital ventilators used globally to sustain life is created in Ireland and one out of every three sets of contact lenses used globally is created here. As we are serving a global market we have created a global talent pool that has enriched our country, our respect for every individual and our respect for diversity and inclusion. It is remarkable that a country that for so many decades saw its people forced to emigrate as economic refugees is now a place where people from all over the world wish to come to live and build their careers. It is worth noting that nearly all the Irish operations of US companies here are led by Irish men and women, many of whom go on to global roles with their companies. They are building a culture that is informed by, among other things, a commitment to their communities. The Irish operations of US companies support the donation by their people of over 600,000 volunteer hours to over 7,000 community projects throughout Ireland each year.

It is also important to put on the record that the economic relationship between Ireland and the United States is very much a two-way relationship. Investing in Ireland has been good for US business and for the US economy. Over 200 Irish companies have created jobs at over 2,600 locations in all 50 US states and they generate US sales of \$90 billion annually. The US leaders of the companies that have Irish operations consistently state how their Irish operations have been critical to their global success. These companies are called multinationals because they serve multinational markets and they must have operations in those major markets, not least the European Union.

While it is not the only reason for our success, Ireland's competitive corporation tax policy is a very important one. It was established six decades ago, before the establishment of the forerunner to the European Union, and it has been implemented consistently since its introduction. On its introduction Ireland was a poor isolated country on the periphery of Europe. Visionaries such as the late T. K. Whitaker realised that if we had any hope of sustaining a living standard for future generations we would have to attract inward investment and we would have to export. To do this we cast aside failed policies of isolationism and introduced pro-enterprise policies such as low corporate tax rates. The reason this policy has worked is that it is implemented with transparency and certainty.

There is a widespread consensus that the basis for taxing the international operations of multinational companies has not kept pace with the evolution of the global economy, the emergence of new industries and business transformation. In some cases, global tax protocols were almost 100 years out of date and there has been an understandable public frustration surrounding the operation of the international tax code. The need to bring matters up to date gave rise to the Organisation for Economic Co-operation and Development, OECD, base erosion and profit shifting, BEPS, initiative. Ireland has been a central participant in this initiative. In her evidence to the committee last week, Commissioner Vestager said: "... one aspect I very much admire, is the fact that Ireland is very much leading when it comes to the implementation of the OECD work to make a more global tax community". Not only is Ireland's taxation regime competitive, by any global standard it is also highly transparent and consistent. Ireland has taxation agreements with 72 other countries and has over 20 information exchange agreements. These information exchange agreements provide for the cross-border sharing of information, ensuring greater levels of international tax compliance.

In conclusion, Ireland has transformed its economy due to key pillars, including the certainty, transparency and universal applicability to all companies of its tax code. That certainty has helped Ireland compete and that track record has created an investment relationship with the United States that is remarkably resilient. For example, in the five very tough years for our country from 2008 to 2012, US business investment here exceeded that of the previous 60 years. This is down to our hard-earned reputation for certainty and to the innovation and talent of our people. In the current very competitive and challenging global environment for inward investment, it is vital that we protect and defend this hard-earned reputation.

Mr. Brian Keegan: In 2011, Oireachtas Éireann amended the Ministers and Secretaries Act to put beyond doubt that the Revenue Commissioners are independent as they carry out their duties under the various taxation and customs Acts. That amendment placed on a statutory basis what was the long-standing convention in this area, a convention dating back to the establishment of the Office of the Revenue Commissioners. The political system may not interfere with the administration of the Irish tax system. In the decision published by the European Commission at the end of August last year, the Commission has taken upon itself powers of interference in the decisions of the Revenue Commissioners. It has assumed powers which Oireachtas Éireann formally denied to itself in 2011.

There are 13 billion reasons for wanting to accept the EU Commission decision, but we believe it would be a false economy to do so. Chartered Accountants Ireland is on public record as stating that the EU Commission ruling in the Apple case infringes on Irish sovereignty. Our belief is that the application of the state aid rules to overturn an administrative decision on a direct tax matter goes beyond EU competence.

The boundaries within which the Commission must operate when addressing tax issues for

all the EU member states, not just Ireland, are complex but nevertheless are clearly set out in the EU treaties. Decisions that relate to taxation require unanimous consent. This principle was reaffirmed by the EU's legal service as recently as November last year, when it found that a proposed directive concerning the reporting of tax liabilities by multinationals would require unanimous approval as a fiscal measure, rather than requiring qualified majority approval as a reporting measure. Any adjudication by the Commission on any aspect of the direct tax affairs of an EU member state for whatever reason must therefore be regarded with some suspicion. Indeed, much suspicion was voiced by members of this committee when they met with Commissioner Vestager last week.

Ireland has traditionally been respectful of the EU state aid rules in accordance with its obligations under the EU treaties. Tax incentives introduced in various Finance Bills have frequently been sent to Brussels for advance vetting before taking effect, a practice mentioned by the chairman of the Revenue Commissioners last week. This is to ensure that they do not distort the Single Market by selectively conferring advantages which go beyond the limits tolerated under state aid rules. On balance, we believe Irish tax legislation has been improved by this type of vetting. Indeed, the 12.5% corporation tax rate itself was created as a result of state aid scrutiny.

However, the Commission's Apple ruling does not concern the design of Irish tax legislation. Instead, it concerns administrative opinions and confirmations made by the officers of the Revenue Commissioners with regard to the apportionment of the profits of non-resident multinational companies. I do not propose to offer a critique of the Commission ruling here. The committee has already heard many of the arguments in the course of its deliberations and, as recently as yesterday morning, the Commission published a summary of the Irish legal position against its decisions. Our concern is the impact of the making of the decision, irrespective of its consequences, on the independence of the Revenue Commissioners and, therefore, on the reliance that a taxpayer may place on their dealings with the tax office, both in the past and into the future. No arm of the State can function efficiently if it leaves itself open to being second-guessed by an external authority. It does not seem reasonable that such a vast amount of money should properly accrue to the Irish Exchequer from a single case. A company would need to have made an average profit from its Irish activities of €10 billion per year over the ten-year period in question for such a vast amount of tax to be owing to the Collector General.

Putting forward concerns over sovereignty draws down suggestions that Chartered Accountants Ireland sides with the Government decision to lodge an appeal, or is arguing for the commercial concerns of Apple Incorporated, or that we support without question, and this is not the case, the behaviour of the Office of the Revenue Commissioners in all matters. However, Irish taxpayers, individuals, domestic companies and multinationals alike, deserve some degree of certainty in dealing with their tax compliance obligations. Otherwise we are all just making up the rules as we go along. I look forward to participating in this afternoon's discussion.

Mr. Jim Clarken: I thank members for the opportunity to speak to the committee today. It is an important and welcome opportunity for Oxfam to engage with decision makers in a genuine and solutions-oriented discussion on how to increase tax justice to improve the lives of people in Ireland and abroad. Oxfam works in 90 of the poorest countries in the world and we seek to develop long-term solutions to global poverty and inequality. This is impossible to achieve as long as the current scale of global corporate tax avoidance continues to drain essential financial resources from developing countries.

I will not speak at length about the Apple state aid case but, instead, about how to apply the

lessons from the case and ensure we develop a global tax system that ends the corporate tax avoidance that is particularly detrimental to developing countries. The UN has estimated that every year developing countries lose approximately \$100 billion as a result of corporate tax avoidance schemes. This is enough to pay for the education of all the 121 million children who currently are not in school and for health interventions that could save the lives of 4 million children. It is outrageous, unjustifiable and morally defunct.

In the run-up to the 2016 general election, Oxfam Ireland commissioned independent nationwide attitudinal research on inequality and corporate tax avoidance. The research found that 82% of Irish adults polled agreed that the next Taoiseach should specifically address tax dodging, equal pay and access to quality public services. The survey also showed growing concern about large-scale tax dodging, with 86% of people believing that big companies and wealthy individuals are using tax loopholes to avoid paying their fair share of taxes. It is clear that the people have mandated the Government to act.

Oxfam recognises that Ireland has been involved in the OECD BEPS process and various ongoing processes at EU level to address corporate tax avoidance. International fora are the most appropriate avenues to deal with a number of issues related to corporate tax avoidance. We also recognise the important role the 12.5% corporate tax rate has played in our economic development over many years. Oxfam Ireland is not asking for changes to this rate. We acknowledge the strong and important role the multinational corporation sector plays in Ireland. However, we have serious concerns as to whether the existing processes Ireland is engaged in go far enough to really address the problem of global tax avoidance. Having worked on these issues for many years, we believe the following five areas need to be addressed as a matter of urgency.

A global tax body must be developed. The rewriting of global tax rules should be tackled by a body like the UN. The OECD and EU are not constituted or qualified to represent the international community and a forum which does not include developing countries on an equal footing will, inevitably, not take their interests sufficiently into account. Since 2012, the G77 has been calling on the UN to set up an international tax body to agree a truly global set of rules for taxation. We call upon Ireland to stand with developing countries on the issue and support the formation of a global tax body.

There must be increased transparency. Ireland has agreed to exchange country-by-country reports and tax rulings with its European partners, yet this falls well short of full transparency. None of this limited information will be available for public scrutiny by legislators, policy makers, civil society watchdogs or the media. It also will not be available to those most affected by tax avoidance, namely, developing countries and their citizens. We already have public country-by-country reporting for the financial sector in Europe, and this is an important tool which allows policy makers to identify potential tax avoidance strategies. There is no public interest in not extending this approach to all other business sectors. If the recent crash has taught us anything, it is that we need quality information to deliberate on and select policy options that result in outcomes that protect the public interest.

We must tackle profit shifting. It is obvious that one of the primary ways companies continue to avoid taxes in Ireland is by profiting shifting. We can see evidence of this in a variety of ways, such as our inflated GDP figures or the very high levels of excess profits over and above what might normally be expected based on real economic activities, which we estimate is in the tens of billions of euro. Despite this, Ireland's specific legislation on transfer pricing is exceptionally weak and does not give Revenue officials authority to investigate instances in

which profit shifting may be used as a tax avoidance strategy. This needs to change.

Ireland needs to legislate for strong controlled foreign company, CFC, rules, as agreed to under the EU anti-tax avoidance directive. This should be done as soon as possible, preferably in the next budget. The main aim of CFC rules is to discourage profit shifting to tax havens outside the EU, which should benefit both developed and developing countries.

Another area that must be addressed is double taxation treaties. A 2011 report prepared by the UN, World Bank, IMF and OECD recommended that all treaties with developing countries should include an anti-abuse clause. Despite this, none of Ireland's treaties with developing countries contain any anti-abuse provisions, even those treaties with Ethiopia, Pakistan and Botswana, which were concluded after 2011, following the recommendations. We call on the Government to ensure all double taxation agreements concluded by Ireland contain such anti-abuse provisions.

The final area we must address is spillover analysis. Ireland is to be commended on commissioning a spillover analysis of the possible effects of the Irish taxation system on the developing world. However, at the time the analysis was carried out, there was no access to country-by-country reporting by multinationals, so it was extremely difficult to assess where the flows originated. Given that country-by-country reporting has been mandated for Irish companies from 2016, we call on the Government to conduct a follow-up spillover analysis using the new data available, which may help to improve understanding of flows between Ireland and developing countries via third countries, and help target measures to end corporate tax avoidance.

Corporate tax avoidance is not a victimless crime. Because of the Apple ruling, we know all profits from iPhones and other Apple products sold in Europe, the Middle East or Africa are recorded in Ireland and little or no tax was paid on some of them. This is worth considering in the context of developing countries in Africa. Africa is a bigger mobile phone market than the USA and will shortly surpass Europe. Apple is cashing in on this growing market. Sales of the iPhone grew by 133% in 2015 in the Middle East and Africa. But African countries' tax revenues have not been benefitting from this boom. Even if just a small amount of the billions of profits that are generated were taxable in developing countries, the additional resources would make a huge difference to the people with whom Oxfam works and who are fighting every day to lift themselves out of poverty.

