DÁIL ÉIREANN

A

JOINT SUB-COMMITTEE ON GLOBAL CORPORATE TAXATION

Dé Máirt, 23 Iúil 2013

Tuesday, 23 July 2013

The Joint Committee met at 1 p.m.

MEMBERS PRESENT:

Deputy Richard Boyd Barrett,	Senator Thomas Byrne,
Deputy Pearse Doherty,	Senator Michael D’Arcy, +
Deputy Michael McGrath,	Senator Tom Sheahan.
Deputy Dara Murphy,	
Deputy Aodhán Ó Ríordáin,	
Deputy Liam