I will conclude by telling a story that shows the human impact of tax policy. It reminds us that when we talk about what seem like dry, technical accounting practices or reforms - with apologies to the accountants in the room - lives are at stake. Monique Koumate was expecting twins in the west African country Cameroon. When she went into labour and started experiencing complications, her partner took her to hospital. However, because they could not pay the small hospital fees, she was left outside the maternity hospital for hours in desperate need of urgent care. The doors were closed to her. Although Monique's family did their best for her, one twin was stillborn and the other died moments after birth. Monique Koumate died on the steps of the maternity unit. Three lives were lost just feet away from the medical attention they so desperately needed and which would have saved their lives. Cameroon has a severe shortage of doctors with just one for every 5,000 people. The government introduced a fee-based system for health care in a bid to bridge a funding gap and make services more widely available. Precisely because of those fees, care was not available to Monique. Illicit flows out of Cameroon are the equivalent of 63% of the country's health budget and the equivalent of the country's entire FDI and aid each year. It is not just the Government of Cameroon which is left short of funds to cover the cost of universal health care. For the west African countries at the centre of

the Ebola crisis, health budgets were dwarfed by the figures lost to corporate tax avoidance and dodging.

We have a chance to build a more human economy in which the interests of the majority are put first, a world where there is decent work for all, where women and men are equal, where tax havens are something people read about in history books, and where everybody pays his or her fair share to support a society that benefits everyone. During the past 15 years, we have reduced extreme poverty across the world by 50%. The intention is, with the sustainable development goals, to eradicate extreme poverty by 2030. It is possible and feasible, but will not happen unless we adequately tackle the global problem of tax avoidance.

Dr. Jim Stewart: I am an academic working in the school of business, Trinity College. I have been working and researching the area of corporate taxation and the taxation of multinational enterprises, MNEs, for many years. MNE tax strategies are complex but often obscure. The tax strategies of Apple were first revealed in detail by a US Senate sub-committee in 2013. These complex arrangements were known to very few. One reason for this is that all Apple subsidiaries in Ireland are incorporated as unlimited companies and file very little financial information.

There are three main aspects to my presentation: Apple structure and tax strategy, aspects of the Commission decision, and some implications of the Apple appeal. Ireland is very important to Apple in terms of profitability and tax structure. Form 10K for 2015 states, “Substantially all of the Company’s undistributed international earnings ... were generated by subsidiaries organized in Ireland.” The Apple group has seven subsidiaries incorporated in Ireland and three are not resident for tax purposes.

There are a number of reasons for the success of Apple, in particular the development of organisational competencies, market power and intellectual property. Apple profitability reflects all three aspects. Organisational competencies include factoryless production, or contract manufacturing, from which Apple Sales International, ASI, benefits enormously in respect of Apple production in China.

Apple Ireland is HQ for European operations, including India, Middle East and Africa. The US Senate report found that one subsidiary in Ireland, Apple Sales International, had no employees, no fixed assets and income of \$22 billion in 2011, on which it paid tax at the rate of 0.045%. The effective tax rate for ASI fell to 10% of that number by 2014, to 0.005%. The ability to remain incorporated in Ireland but not resident for tax purposes in any country was ended in the Finance Act 2013. As a result, Apple Ireland has been reported in 2016 to be the largest taxpayer in Ireland.

The appendix to my presentation shows various measures of effective tax rates, ETRs, for Apple for the period 2006 to 2015. The table shows that while the Apple group pays corporation tax, although not at the statutory rate, little corporation tax is paid outside the US due to large foreign tax savings, largely arising from Irish operations. The foreign tax charge on overseas earnings amounts by one measure to 5.2%, by another to 3.4%. As a result of Apple’s overseas tax rate being so low, a tax credit for overseas tax is also low, so that on repatriation of those profits, Apple would be subject to a much higher tax rate.

The Department of Finance summary of the basis of Ireland’s appeal does not refer to the fact that ASI and Apple Operations Ireland, AOI, are registered companies in Ireland, but rather refers to the Irish branches of ASI and AOI. There are several important legal requirements

for an Irish incorporated company, as distinct from a branch. The country of incorporation has assumed greater significance because of European Court of Justice rulings. For example in the case of Eurofoods, incorporated in Ireland, there was a dispute as to whether the firm should be liquidated in Ireland or Italy, where the parent company Parmalat was located. The European Court of Justice ruled that the registered office, the place of incorporation, was the centre of main interests. This firm also had no employees and no fixed assets. ASI and AOI were regarded by Revenue as not tax resident in Ireland because ASI and Apple Operations Europe, AOE, had a trading activity in Ireland through their respective branches but were managed and controlled outside Ireland. Furthermore, both companies were not resident in any other jurisdiction.

Apple has argued that ASI could be split into two branches, even though it had no fixed assets and no employees, and this argument was accepted by Revenue. The Commission states that the two tax rulings issued by Ireland concerned the internal allocation of these profits within Apple. One branch in Ireland earned very little profit and paid tax on those profits. The other part, the headquarters branch, earned most profits and paid no tax. The Commission issued a press statement to the following effect:

Specifically, Revenue endorsed a split of the profits for tax purposes in Ireland: Under the agreed method, most profits were internally allocated away from Ireland to a “head office” within Apple Sales International. This “head office” was not based in any country and did not have any employees or own premises. Its activities consisted solely of occasional board meetings.

The Commission comments on this organisational structure as follows “since ASI’s and AOE’s Irish branches do not have a separate legal personality from the companies to which they belong, neither those branches nor any other part of those companies, in particular their respective head offices, could be said to separately own the assets or owe the liabilities of those companies”.

Why were ASI and AOI regarded as non-resident companies? Apple and Ireland claim that critical business activities conducted by or for ASI and AOE were conducted outside of Ireland, for example through Apple Inc. employees or the board of directors of ASI and AOE. In contrast, the Commission could find no evidence that AOI or ASI were managed and controlled outside Ireland.

Why is ASI so profitable if it has no fixed assets or employees? The Commission decision states that ASI and AOE had the beneficial ownership in their territory of the intangible property developed as a result of the research and development conducted under the cost sharing agreement with Apple.

One of the criticisms of the Commission decision is that Ireland would become a tax collector for the rest of the world. The Commission press release of 30 August 2016 states, “The amount of unpaid taxes to be recovered by the Irish authorities would be reduced if other countries were to require Apple to pay more taxes on the profits recorded by Apple Sales International and Apple Operations Europe for this period”. The Commission decision refers to two cases where this has happened, namely, Italy where according to press reports the amount was approximately €318 million, and one other unnamed country. The transfer is indirect. It is not a direct transfer from the Irish State. Such reallocation of profit from Ireland to other countries, mostly EU countries, has become common. There have been around 100 such adjustments since 2005, involving a reduction in profits declared in Ireland, a consequent repayment of Irish corporate tax of around €900 million and an associated increase in reported profits and

corporate tax payments in other countries. There are likely to be far more cases involving Irish subsidiaries in future years because of increased data provision to jurisdictions in other countries, in particular country-by-country reporting. Such adjustments could be seen as a form of introduction of consolidated corporate tax base, CCTB, but on a bilateral basis.

Revenue, in commenting on the decision to appeal the Apple decision, stated, “MNEs should pay tax on profits and it is not the function of Revenue to defend the use of international tax law by multinationals”. By appealing this case the Irish Government appears to be doing just that. The Irish Government case is identical to the Apple case. The Irish Government has spent considerable sums in defending the Apple case and there will be further expenditures in the future. In the absence of these expenditures, Apple expenditures are likely to be much higher. The words “Apple” and “Ireland” are continuously conjoined in the Commission decision, giving the impression both cases are identical.

In the context of Brexit, where we are likely to seek important concessions from our EU partners, and special economic measures perhaps in an emergency for certain sectors, it is unfortunate that in two major areas, the introduction of CCTB and CCCTB and the Apple case, Ireland is in dispute with the Commission. There is a high risk that, by appealing this case, a number of EU Governments and, perhaps more important, public opinion in EU countries will interpret this appeal as support for Apple’s tax strategy. Apple has deep pockets and this appeal could last several years, a constant reminder to public opinion that Ireland apparently supports Apple’s tax strategies.

The Commission case is very strong. Apple and the Irish Government are likely to lose this case, but irrespective of the decision, appealing this case is a mistake and is not in the public interest.

Deputy Michael McGrath: Mr. Redmond used some fairly strong language about second guessing taxation decisions in a retrospective fashion. He also spoke of tax certainty. The Commission announced the decision back in August. Has it had an impact on sentiment or on the way US multinationals view Ireland with regard to tax certainty or the integrity of Revenue?

Mr. Mark Redmond: One’s brand is one’s promise and the investing in Ireland brand has always been certainty. There was a very broad appreciation that the Irish Government moved quickly to appeal the decision of the European Commission. That has reassured investment because there was concern that, 25 years after the event, there could be a retrospective second guessing of an independent Revenue authority.

Deputy Michael McGrath: There has been no discernible impact on how Ireland is viewed. Mr. Redmond has not heard of any change in the way Ireland is regarded as a place for foreign direct investment.

Mr. Mark Redmond: The two-way US-Ireland business relationship, with US investment into Ireland and *vice versa*, has never been as strong. However, I must acknowledge that we are in an uncertain global situation with Brexit, the EU state aid case and a changing view to world trade from the far side of the Atlantic. For this reason, we must as a country be vigilant on the issues within our control to ensure that an atmosphere of certainty regarding Ireland as a good place to create jobs is maintained.

Deputy Michael McGrath: Mr. Clarken advocates the need for a truly international organisation to advance the cause of tax justice. He suggested the UN, saying that the OECD and

EU are not the appropriate bodies to resolve the issue of legal corporate tax avoidance. What of the substance of the OECD's base erosion and profit shifting, BEPS, initiative? Irrespective of the fact that, although it is not global, the OECD is trying to get developing countries to sign up to it, does Mr. Clarken agree with the direction of the proposed reforms to deal with the erosion of the profitable base and the artificial shifting of profits? Is what the OECD is trying to do right and is it the wrong body to do it?

Mr. Jim Clarken: Broadly speaking, the OECD has identified a global crisis in terms of corporate tax and tax avoidance. That this has been done and agreed by a body is helpful, but the OECD is not a representative body. Rather, it is a club for the wealthiest nations in the world. Developing countries were not there at the beginning and have not been involved in designing the initiative. That is very problematic. I do not know any country that would sign up to a set of agreements that were designed without its input. That is fundamental to our problem with this. There is global momentum in the G77, led by Ecuador and supported by China, for the UN or a globally representative body to tackle these issues. The fundamental flaw cannot be addressed by the current initiative.

Deputy Michael McGrath: If the developing countries had been involved in the process from the outset, how would the substance of what has been agreed be different? I understand Mr. Clarken's point, in that those countries are being asked to join something in which they did not have a role in designing. That is fair enough, but if they had been, what would be wrong with the BEPS project and its objectives and action points?

Mr. Jim Clarken: The membership issue is fundamental. Those within the OECD process are not going to design a system that is in any way impactful on or detrimental to any of its members, as we have seen in the OECD's definitions of tax havens and so on. The membership issue is a major part of the problem.

In order to engage with the OECD, developing countries would be forced to pay significant fees that they could not afford and they would not be given the technical support required for an even and fair bilateral arrangement with another country. They are not in a position to engage with those processes at the same level as every other country in the OECD. That is an immediate problem with how the initiative will be rolled out.

Deputy Michael McGrath: Will Mr. Keegan comment on the issue of profit shifting that Mr. Clarken raised in his opening statement? Mr. Keegan is the expert on tax law. When I examine how profits move from one jurisdiction to another, it always seems to involve transfer pricing and royalty payments for intellectual property, with the profits ending up in countries where there is practically no tax to be paid. According to Mr. Clarken, Ireland has only had transfer pricing-specific legislation since 2010 and there is still no law in Ireland to authorise Revenue officials to investigate incidents in which profit shifting may be used as a tax avoidance strategy. He stated that this was remiss of the Government, given its support of the arm's length principle, and that Ireland's transfer pricing regime should be made two-way, giving Revenue officials the power to investigate where they believe transfer prices to be overstated in Ireland's favour rather than only where they may be understated. This goes to the heart of the issue of profits being moved from one jurisdiction to another and how Ireland can be a link in that chain. Will Mr. Keegan address this point? Are our laws on transfer pricing and what we have signed up to weak or strong enough?

Mr. Brian Keegan: As Mr. Clarken observed, the transfer pricing legislation has only been in place formally since 2011. The Irish transfer pricing legislation is in full conformity with the

OECD standards. It is hot-wired against them, so it compares well *pari passu* with everything else. However, Deputy McGrath is right. The mismatch that arises is fundamentally the result of disputes about the so-called arm's length principle and the real market value of items being charged across borders. In so far as the focus of any revenue authority is concerned, such authorities will only examine the impact on their own tax takes. They will not necessarily alert other revenue authorities. At least, that was not the case until recent initiatives on exchanging information across borders became more prevalent.

There has been a strengthening of provisions against potential profit shifting since 2011, particularly in Ireland. Participation in BEPS is contributing towards Ireland's capacity to manage that. One of the great pities of the Apple case is that the European Commission's investigation seems to have damaged the BEPS process. There is increasing push-back from the US in particular against participation in, for example, country-by-country reporting and harmonising tax treaty arrangements because of a sense that the BEPS project is unfairly targeting some of its multinationals. Many complex issues are involved, but the movement is undoubtedly in the right direction. Ironically, the Apple decision does not help that.

Deputy Michael McGrath: In terms of the ability of a large multinational to design its corporate tax structure and engineer its affairs in a manner whereby profits can be moved along the chain to end up in a country where no tax is paid, let us say a true tax haven, is there still too much flexibility through the royalty payment process where there is no underlying economic rationale for the transfer pricing arrangements or is there a consistency through the arm's length principle and OECD standards as regards what determines how transfer pricing works? It seems that profits have been shifted to end up in the Caymans, Bermuda or other places where no tax is paid.

Mr. Brian Keegan: The Deputy is correct. The best way to answer this is by saying that the process is not nearly where it should be at the moment. However, it is still a work in progress and open consultations are ongoing at OECD level as to how branch profits should be attributed. To summarise, we are in a better position - not just in Ireland, but generally around the world - than we were four or five years ago, but it remains a work in progress and there is still capacity for profit shifting to take place. That is why the BEPS initiative continues to try to roll forward.

Deputy Michael McGrath: Will BEPS resolve it?

Mr. Brian Keegan: It would if it managed to achieve all of its 15 objectives, but its capacity to do so has been damaged or at least delayed by the response to the Commission investigation.

Deputy Michael McGrath: Dr. Stewart went into the Apple issue in some detail. I thank him for that. He is a strong advocate for tax justice. Emerging from this case is the scenario whereby all of Apple's profits outside of the Americas - approximately 60% of its global profits - should have been subject to tax in Ireland as opposed to all of the other countries where Apple had operations and its products were being sold. Where is the tax justice for those countries in that?

Dr. Jim Stewart: Apple on an organisational basis decided to allocate most of its non-US profits and route them through Ireland.

Deputy Michael McGrath: Yes.

Dr. Jim Stewart: There have already been a number of other cases - there will be more - in

which profits have been reallocated. I mentioned the Italian case and the Commission mentioned another, but there are likely to be further cases in which profits will be reallocated. It is difficult to decide on how profit should be allocated within a firm such as Apple. The profits do not arise just from intellectual property, IP. The Cork branches had entered into a contract with Apple so that they have the licence to use that IP. It also results from organisational competence where the Chinese sales of Apple computers are effectively routed partly through Apple Sales International, ASI, in Cork for a few weeks, a few months and then sold on. The profits accrue in Cork.

It relates to other aspects, that is, market power. What market power means is that Apple can charge superior prices for its products. I think the profits resulting from the price of the product should accrue in the countries where the sales take place. This is the reason I am in favour of a common consolidated corporate tax base, CCCTB. I do not think that arm's length transfer pricing can work where most trade is intra-firm. There must be other issues involved. It is a difficult in respect of intra-firm transfer pricing.

Deputy Michael McGrath: In the case of Apple, is it Dr. Stewart's view that the money was legally owed to Ireland because of the tax structure that was used, but in terms of economic substance it should not be paid to Ireland as many other countries would have a legitimate claim on a share of it?

Dr. Jim Stewart: I think it was legally owed to Ireland. However, in terms of economic value added, it probably arises in other countries. There are difficulties in the appropriate allocation of profits, particularly for Google and Apple, in other countries. It is a very difficult decision.

Deputy Michael McGrath: The payment by Apple of €13 billion to Ireland is hardly a leading example of tax justice.

Dr. Jim Stewart: It is better than Apple not paying any tax at all on those profits.

Deputy Richard Boyd Barrett: He is absolutely right.

Deputy Michael McGrath: It is a bit more complicated than that. Much of the profits concerned remain untaxed pending possible repatriation to the United States and pending claims by other countries which can claim there was economic activity in their jurisdiction that contributed to the generation of those profits. Commissioner Vestager opened up that in the Commission press release last August. It is not as simplistic as Deputy Boyd Barrett seeks to make out.

Dr. Stewart states he is an advocate of CCCTB. What is his assessment of the impact that would have on Ireland if the present CCCTB proposals were adopted?

Dr. Jim Stewart: It is very difficult to say. There are reports purporting to estimate the effects on Irish corporate tax receipts. It is very difficult to know exactly how it will work out. The Commission has done studies indicating there will be a small fall in corporate tax receipts in Ireland and an increase in other countries. I think because of the adjustments that I referred to earlier, CCTB, that is, a common corporate tax base, will enter by default. Increasingly, countries will have the information on which they themselves determine that profits of companies operating in their jurisdiction do not reflect value added and they will seek those profits to be repatriated or to be transferred from where the profits are currently declared. I think the solution is the introduction of a harmonised CCCTB. In the long run it would be good for Ireland, good for business in Ireland and good for multinational enterprises, MNEs, in Ireland. US

companies are the main beneficiaries of a free market and that is the reason some US companies have initiated state aid claims cases. For example, Microsoft and other companies are the major beneficiaries of a free market and free trade in goods, services and labour.

Deputy Michael McGrath: I thank Dr. Stewart.

Deputy Pearse Doherty: I welcome all the witnesses and thank them for their presentations. I have a couple of questions for Mr. Redmond. Will he clarify the position of American companies that have their headquarters in Ireland? If an American company that is operating in Ireland has its headquarters in the United States and repatriates its profits, having paid 12.5% tax on them in this jurisdiction, what happens to the profits when they go back to the United States?

Mr. Mark Redmond: I will not pretend to be an expert on it but I would assume they would be liable to US corporation tax on repatriation.

Deputy Pearse Doherty: Every American company which is headquartered in the United States is liable to US tax if it shifts the profits back to America.

Mr. Mark Redmond: My understanding is that the current US corporate tax regime is what is called a global regime. No matter how many subsidiaries or the structure of the company, ultimately any profits will be liable to US corporate tax.

Deputy Pearse Doherty: Would they get a credit for the tax they paid in the member state, be it in Ireland where it is 12.5%, so if they were to pay the current rate, which is 35%, the 12.5% paid in Ireland would be deducted?

Mr. Mark Redmond: That is my understanding.

Deputy Pearse Doherty: Most companies would obviously pay tax on their profits accrued in a certain jurisdiction. The companies Apple Sales International, ASI, and Apple Operations Europe, AOE, have paid no tax anywhere in the world.

Mr. Mark Redmond: As I said to the Chairman at the outset, I will not be commenting on specific companies, and specifically on this case because of the legal proceedings. If a company's profits are generated in Ireland, that will be liable to 12.5% corporation tax.

Deputy Pearse Doherty: We hear these throwaway remarks that are very good and clever. The public who are not accountants believe that the US company profits are taxable in the United States. However, is it not the case that every single US company that has its headquarters in the United States is taxable in the United States if it moves its profits back to the United States after paying tax in Ireland?

Mr. Mark Redmond: That is my understanding. Ultimately, any profit the companies generate anywhere in the world is liable to US corporation tax.

Deputy Pearse Doherty: The difference with these two companies incorporated in Ireland is that, unlike all the other US companies here, they did not pay any tax either in Ireland or anywhere in the world. They could invest their profits anywhere in the world outside of the US without paying tax.

Mr. Mark Redmond: The Deputy will forgive me but I cannot comment on the specific case. However, the general point he makes is correct. A US company generating profits any-

where around the world is ultimately liable to corporate tax. What is important to note is that if the profits are generated in Ireland, they are liable to Irish tax.

Deputy Pearse Doherty: There is no requirement on them to repatriate the profits. They could invest in energy, in buying Supermac's, or whatever they want. There is no requirement on them. Sometimes it is put out that they are taxable in the US. There is no requirement on any US firm to repatriate its profits after it has paid tax to the headquarterd member state.

Mr. Mark Redmond: Again, just to be complete, in the past the US has had repatriation incentives to encourage US companies to bring funds back. As the Deputy knows, there is speculation that might happen in the future. As we sit here today, there is no requirement for repatriation of profits in a timeframe.

Deputy Pearse Doherty: Mr. Phillip Bullock is the head of tax policy in Apple. Given that Apple Inc. is one of the largest, if not the largest, company in the world, I would imagine he knows his business. He gave sworn testimony before a US Senate hearing that there was an arrangement with the Irish Government which allowed for the taxable profits to be calculated at 2%. Does Mr. Redmond dispute that?

Mr. Mark Redmond: I think that will be central to the legal proceedings currently in train between the Government and the European Commission. It would be inappropriate for me to make a specific comment on that.

Deputy Pearse Doherty: Is Apple a member of the American Chamber of Commerce Ireland?

Mr. Mark Redmond: Yes, it is.

Deputy Pearse Doherty: I am interested. I am not casting any aspersions on the character of the individual, but in sworn testimony before a US Senate hearing - I can read the transcripts if Mr. Redmond wishes but I am sure he is familiar with them - he speaks of a special tax arrangement. When he was asked under questioning from Senators, he said that was 2%. I think Mr. Tim Cook followed that up in that there was a special tax incentive to attract Apple to Ireland in the 1980s. Does Mr. Redmond stand by that? It goes to the core of the matter, whether there was a special tax arrangement with the Government or with the independent Revenue Commissioners?

Mr. Mark Redmond: It goes to the core of the matter but I need to be very careful. To be helpful to the committee, both the chairman of the Revenue Commissioners and the Minister for Finance have come before the committee and have put on record that there was no special deal arrangement.

Deputy Pearse Doherty: For the record, the head of tax operations contradicted that in sworn testimony to the US Senate hearings to say there was a special tax arrangement and the CEO of the company said there was a tax incentive package. We have sworn testimony in the US Senate, which let the cat out of the bag, according to the Commission, which led to this investigation. We have others who dispute that. I am not questioning their sincerity in respect of it, but I am interested to know on which side the American Chamber of Commerce Ireland comes down on. Does it come down on the side of the company's statement in 2013 or the statement that it got it wrong?

Mr. Mark Redmond: As I said, this case and the reason the chamber welcomes the Gov-

ernment's decision to appeal go to the heart of the independence of Revenue and the robustness of Ireland as a democracy. The Minister for Finance and the chairman of the Revenue Commissioners have given testimony to the committee that there was no arrangement or deal and that is good enough for me.

Deputy Pearse Doherty: I will pick up on that point with Mr. Keegan who in his opening statement mentioned the independence of the Revenue Commissioners. He has also done so on his own blogs. Will he enlighten the committee on the legislation about which he talked? Why was legislation enacted in this House to deem that the Revenue Commissioners were independent? Why did that only happen a couple of years ago?

Mr. Brian Keegan: As I understand it, the 2011 legislation was as a consequence of a recommendation made by the Moriarty tribunal.

Deputy Pearse Doherty: Yes.

Mr. Brian Keegan: It had to do with putting on a statutory footing the Office of the Revenue Commissioners. It was generally understood it would be treated as completely independent in its management of tax cases but that the political system might have something to say, for example, about the number of staff employed and the budget assigned to it. The legislation was to copperfasten what was understood.

Deputy Pearse Doherty: I appreciate the clarification. The reason I have asked Mr. Keegan about that matter is I have huge respect for the Office of the Revenue Commissioners, as I mentioned when its representatives were before us, but I think it got it seriously wrong in this instance. We are, however, also looking through the lens of the past. Let us look at the years when the judgment or tax ruling was made. There was no legislation stating the Office of the Revenue Commissioners was independent. In fact, the Moriarty tribunal recommended that, as legislators, we introduce it. The reason was it had found that the Taoiseach of the day, during the exact same period when the first Apple ruling was issued, had directly interfered with the most senior official within the Office of the Revenue Commissioners to confer a benefit of millions of euro on an individual by the name of Mr. Dunne. There is, therefore, an acceptance that there was political interference at the highest level with the Office of the Revenue Commissioners during that period. Mr. Redmond spoke about the independence of the Revenue Commissioners, but is it not a statement of fact that the Moriarty tribunal found that there had been interference during that period? There were many other allegations of political interference in the case of Ansbacher. For example, the former Taoiseach Bertie Ahern's brother-in-law, as Revenue appeals commissioner, reduced the former Taoiseach Mr. Haughey's tax liability which was in the millions to zero. Is it not believable that there could have been political interference given what we know about what happened at that time? We know what the culture of politics was back in the 1980s and how the Fianna Fáil Party worked in making side deals and having regard to all of the things that have been noted since.

Mr. Brian Keegan: I bow to the Deputy's knowledge of the Moriarty tribunal. I do not know about it to that level of detail or about political interference in other cases, but I will make this observation. It does seem that, if nothing else, the Commission has been extremely thorough in its documentation. I am not familiar, however, with what it would have made of the suggestion of political interference. Beyond this observation, I cannot really offer anything useful in answering the Deputy's specific question.

Deputy Pearse Doherty: As I have made clear, I am not suggesting there was political in-

terference. However, I do take issue with delegates continuing to refer to the independence of the Revenue Commissioners and the need to defend it without noting that the Moriarty tribunal found that there was political interference. Because of the level of that political interference the House was required to introduce legislation to make it a crime.

I ask the panel of delegates to comment on the fact that one of the largest accountancy firms in the State, KPMG, is advertising on its website as an “Irish headquartered company”. It talks about the attraction of using Ireland as a global corporate headquarters. It cites a number of reasons, including that Ireland is a gateway to Europe; that it is a member of the eurozone; that it has an English-speaking, young, dynamic and well educated workforce; that it has a single financial services regulatory authority, a common law legal system and an attractive tax regime encompassing the rates of 0%, 12.5% and 25%, depending on the vehicle used. Why do we have one of the largest accountancy firms in the country telling global giants to locate here and stating there are vehicles by which they could reduce their tax liabilities to zero? Do the delegates think that is the type of member state tax regime we should have in place in this jurisdiction? I ask Mr. Clarken to comment first.

Mr. Jim Clarken: It is quite offensive to the citizens of Ireland that such an assertion is being made on behalf of all of us in the context of the investment that takes place here because of the things the Deputy mentioned. The benefits include that Ireland has an English-speaking, well educated workforce, as well as access to the European market. It is worth remembering that although we had a consistent tax rate for many years, things did not really take off until the mid-1990s following the peace process, when there was the investment of funds from the European Union in infrastructure. There was also the impact of investment in education over a long period. We understand there are global accountancy giants which are advocating and presenting Ireland in this very way. This goes to the heart of what we want in terms of the need for transparency. We cannot see a justifiable reason not to have absolute transparency and public country-by-country reporting in order that people in the media and others can scrutinise what is happening. Unless civil society can do the same in having public registers of beneficial ownership and the publication of tax rulings, we will not have learned sufficiently from what has happened here and there is a real fear that it will continue in the future. We have not heard a single, rational, strong reason we are resisting providing for that level of transparency. We cannot rely on LuxLeaks, the Panama papers and all of the solid pieces of investigative work by journalists to provide us with information which should be publicly available.

Deputy Pearse Doherty: Will Dr. Stewart comment on the same matter?

Dr. Jim Stewart: It is wrong that the tax code allows certain vehicles to pay zero tax. The section 110 vehicle can offer very low rates of tax. In fact, PwC also has a statement on its website that section 110 companies can also pay zero tax. That is wrong and needs to be addressed.

Deputy Pearse Doherty: Will Mr. Keegan give us an explanation? We have legislation in place to deal with section 110 companies and will see how effective it is. Why is KPMG still promoting to companies that they should locate here as Irish-headquartered companies and that they can pay zero tax, depending on the vehicle used?

Mr. Brian Keegan: Because, in common with all businesses, it wants more business. It is as simple as that. One of the points we can sometimes overlook - it is a commercial reality, although I know that it is not a comfortable one for a lot of businesses - is that, in my experience - I have been involved in the tax sector for 30 years - most businesses regard tax as another cost. It is a cost to be managed in the same way as manufacturing, lighting or heating costs are

managed. As a nation, we have recognised this since the late 1950s. First there was export sales relief, which was followed by the 10% manufacturing rate, corporation tax from 1980 onwards and, subsequently, the 12.5% rate of corporation tax. When one is trying to attract business to a small peripheral country, one uses whatever tools and levers one possibly can. It may not be acceptable in many quarters and I understand why. People are looking at their own tax bill and saying: “We have to pay so much. Why aren’t other companies paying as much?” The reality is that businesses are more likely to migrate to where they can manage tax as a cost. Whether that is right or wrong is the subject of a separate discussion, but I am answering the Deputy’s question straight.

To give another point of view, Dr. Stewart mentioned a justifiable reason for not having country-by-country reporting. The United States has indicated that it will not do business with any other country which provides for public country-by-country reporting. Why is it doing this? It is because it has a concern about confidentiality for its own corporates. I am not saying all of these things are right or wrong, but I am trying to give a straight answer to the Deputy’s question as to why a company such as KPMG might be advertising in this way.

I have one last point to make about some of the structures used. Just because tax is not paid in Ireland does not necessarily mean that it is not ultimately paid somewhere else. That is a point worth making in the context of multinational tax planning.

Deputy Pearse Doherty: I will put my last question to Mr. Clarken and Mr. Redmond. I am aware that on the day of the Apple ruling, the CEO of a medical devices company operating here received a call from the CEO at the company’s headquarters asking him whether the company had invested in the wild west. The CEO was concerned about the reputational damage that might ensue if Ireland was involved in practices of this nature. I ask Mr. Clarken, who has spoken about the impact of reputational damage on other member states, and Mr. Redmond to respond to that.

Mr. Jim Clarken: Ireland is a very credible international player in international development, human rights and social justice. Its voice is heard way above its scale and its size. The events of the last year or two have had a hugely detrimental impact on Ireland’s reputation. It is important for corporations to remember that the tax euro they pay are needed not just for social services like health and the education of the kind of workforce they require, but also for public investment in infrastructure like water and quality broadband. If they do not pay their taxes, they will not have the capacity to do what they need to do here. It is very short-sighted for corporations to be unwilling to pay their fair share. If the US is not willing to engage with companies that have public country-by-country reporting, we need to challenge it about that because the Inland Revenue Service in the US is also losing out. We mentioned in a report we produced for Davos less than a month ago that the eight wealthiest people in the world own the same amount of wealth as 3.6 billion people. The IMF, the World Economic Forum and numerous other agencies that would ordinarily have nothing to do with our arguments have identified this as a global crisis that will have significant implications for economic growth across the world if it is not addressed. This problem must be addressed for the benefit of economies and multinational companies. If developing countries are not given an opportunity to move beyond their current stage of development, they will not be able to create markets for the kinds of products and services these companies want to sell. This needs to be considered by such companies from a self-interest point of view. If this is managed properly, it will result in a win for companies. Things cannot continue as they are at present.

Mr. Mark Redmond: As I said at the outset, we must remember when we use phrases like

the “wild west” that we are talking about the reputations of 150,000 talented people in this country who work for US companies. The Deputy referred to a phone call between two leaders of a medical technology company. The recipient of the call is the leader of a team that is part of a group of people in this country who create four out of every five medical stents, thereby saving lives throughout the world. These 150,000 bright people, who are passionate about innovation, would not do what they do to save and enhance lives if they were working in the wild west. We should be proud of them and proud of the contribution they are making to Ireland’s reputation on the world stage.

Deputy Richard Boyd Barrett: Nobody here is casting any aspersions on the 150,000 workers who work in the multinationals that operate here. Nobody has suggested that any such aspersions should be cast. It is a complete red herring. I would like to pick up on a line of questioning from earlier in this meeting. Apple is a member of the American Chamber of Commerce Ireland. Does Mr. Redmond have any reason to believe the representatives of Apple were telling lies to the Senate congressional committee? Would it not be a serious matter if members of the chamber of commerce swore under oath and lied to a Senate congressional committee? Would Mr. Redmond’s assumption be that his members told the truth at the Senate congressional hearing when they said they believed there was a special tax arrangement with Ireland and when Tim Cook said there was a special tax incentive scheme? Does Mr. Redmond have any reason to believe they were stating anything other than the truth?

Mr. Mark Redmond: I have to say again that this matter is now the subject of legal proceedings.

Deputy Richard Boyd Barrett: No, but how-----

Mr. Mark Redmond: All I can do to be helpful to the committee is assume that the representatives of the company engaged with those hearings as openly and as helpfully as they could. These matters are now the subject of a legal case.

Deputy Richard Boyd Barrett: I do not think that is a consistent answer because even though this issue is now the subject of legal proceedings, Mr. Redmond was quite happy a moment ago to say he believes that what Revenue told this committee was correct, while refusing to say that he believes what Apple said to the Senate congressional committee was correct. Why is he willing to quote an argument that suits Apple and to confirm his belief in the veracity of what was said by Revenue here, while at the same time being unwilling to confirm his belief in the veracity of what representatives of Apple - members of the chamber of commerce - told the Senate congressional committee?

Deputy Peter Burke took the Chair.

Mr. Mark Redmond: I want to be consistent. I am not here to speak for an individual company. To be helpful to the Deputy and the committee, it would have to be assumed, given that the company is appealing the European Commission ruling, that it is strong in its opinion that there was no deal.

Deputy Richard Boyd Barrett: Representatives of Apple told the congressional committee that there was a deal, but when they subsequently discovered that this statement might cost the company €13 billion, they suddenly concluded that there was no deal and decided to fight it in court. Could Mr. Redmond forgive a poor layperson looking at this for believing that it stretches their intelligence and their credulity? Is it not a bit hard for people to get their heads

around?

Mr. Mark Redmond: The point I would make about people looking on now is that there is an ongoing legal process. A decision will be made on the basis of the evidence. That is where we are right now. It would be wrong for me to interfere in that legal process.

Deputy Richard Boyd Barrett: Okay. I think any reasonable person looking at it would say the company has been caught with its pants down. It said something it believed to be true at the time, but it decided to backtrack on that at a later point when it discovered that it was going to cost it dearly. I think that is what any reasonable person looking at this would conclude. We will move on. I think the point has been made.

Professor Stewart said that in 2011, Apple Sales International, with “no employees, no fixed assets and income of \$22 billion” paid €10 million in tax. This equates to a tax rate of 0.045%, or less than half of 1%. The company cannot have many overheads if it has no employees and no office. I want to clarify that it has no legal tax residence anywhere in the world. Regardless of the merits of the current case - I am not asking about them - do Mr. Redmond and Mr. Keegan consider that the facts I have outlined are acceptable? Is it acceptable that a company could make \$22 billion in revenue while having no overheads and paying less than 1% in tax? Leaving aside the issue of Ireland, do Mr. Keegan and Mr. Redmond believe that to be morally acceptable?

Mr. Brian Keegan: If the Deputy does not mind, I will ground my response in Ireland because it is primarily the territory I am-----

Deputy Richard Boyd Barrett: That is not what I am asking Mr. Keegan about.

Mr. Brian Keegan: -----most concerned about and is probably the only territory about which I can give the Deputy a sensible answer. Any non-resident company that has a branch or an operation here is only taxable to Irish corporation tax on the profits from the activities of the branch. It does not matter whether it earns €1 or a different sum elsewhere - the focus of the Irish tax system is on the profits within the branch.

Deputy Richard Boyd Barrett: With due respect, I heard Mr. Keegan’s opinion on this issue very clearly earlier in this meeting. He said he believes the Commission is interfering and has made the wrong call on this matter. We get that point.

Mr. Brian Keegan: No, sorry.

Deputy Richard Boyd Barrett: I am-----

Mr. Brian Keegan: I also made the point that I believe the Commission cannot write its own rules. We have to operate with the rule of law when it comes to imposing a charge on a citizen or a company.

Deputy Richard Boyd Barrett: This is-----

Mr. Brian Keegan: If the law says a particular thing, then the company must comply with it and must pay. One cannot rewrite the rules just because one does not like the outcome. One can rewrite the rules so that the outcome is better in the future and we discussed it in that context.

Deputy Richard Boyd Barrett: With due respect, the issues that Mr. Keegan is willing to address, although Mr. Redmond will not, are the subject of the legal case. Mr. Keegan has

given his opinion but the issues are the subject of a legal case. Dr. Stewart has made the opposite argument that legally the profits accrue to Ireland. Opinions may differ but the matter will be adjudicated by the European Court of Justice. I did not ask Mr. Keegan about that matter and suggest we leave it to the European Court of Justice.

Mr. Brian Keegan: All right.

Deputy Richard Boyd Barrett: Mr. Keegan's work involves tax matters.

Mr. Brian Keegan: Yes.

Deputy Richard Boyd Barrett: Does Mr. Keegan think it is morally acceptable that a company can earn €22 billion in one year yet pay less than 1% tax, wherever that tax might be paid?

Mr. Brian Keegan: The question is difficult to answer but I will try to give the Deputy the best answer that I can. The first goal of a taxpayer, be it a corporation or an individual, is to comply with the law of the land. There is almost no moral guidance extant on any of this stuff. Professor Tony Honoré works in one of the Oxford colleges. He has talked about the moral contract that a company or an individual has with society. Once a company or an individual decides to locate, to whatever extent, in a society they must buy into the rules. Therefore, they must be compliant with all of the rules of that society, including the tax rules. That is a reasonable and coherent position.

As for the first question on moral grounds-----

Deputy Richard Boyd Barrett: That is what I asked.

Mr. Brian Keegan: I shall answer the Deputy as best as I can. On moral grounds, the first position is whether an individual or company is tax compliant. Are they obeying the rules of the territory or country in which they find themselves? That is the moral side.

Deputy Richard Boyd Barrett: The companies that I have just referred to are legally tax resident nowhere in the world. We can debate whether they should be. I believe that if they are incorporated here then they should be taxed here.

Mr. Brian Keegan: Yes.

Deputy Richard Boyd Barrett: The companies are tax resident nowhere. Mr. Keegan's argument is a bit spurious.

Mr. Brian Keegan: The Deputy asked me one question and I tried to give him an honest answer. He did not like where my answer was going and asked me another question. What can I do?

Deputy Michael D'Arcy: Mr. Keegan is not the first person that the Deputy has confused.

Deputy Richard Boyd Barrett: Does Mr. Keegan think it is acceptable-----

Acting Chairman (Deputy Peter Burke): I ask the Deputy to allow the witness to finish giving his answer.

Deputy Richard Boyd Barrett: Yes.

Mr. Brian Keegan: Once one gets over the moral issue of compliance, one gets down to the moral issue of whether the system is justifiable, fair and charges the right amount. The consensus at the moment, with which I agree, is that it is not. That is why we have a thing called the base erosion and profit sharing, BEPS, project. The idea behind the BEPS project is to eliminate the kind of mismatches that make the global system inequitable in the first place. My organisation and I support that stance. We are the single organisation that has made the most technical input into the BEPS process over the past three years. We are constantly in correspondence with the OECD on the project, making suggestions and offering views on its consultations papers. We really want to make this happen.

I reiterate the point that I made to Deputy Michael McGrath. One of our concerns about the current Apple case is that it is impeding the BEPS process. I cannot give a more comprehensive reply.

Deputy Richard Boyd Barrett: Genuinely, I do not mean to be rude and I appreciate the answers.

Mr. Brian Keegan: The Deputy has not been rude. He is just thorough, which I can live with.

Deputy Richard Boyd Barrett: I only have a short time to ask questions.

Mr. Brian Keegan: That is fair enough.

Deputy Richard Boyd Barrett: If what Mr. Keegan has said is true, does that mean he is strongly in favour of, as Dr. Stewart has rightly argued here for, a common consolidated corporate tax base? The Government is resistant to or at least suspicious of the idea. Does Mr. Keegan agree we need a method to take account of where we allocate profits?

Mr. Brian Keegan: Yes.

Deputy Richard Boyd Barrett: Successive Irish Governments have resisted doing so because they know it is not in their interest-----

Mr. Brian Keegan: Right.

Deputy Richard Boyd Barrett: -----or have perceived it as not being in their interest because they knew and know that companies have used this country as a tax haven.

Mr. Brian Keegan: Yes.

Deputy Richard Boyd Barrett: That is the reality. It is the dirty secret that everybody knew. Successive Irish Governments knew these companies used Ireland as a tax haven but it suited them to say nothing, to resist efforts by others such as Oxfam and academics like Dr. Stewart and others who pointed out this reality and to say “nothing to see here”.

Mr. Brian Keegan: I spend a lot of my time trying to teach tax. From that point of view, nothing would suit me better than a common consolidated corporate tax base, CCCTB. It would be fantastic, in theory, to have a common system where everybody knew exactly where they stood in terms of taxation. The system has two fatal flaws. First, because it would be centralised to Brussels it would not give Oireachtas Éireann the kind of flexibility it might need to change the situation to meet a different economic circumstance. Second, because the tax arbitrage is all about mismatches and because CCCTB is effectively an EU-based system, it

does not address a huge part of the problem. I mean the mismatch between the likes of countries on the far side of the Atlantic and countries in the Far East. One has a local solution to a global problem. The upshot of that might be that those who are involved in the local solution might ultimately do this. Philosophically, I have no particular difficulty with the scheme. My concerns about it are practical.

Deputy Richard Boyd Barrett: My time is almost up so I shall ask the two Jims, that is, Mr. Clarken and Dr. Stewart, a few questions.

Mr. Brian Keegan: Are we good now?

Deputy Richard Boyd Barrett: I would not say that-----

Mr. Brian Keegan: Neither would I.

Deputy Richard Boyd Barrett: -----but we can continue our debate on another day.

I commend Mr. Clarken and Dr. Stewart on the work of their organisations and their individual work in this whole area. Would Mr. Clarken from Oxfam agree it is fair to say that the major contributing factor to the staggering level of inequality he has identified in his recent report about eight people owning the same wealth as half the world's population is corporations that do not want to pay tax? I know there are lots of contributory factors. Would Mr. Clarken say that is the major contributing factor? What does he think we will be faced with if we do not address the problem in a serious manner in terms of redistributing the wealth that has become heavily concentrated at the top?

I shall ask Dr. Stewart a question as I am out of time. Perhaps both witnesses can answer together. I have read the TASC seminar report put together by Dr. Stewart and Mr. Cillian Doyle on the section 110 issue to which Dr. Stewart alluded earlier. The report is brilliant and quite shocking. Dr. Stewart has said that 2,500 financial vehicle corporations, FVCs, could be benefitting from the provisions of section 110, which essentially is a scheme whereby no tax is paid on assets worth hundreds of billions of euro. If I have understood correctly what Dr. Stewart said - I ask him to confirm and elaborate slightly - there is little or no regulation on this area and there is not even joined-up thinking between the Central Bank and Revenue in terms of getting information on these firms. Dr. Stewart cited a range of stockbrokers, financial organisations, etc. that tout Ireland as a country without financial regulation and in which virtually no tax is paid on assets worth hundreds of billions of euro. I ask him to comment further on that point.

Mr. Jim Clarken: I can answer the Deputy's question on impact. Without doubt, tax avoidance of this scale has a massive impact and we know it amounts to €100 billion in developing countries. It amounts to trillions of euro when one considers individual wealth as well as corporation wealth that has not been taxed in the places that it should have been taxed.

Let us remember, as I have tried to illustrate, the difference between a health service that works and one that works less well is people dying in huge numbers. Similarly, it means children not being educated from the ages of five years upwards or children dying. That is how serious this problem is. I have outlined the human face and impact of tax avoidance. It has a massive impact on the lives of ordinary people across the world. Tax avoidance must resonate as a justice issue. We need global corporations to be successful, innovative and produce great products and services in order that society at large will benefit. Corporations once thought of themselves as organisations that were to contribute to society as opposed to just quarterly reporting on profit improvements. As was quoted, surely the moral contract with a society is the

society where one is based. That is where it starts. When we see corporations in developing countries often not paying tax yet benefiting from the resources of that country, whether they be natural or human resources, and the benefits governments in those countries provide to them to make the money they want to make, there is a complete mismatch.

Our major concern is that the inequality growth we are seeing, and it is important that people understand it is getting worse year on year, is a huge impediment to development. We are fearful that it is an impediment to our ambition to eradicate extreme poverty, which might sound like a big dream but if we continue at the pace we have been going in the past 20 years we could do that. There is a real concern, and not just on the part of organisations like Oxfam but also the IMF, the World Economic Forum and other such organisations, that unless this is tackled head-on we will be looking at reversing some of the progress we have made rather than getting to the finish line. It has to be a priority for all of us.

Deputy Richard Boyd Barrett: I thank Mr. Clarken.

Dr. Jim Stewart: I thank the Deputy for his question. Regarding section 110, section 110 refers to this particular section in the 1997 Finance Act which underwrites an earlier provision. The basic idea was to encourage securitisation in the International Financial Services Centre, IFSC. Rather confusingly, there are two types of companies that may be section 110 companies. There are financial vehicle corporations, FVCs, that the Central Bank has been looking at for years and in which the European Central Bank, ECB, has been very interested, and then special purpose vehicles, SPVs, that may benefit also under this provision. There are thousands of special purpose vehicles in Ireland, only a small number of which are section 110 vehicles.

An interesting aspect is that according to Revenue data, there are approximately 2,200 of these that are alive; they are trading. However, according to Central Bank data there appears to be only about 1,650 so one of the issues Cillian Doyle and myself have been doing research on is to try to explain that gap. One of the possible reasons we have for explaining that gap is regulatory problems in locating an FVC and an SPV because it seems to us that the only way the Revenue finds out that a company is a section 110 company is when it is sending in its annual report and accounts. The Central Bank is supposed to collect this data within one week of anything trading but many companies do not seem to report to the Central Bank. Interestingly, many of the companies that have bought distressed property are in the Central Bank registry as a FVC but they are not strictly an FVC. There are many other companies that are simply omitted. That area certainly deserves much more research. I hope that is helpful to the Deputy.

Deputy Richard Boyd Barrett: Yes. I thank Dr. Stewart.

Deputy Michael D'Arcy: I will not ask the gentlemen to comment on the Apple case. My question is to Mr. Keegan. I believe it was Leona Helmsley who said that only the little people pay taxes. Is this a case of the little companies pay tax and the larger companies can get away without paying tax because they can employ tax lawyers that are good enough to help them do that?

Mr. Brian Keegan: It is to the great credit of this country that little people, generally speaking, do not pay tax and bigger people do pay tax. The Deputy heard testimony from the Revenue Commissioners to the extent that approximately 40% of corporation is paid by fewer than a dozen companies. That principle also extends to our income tax system where, effectively, 75% of all income tax is paid by about 25% of wage earners.

If a company of a sufficient size can operate in a multinational environment, going back to the point I made earlier that companies regard tax as a cost and will do what they can legitimately to manage that cost, it can put strategies in place that many of us cannot. American companies can put strategies in place that many European companies cannot because of a particular mismatch in the way tax is computed in both territories, but that is the world in which we find ourselves. I do not believe it necessarily falls based on this case.

Deputy Michael D’Arcy: The section 110 companies are probably the best example that has appeared in the past ten years. Is it appropriate that legislation that was intended for usage in financial services was applied to property?

Mr. Brian Keegan: That is a complex question. As Professor Stewart has mentioned, that section 110 legislation dates as far back as 1991 and was designed specifically to get the IFSC up and running.

Deputy Michael D’Arcy: To get it established.

Mr. Brian Keegan: Yes. It contains a fail-safe provision in that it is only available in the context of a company whose ultimate parent has a tax treaty with Ireland. It may not be paying tax in Ireland but it is accountable in a country we know we can deal with, and that is important.

In terms of property, the only observation I would make is that there is a long-standing position in Irish tax law that any asset which derives value from land or property in the State is *prima facie* taxable in the State. It appears to me that section 110 vehicles, at least in so far as they have been hitting the news in recent months, seemed to-----

Deputy Michael D’Arcy: Circumvent.

Mr. Brian Keegan: That is a good word for it. They seemed to circumvent that particular principle and as a consequence of the last Finance Act, that is no longer the case but beyond that I cannot really observe.

Deputy Michael D’Arcy: My next question is to Mr. Redmond. Are any of the vulture funds part of the American chamber?

Mr. Mark Redmond: Not to my knowledge, no.

Deputy Michael D’Arcy: In terms of the 150,000 staff directly employed, in addition to the approximately 100,000 attached to those jobs, would the US companies stay or, to use the expression, would the horses be scared away from the prospect of Apple having to pay the €13 billion? I am talking in the general rather than about the Apple case.

Mr. Mark Redmond: Yes.

Deputy Michael D’Arcy: Unlike my colleague, we will give Mr. Redmond the opportunity to answer that one.

Mr. Mark Redmond: No problem. I would have to say to the Deputy that it is vitally important that we defend the fact that we have a certain environment here in which to invest.

Deputy Michael D’Arcy: Can I challenge that?

Mr. Mark Redmond: Go on.

Deputy Michael D’Arcy: We do not have a certain environment.

Mr. Mark Redmond: My apologies. It is to the extent that we can control that. We are probably one of the most open economies in the world and as I said earlier, there is a lot going on that we do not control but what is within our control is the way we set the rules and regulations by which we operate. One of the key pillars of that is the body that taxes taxpayers in this country and that body has to operate independently, without fear or favour and with certainty. That has been one of the key pieces that has earned Ireland an enviable reputation as a certain place within our control in which to invest. That is why it is right for the Irish Government to defend that.

Deputy Michael D’Arcy: Is Mr. Redmond’s organisation concerned about the retrospective nature attached to the Apple case?

Mr. Mark Redmond: I believe I am right in saying it was 25 years of retrospection in one case, 1991, which is incredible.

Deputy Michael D’Arcy: I think they only go back ten years.

Mr. Mark Redmond: No. Two alleged opinions were given by the Revenue, one of which was 1991 and the other was 2007.

Deputy Michael D’Arcy: Yes. I am sorry.

Mr. Mark Redmond: I refer the Deputy to the United States Department of the Treasury. The week before the press conference in August it issued a strong White Paper that referenced a chilling effect with regard to US views of Europe.

Deputy Michael D’Arcy: I assume Mr. Redmond’s body represents many of those marquee names - Apple, Google, etc. What is the primary reason they are established in this country? Is it access to the Single Market or our staff? What is the primary reason they are here?

Mr. Mark Redmond: What they consistently call out on both sides of the Atlantic, and I spoke about it earlier, is the unbelievable talent pool created here in Ireland.

Deputy Michael D’Arcy: Not access to the Single Market.

Mr. Mark Redmond: That is very important. It is also the access to the European Union, the fact that we are an English speaking country, our education system, our tax certainty and our competitiveness. However, if the Deputy is asking me what is the number one reason, they consistently say, and the Deputy will hear this from them, that they are blown away, so to speak, by the quality and the track record, for example in medical technology, which is unbelievable. As the members know from visiting these companies and seeing what they do, the talent here is second to none.

Deputy Michael D’Arcy: Can I push on Mr. Redmond’s analysis somewhat as he is in a good position to give a view? In terms of Brexit, we hear of Frexit and the potential prospect of other countries leaving. Could Ireland leave the European Union, the Single Market and the customs union and not suffer a huge loss in terms of those type of jobs?

Mr. Mark Redmond: The view of the chamber is that Ireland must remain within the European Union, Ireland is a key player in the European Union, and Ireland’s society and economy will continue to benefit by being part of the European Union. I should say it is also important

in the context of our key relationship with the United States of America.

Deputy Michael D’Arcy: Is Dr. Stewart aware of the Ernst & Young analysis on the CCTB?

Dr. Jim Stewart: Yes.

Deputy Michael D’Arcy: It stated clearly that there would be an enormous transfer. The countries that would gain are the large countries and those that would lose are the small countries. Why would we go down that route?

Dr. Jim Stewart: Their analysis was a forecast and forecasting is a tricky task to undertake. One of the factors that goes into the allocation of profit is, of course, the size of assets in a country. I note that with the wind-down of the double Irish many companies have been transferring intellectual property to Ireland and it is not obvious to me that we would lose a significant amount of tax revenue.

In any case, we will lose tax revenue because of these collaborative adjustments that I referred to earlier. The way ahead to a rational tax system is in terms of CCCTB. It is a tax change that will cement the benefits of the free market. It is ultimately to the benefit of all companies operating in Ireland that one can sell goods freely throughout the EU.

By the way, it would be a complete disaster if Ireland even thought about leaving the EU, never mind that one might have discussed it. This is not the matter to be discussing at present in light of Brexit, Trump, etc.

Deputy Michael D’Arcy: It is good to hear Dr. Stewart’s view on what would happen. Many get much more air time than he does.

On the repatriation of profits to the US from those stateless companies, I recall Mr. Tim Cook clearly stating in an interview that there is a fund of billions of dollars for when Apple repatriates its profits. Should it be the country where the product is invented, created and formed that would take the bulk of the profits?

Dr. Jim Stewart: That depends. For example, the country where the intellectual property, IP, was created, that is, America, has transferred the rights to those assets to Cork and the value is located in Cork. One might dispute the price that Cork subsidiaries paid for that but that is a different issue. The rights are located in Cork and that is where the intellectual property is held and where the profits are located.

Those who know far more about tax than I would say it is plausible to repatriate profits to the US under current legislation without triggering a tax charge of anywhere near 35%. The problem is it is difficult to get in very large sums. If one were trying to get in a couple of billion dollars, one would be hit but by nothing like 35%. That is why Apple has engaged in various alternative tax strategies.

Deputy Michael D’Arcy: I will ask, because it is something that is important, whether Dr. Stewart saw the committee’s view on the CCCTB.

Dr. Jim Stewart: Yes.

Deputy Michael D’Arcy: Were we wrong to take the position we took?

Dr. Jim Stewart: I think the committee is wrong. CCTB and CCCTB is a rational way of organising the intra-country allocation of profits. The OECD, unfortunately, has gone down the route of setting prices at arm's length. Most trade that takes place in Ireland is within the firm and most of the trade takes place within the firm in monopolistic or oligopolistic-type structures, such as Google and Apple. Determining the arm's length price is very difficult and subject to massive litigation. It is out of date and a formulary approach, such as the CCTB, is a much more rational way of organising that.

By the way, the tax rate in Ireland would remain the same. We could still have different tax rates.

Deputy Michael D'Arcy: In some areas, not all.

Dr. Jim Stewart: That would be something that would remain under our control. The tax base would change though.

Deputy Michael D'Arcy: I will ask Mr. Clarken about the base erosion and profit shifting, BEPS, process. Was it he who stated that the BEPS process will probably not be a success?

Mr. Jim Clarken: I said it was heavily flawed.

Deputy Michael D'Arcy: If the US is not prepared to play ball on country-by-country reporting, is it Mr. Clarken's position that it cannot work?

Mr. Jim Clarken: I suppose we have a number of issues with it and a number of reasons we specifically think this should be a global body. For example, if Ireland was not a member of the OECD and suddenly this body decided to design a new system that we were not part of, would we around here think it acceptable to join that after the rules had been created? More than 100 country Governments have been excluded from the agenda setting. I mentioned that at the start. I should have also said the OECD's processes are opaque. It has already determined that it will not be critical of countries within the club, for example, it has narrowly defined what a tax haven is. Understandably, the OECD is committed to advancing the benefit to its members, as opposed to the world which is what we think needs to happen, and it has limited its agenda specifically to BEPS whereas a UN body could have a much broader remit.

Also, there is a lack of transparency and possibility to engage with and challenge the OECD on these processes, compared with what a UN-mandated body would be obliged to do, for civil society, for media and for opposition to the various proposals that are being put forward. It is important that the membership involved in this matters. The OECD is based in Paris and developing countries have limited enough access to it. In the UN institutions, the poorest countries are given financial support to participate where they do not necessarily have the technical or financial expertise or capacity to be involved. By definition, it will be an unbalanced outcome. We have to acknowledge it is better than where we were but it is not the right vehicle.

Deputy Michael D'Arcy: We were the first country to move on the BEPS process. Some other countries within the OECD still have not moved. It was budget 2014 when we moved ahead of everybody else and we were told by the Department of Finance that there would be first-mover benefit. Did any first-mover benefit accrue to ourselves?

Dr. Jim Stewart: It is very difficult to know.

I would also echo the previous speaker's statement that the BEPS project is not magic. It in-

roduces a lot of complexities into the tax system. It makes what is already complex even more complex. There is also emphasis on exchange of information. Something has to be done with that information and there is a problem that revenue authorities in different countries may suffer from information overload. How can they deal with all the information on rulings and coming under country-by-country reporting so that they can use it in a particular way? There are greater chances of reform coming from the European Union rather than the OECD. In particular, under changes in US Administration, the US may become more hostile to the OECD process and may also engage in rather protective practices in tax, trade and other policies.

Deputy Michael D’Arcy: Could the US leave the BEPS process?

Dr. Jim Stewart: I do not think it would leave the BEPS process but it could introduce unilaterally a lot of changes that would be at variance with the BEPS process. The risk is that other countries would feel that they have to retaliate or change their own.

Deputy Michael D’Arcy: I will discuss the Apple case with Mr. Keegan and Mr. Redmond and then the hypotheticals. Mr. Tim Cook stated in the statement in August of last year that Apple had taken a Revenue opinion on how the taxes would be applied and acted in accordance with that opinion. The Revenue Commissioners have also said that is the case, that they gave an opinion of how the law should be applied to the company. Commissioner Vestager, when she appeared before the committee last week, said there could be €13 billion due to the Irish Exchequer. Is it possible that Ireland could have the benefit of the windfall of those moneys, given that the information was given by the Revenue Commissioners on behalf of the State and that the reputational damage to Apple could be so much larger than €13 billion? Is it possible that a case could be taken by the company on the basis that the Revenue Commissioners gave an opinion it believed to be correct with regard to the law, yet retrospectively the Commission moves with a state aid case that impacts on the company?

Mr. Mark Redmond: As I understand it, what the European Commission has to prove is that not only did it give a ruling, but it selected Apple for special treatment. There are two parts to it. I believe it is so important-----

Deputy Michael D’Arcy: I am putting it hypothetically.

Mr. Mark Redmond: I was not going to go there. It is important that a good revenue authority in an open democracy encourages taxpayers to come to it and seek clarification on how the law applies to them if they are uncertain. That is best practice. That is why I said at the outset that I would hate to see any undermining of that in this context.

Mr. Brian Keegan: I will make two quick observations. I cannot understand the description of the OECD process as being opaque. I cannot think of any process I have encountered in which there was more consultation and which was more accessible to the institutions and the people involved. In terms of information overload as a consequence of BEPS, a common reporting standard has been developed. In fact, the Oireachtas passed legislation in the Finance Act which allows the Revenue Commissioners not to accept voluntary disclosures any more with regard to offshore assets because the quality of the information they are getting is so good. I have to disagree completely with the observations on the BEPS process.

As regards how the law should be applied, I will make one observation to Deputy D’Arcy. The Revenue Commissioners were not saying this is how section 25 works. They were saying that they had a calculation to carry out of the actual commercial amount which falls subject to

Irish tax. That is the issue. They have to give those types of decisions in all types of circumstances, be they to multinationals or to a self-employed person who perhaps uses his car for private use and business. They constantly do this type of work and if we impede their capacity to clarify matters for taxpayers in any way, we are doing ourselves a disservice.

Deputy Michael D’Arcy: What about the prospect of a case taken against the State on the basis that the information is given by the Revenue Commissioners to a company and subsequently a state aid case is taken?

Mr. Brian Keegan: That is a deep legal issue on which I am not qualified to comment. I would have considered it unlikely, but I cannot say definitively.

Senator Rose Conway-Walsh: I thank the witnesses for their presentations. Mr. Redmond spoke about our reputation for certainty, which is an important word. However, does he think companies have located in this country because they were certain that they would have to pay little or no tax?

Mr. Mark Redmond: No, I do not. Our internationally competitive tax rate certainly is an important factor. To respond to the earlier question, the key reason companies locate and grow here is the talent they find here. That is the essential reason. Other countries can compete with us in respect of competitive tax regimes, but few can compete with us with regard to the extraordinary talent we have created.

Senator Rose Conway-Walsh: On that basis, there is no threat to multinationals investing in Ireland regardless of the outcome of the tax ruling or what tax they might have to pay in the future. Mr. Redmond is saying the taxation element of our competitiveness is almost insignificant in attracting foreign direct investment. People are quite happy with the 12.5%.

Mr. Mark Redmond: It is not insignificant. It is a very important factor, but, as I said, the first is people. The issue that would concern us is the certainty. Imagine if the situation was reversed and an Irish company had invested in one of the states of the US and got an opinion or guidance at state level, but 25 years later it was overturned at federal level. Imagine how the Irish would feel about that, so it is the certainty piece.

Senator Rose Conway-Walsh: Imagine if absolutely no methodology was used and one could not trace anything. How would that make matters appear? One hears somebody say to the US Senate that they had a special agreement, but then one hears a few months later that there was no special deal in place. Imagine how confusing that is for ordinary Irish people and, indeed, for people who are thinking of investing here. All taxation and rulings must be retrospective by their nature. When one looks at penalties, levies and so forth they are always done retrospectively. Why should multinationals be any different?

Mr. Mark Redmond: All citizens have a constitutional entitlement to order their affairs in accordance with the law of the land as it applies at that time. We cannot change the laws and go back and change our minds about how they were treated. In terms of satisfaction for the ordinary man or woman on the facts of this case, that is what the court proceedings will be about. It is to find out.

Senator Rose Conway-Walsh: Does Mr. Redmond think it was negligent of the Government not to have some type of methodology that could be introduced now? That is the crux of the matter. If the methodology was in place, I believe the EU Commission would be happy with whatever way it was used. What does Mr. Redmond think of the absence of the methodology?

Mr. Mark Redmond: Again, I will not speak on specifics but, to be helpful, as I understand it some of the reasoning given by the Commission is referring to regulations or best practice guidelines that were introduced a decade after the facts of the case. People must be consistent in how they apply the law.

Senator Rose Conway-Walsh: It is very difficult to be consistent when one has no methodology or nothing with which one can compare things. I accept that we have a well educated workforce but, looking at the tables for education throughout the world, believing the reason multinationals are attracted to Ireland is that somehow we are more educated than the people of other countries does not hold true. I will move on to other specific matters. There are many Irish companies operating in the US. Do they get the same deals as US companies get here?

Mr. Mark Redmond: What type of deals does the Senator mean?

Senator Rose Conway-Walsh: For example, are there companies paying 0.005% tax?

Mr. Mark Redmond: The Irish Government and the Revenue Commissioners dispute that. That is probably at the heart of part of the legal proceedings. To be helpful to the committee and to reply to the question, my understanding is that there is as much tax competition between different states within the United States to attract inward investment as Ireland faces from other EU members states, or indeed other countries, to attract inward investment here. There are different state tax regimes depending on where a company chooses to locate.

Senator Rose Conway-Walsh: Does Mr. Redmond think we had a fair taxation system in 2005?

Mr. Mark Redmond: What is one talking about when one refers to a fair taxation system? One issue is to ensure it is progressive so that, from an individual perspective, the more one earns, the more tax one pays. The OECD has said consistently for decades that Ireland has one of the most progressive tax systems in the world.

Senator Rose Conway-Walsh: I am referring to corporate taxation. Does Mr. Redmond think we had a fair system in 2005?

Mr. Mark Redmond: Again, perhaps the question is whether it is fair that a company pays 12.5% whereas an individual could pay up to 52%, depending on their income.

Senator Rose Conway-Walsh: No, what I mean is does Mr. Redmond think we had a fair system when we were operating the double Irish, section 110 and many other vehicles that are used? Was that fair?

Mr. Mark Redmond: Ireland was not operating the double Irish. It was not contemplated by Irish legislation. That is an issue is being addressed by the base erosion and profit shifting, BEPS, project question.

Senator Rose Conway-Walsh: Yes, but does Mr. Redmond believe it was fair before it was addressed?

Mr. Mark Redmond: From Ireland's point of view, we need to ensure that we have a transparent tax system that is equitable and operated consistently and that companies understand their obligations under it.

Senator Rose Conway-Walsh: It was not equitable, however. Strides are being made to

put that right. The Government, however, was dragged kicking and screaming to do that and is now taking credit for it. Is it right that a US company such as Apple should refuse to appear before this committee?

Mr. Mark Redmond: That is a matter for them to explain. It is not for me to speak for the company on that point.

Senator Rose Conway-Walsh: What about companies other than Apple? Does Mr. Redmond think that when US companies are invited to appear before the Oireachtas Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach, they should be inclined to do so?

Mr. Mark Redmond: All I can say is that when we got the invitation, we were delighted to accept it. We are happy to be here and will always, hopefully, be helpful to Oireachtas committees.

Senator Rose Conway-Walsh: I thank the American Chamber of Commerce Ireland for being here.

The Apple ruling made international front pages from the *Financial Times* to *Metro* in London, with headlines proclaiming fury at Apple's 0.005% tax bill. A poll of international readers of *The Economist* found that the majority agreed that rules were flouted regarding Apple's tax arrangement. This continues to be terrible publicity for Ireland. There are no two ways about it. It is that publicity and the perception of Ireland as a tax haven that is damaging. Does Mr. Redmond believe our reputation could be somewhat salvaged or restored by Ireland coming clean and not appealing the Commission's ruling? Would it not be better if Ireland admitted that it had done things wrong in the past, that it did not have tax fairness or transparency, and that it lacked what I would call a progressive tax system? If we said we will do it right in the future, would that not create absolute certainty for companies?

Mr. Mark Redmond: No. In short, Ireland is not a tax haven. That is not just me saying it. It has been put on the record of this committee by Pierre Moscovici, European Commissioner for Economic and Financial Affairs, Taxation and Customs, José Ángel Gurría, the Secretary General of the OECD, and Pascal Saint-Amans, the leader of the OECD's BEPS project. Tax havens do not have over 70 tax treaties and 20 information exchange agreements. Tax havens are not fourth in the world to sign a bilateral agreement with the United States of America on its Foreign Account Tax Compliance Act. Tax havens do not have 250,000 people working and creating brilliant products and services which are saving and enhancing lives around the world. That is why I keep saying to the committee that we need to put the facts out about the substance and depth of the US-Ireland relationship.

Senator Rose Conway-Walsh: Absolutely. That goes without saying. I know figures fluctuate from here and there on direct and indirect investment and so forth. It is difficult to substantiate them but it is well-recognised we have a positive relationship with the US. We want to protect that in terms of investment both ways, both from Ireland and back. We are just trying to get to the crux of fairness and tax justice.

Mr. Clarken's recent report labelled Ireland a tax haven, which provoked much anger. What is the most internationally-recognised measure of what is and what is not a tax haven? Based on the OECD's assessment, how many tax havens are there in the world?

Mr. Jim Clarken: The OECD definition is limited. I will not engage in semantics but any

destination which facilitates, inadvertently or otherwise, grand-scale tax avoidance or profit shifting can be considered detrimental to other countries. That is where we would be positioning this. Looking at a number of indicators, we described how Ireland plays out within that system. More importantly, going back to the core argument, there is a real global problem and Ireland is somehow part of it. It is up to us to do everything we can as part of a multilateral arrangement to improve that system for the benefit of Irish citizens and people all over the world. It is possible and doable.

I would contend an earlier assertion about BEPS. Transparency is not at the heart of BEPS. We are not talking about public country-by-country reporting, public beneficiaries of ownership or publication of tax rulings. Had it not been for the US Senate inquiry, we would not be aware of the Apple situation? Without having the level of transparency needed, we may see situations like this again, with or without BEPs. This has to go to the heart of what needs to be done and transparency needs to be central.

Senator Rose Conway-Walsh: Exactly. Dr. Stewart's conclusion is striking. He stated that the EU will win the appeal and, politically and legally, Ireland will lose. Who does he think has influenced the Government to lodge the appeal?

Dr. Jim Stewart: I do not really know. I always thought it was a puzzling decision because it seemed to align the State with one company, Apple. Making this appeal damages Ireland's reputation. I believe it is a mistake.

Senator Rose Conway-Walsh: In Dr. Stewart's experience, would Apple's appeal have been sufficient without Ireland rowing in and already paying €1.8 million in fees?

Dr. Jim Stewart: Apple was going to appeal. It has significant resources and could easily finance the appeal itself. It was in its interests to appeal. The State should have stepped back and said we made a mistake but we are now willing to stick to state aid rules. The arrangement with Apple was deemed to be illegal. If the EU had found out about this some years ago, it would have been illegal then. The reason it remained illegal is because no one knew about it. The best way to do something illegal is not tell anybody. No one knows about it and, therefore, it remains legal because due process cannot take place. That is one of the problems with this particular state aid case.

Senator Rose Conway-Walsh: Does Dr. Stewart believe that Apple may be the tip of the iceberg and other similar deals may emerge?

Dr. Jim Stewart: I do not think that it is the tip of the iceberg. What surprises me in one way, however, is that the Apple case is similar to the double-Irish arrangement. In the latter, the actual headquarters location in Bermuda, or wherever, was minimal. It was just a brass-plate operation. There were some legal differences involved between the two. It was not a branch involved but a separate company. Again, it was deemed to be located in two countries and bi-located, hence the double Irish. It is because Ireland passed legislation making the double Irish illegal for countries where one does not have a double-taxation treaty that the Commission did not investigate this particular case.

In the overall context, it is legally difficult to work out where a company is located. It sounds like a simple question but is very difficult and tricky, particularly for digital and Internet-based companies. That is one element with which the OECD has attempted to grapple. It has had some success but it is a huge area.

Senator Rose Conway-Walsh: The Commissioner told us last week that the majority of the €13 billion is owed to Ireland. Does Dr. Stewart believe there are any other countries which will lay claim to any of it?

Dr. Jim Stewart: There probably could be countries which will lay claim. The Italian press has reported Italy will reclaim €318 million from Apple. Austria is reported to be inquiring about making claims as well. The Commissioner is correct, however, that the bulk of the monies will remain with Ireland.

Acting Chairman (Deputy Peter Burke): I thank Senator Conway-Walsh. I have a few questions on the CCCTB proposal. In 2016 we had huge celebrations of our sovereignty. Does Dr. Stewart believe there is a danger that the CCCTB could water down or compromise our sovereignty and our ability to set our own tax rules?

Dr. Jim Stewart: I think that because Ireland has signed up to the treaties, we have already voluntarily given up a lot of our sovereignty. We exchange a huge amount of information with the Commission and other EU countries. I think that is right and a good thing to do. There are enormous benefits from being in the EU and we have voluntarily given up considerable aspects of our sovereignty. It is a bit of a chimera to suggest that we have sovereignty over our tax. Our tax rate is heavily influenced by what other countries do. In the context of Brexit, for example, if the UK goes down the route of light-touch regulation and low corporate tax, that will have huge adverse implications for us. What do we mean by sovereignty? How can we really be sovereign in setting our own tax rates? Co-operation and collaboration is a better economic strategy for us.

Acting Chairman (Deputy Peter Burke): If Ireland were to agree to the proposal, Dr. Stewart does not believe that it would compromise the Oireachtas in terms of setting tax rules. Is that correct? I ask Dr. Stewart to give me a “Yes” or “No” answer.

Dr. Jim Stewart: Yes, of course it would change it but-----

Acting Chairman (Deputy Peter Burke): That is okay.

Dr. Jim Stewart: -----to our benefit, as with all of the other agreements with the EU which have been to our benefit.

Acting Chairman (Deputy Peter Burke): The second point I want to pick up on relates to Dr. Stewart’s response to Deputy Michael D’Arcy. He said that it does not change the rate of tax at which companies are charged.

Dr. Jim Stewart: I meant the CCTB. The initial stage would not change the rate.

Acting Chairman (Deputy Peter Burke): In terms of a company for which this would become mandatory and the capacity of the State to charge tax on a company’s passive income and investment income, the European Commission confirmed to this committee that the State could not charge a higher rate on that. Would Dr. Stewart agree with that?

Dr. Jim Stewart: I am not sure about that point. My point about not changing the tax rate relates to the first round, that is, the common tax base. There would be other changes, of course, with the CCCTB because it would be based on a formal reapportionment.

Acting Chairman (Deputy Peter Burke): The CCCTB would change the rate. Is that correct?

Dr. Jim Stewart: No, under CCTB we can still set the rate, it just allocates the tax base-----

Acting Chairman (Deputy Peter Burke): Can we charge tax at the higher rate on investment income and passive income?

Dr. Jim Stewart: I have not read anything to the contrary. Perhaps Mr. Keegan knows whether that is the proposal.

Mr. Brian Keegan: My understanding of the proposal is that we would be lumbered with one tax rate and could not distinguish any longer between passive income and trading income, which would be a big disadvantage.

Acting Chairman (Deputy Peter Burke): That is a huge point which was also made by the Commission in here. Given that Dr. Stewart is advocating that we do this, is it not strange that he is not aware of that aspect of the proposal? The European Commission has given evidence to this committee and was very clear that countries will only be able to charge one rate and will not be able to charge a higher rate on certain income.

Dr. Jim Stewart: There are lots of other aspects to CCTB involving deductions that can be made. There is talk about a deduction for equity in line with interest income, so in terms of the actual proposal that will come out, it is all to play for. A lot of negotiation has yet to take place.

Acting Chairman (Deputy Peter Burke): Would it be fair to say, in terms of market share and population, that there are many areas where larger countries could benefit quite substantially in comparison with Ireland?

Dr. Jim Stewart: It is not obvious that that would happen. There is the forecast by Ernst & Young but that could change in terms of the amount of assets available in Ireland. That is a forecast.

Acting Chairman (Deputy Peter Burke): It seems a very uncertain road. My final point relates to the current mismatch in terms of countries outside Europe. Will the CCCTB have any influence on that or change anything in that regard?

Dr. Jim Stewart: I am sorry but I do not quite understand the Deputy's question-----

Acting Chairman (Deputy Peter Burke): I am asking about the mismatch when Ireland is dealing with other countries. To take the Apple case, there is a mismatch of international tax legislation. Does Dr. Stewart believe that these proposals would do anything to change that?

Dr. Jim Stewart: In terms of the mismatch in different countries' tax legislation?

Acting Chairman (Deputy Peter Burke): Yes.

Dr. Jim Stewart: Yes, I think it should.

Acting Chairman (Deputy Peter Burke): How does he see that happening?

Dr. Jim Stewart: There will be a common corporate tax base.

Acting Chairman (Deputy Peter Burke): Yes, but not with a third country.

Dr. Jim Stewart: I understand what the Deputy means. He means with countries outside-----

Acting Chairman (Deputy Peter Burke): Correct.

Dr. Jim Stewart: There would still be a problem but I think that-----

Acting Chairman (Deputy Peter Burke): So, it does not solve that problem. To stick with the Apple case, obviously the law has changed here since then but in terms of the major international mismatch, a lot more work has to be done to solve that, rather than narrowly focusing on one EU proposal.

Dr. Jim Stewart: I would be surprised if the Commission did not play a more active part in negotiating between those countries which had a common CCTB and those outside the EU.

Acting Chairman (Deputy Peter Burke): Finally, I have a question for Mr. Keegan. When we hear the term “deals” being used in the media, very loosely in some cases, with regard to the Apple case, does that compromise Revenue’s authority to issue advance opinions? Obviously investors and taxpayers need to rely on advance opinions, in terms of their interpretation of the law and in terms of certainty.

Mr. Brian Keegan: Inevitably - as a result of human nature, if nothing else - it has made Revenue an awful lot more cautious. We have seen in recent times a number of changes to Revenue’s procedures around advance opinions, most notably in the last few weeks where Revenue has time-bound future opinions and any opinions post-2012 to a period of five years. A sunset clause has been put in place. That, of itself, is not necessarily a bad thing. One of the other points that generally applies is that we do not rely terribly heavily on advance opinions in Ireland in comparison with other European countries because our tax system is fundamentally different. It is based on common law principles rather than civil law principles. Looking at the judgment, there is a mismatch there in the tradition of tax and perhaps a misunderstanding.

To respond directly to the Deputy’s question, it is bound to have had an effect.

Acting Chairman (Deputy Peter Burke): When Commissioner Vestager appeared before this committee, she insisted that the sovereignty of this country was not being watered down by her decision to impose state aid rules and to take this case. She was very clear that the Commission was not encroaching on our laws. Is there anything in the various tax consolidation Acts that can be used to collect this tax from Apple?

Mr. Brian Keegan: I think that Revenue has an enormous procedural difficulty in raising an assessment for tax that it already judged is not due and collectible in this country. I cannot see any of the normal provisions applying in this instance.

Acting Chairman (Deputy Peter Burke): I heard a tax expert on radio recently who said that the company submitted its tax return in compliance with the law and that in this case there was also an advance opinion to back that up. The Commission is using state aid rules as a vehicle to collect this tax. Is that correct?

Mr. Brian Keegan: That is correct.

Acting Chairman (Deputy Peter Burke): That is a very clear case of the Commission superseding Irish tax law, in the context of the method being used to collect the tax.

Mr. Brian Keegan: That is a conclusion that one would have to draw and that is why, in the European treaties, there is a very clear distinction made between what the Commission can do on fiscal matters, and tax matters specifically, and what it can do on state aid matters. One

of the contentions right the way along, in terms of the arguments against the Commission and in terms of the practicalities, is that this is state aid going beyond its normal boundaries. We are quite used to state aid rules influencing the construction of Irish law and to getting Irish law pre-cleared under those rules. This is state aid impinging on an administrative decision by an arm of the State and that is unprecedented.

Acting Chairman (Deputy Peter Burke): It is unprecedented in terms of tax in Ireland too.

Mr. Brian Keegan: That is correct.

Acting Chairman (Deputy Peter Burke): Finally, how does Mr. Keegan see the BEPS process working in terms of the exchange of information? I ask Mr. Keegan to comment on the fact that Ireland is undertaking a corporate tax review, as announced in the budget. I also invite him to comment on the loopholes that have been closed off, including the so-called double Irish relating to stateless companies that are incorporated within the Companies Registration Office, CRO, the section 110 companies and so forth. What are his views on how the Government has responded in this budget to ensure that our tax system is transparent and that loopholes that were being used in an inappropriate manner are closed off?

Mr. Brian Keegan: Our history of responding, in particular to the BEPS project, has been absolutely outstanding. We talk about our conflict, for want of a better word, with the European Commission at the moment but a range of directives have been brought into play, in terms of information exchange and co-operation in the recovery of taxes across borders, which Ireland has signed up to with some alacrity. The consequence of that has been that the system has become progressively more and more insulated from attack and the consequence of that has been that the corporation tax yield has gone up by 50% in the last two years. We are going in the right direction. As I expressed earlier to Deputy Michael McGrath, I am a bit concerned about the consequences of this case for the best process overall. Even prior to the inauguration of President Trump, the US authorities already seemed to be beginning to push back on some of the developments and this is clearly not helping.

Acting Chairman (Deputy Peter Burke): I thank all the witnesses for taking the time to respond to the committee and for interacting with the members. I thank the committee secretariat for the work they do.

The joint committee adjourned at 6.20 p.m. until 9.30 a.m. on Thursday, 16 February 2017.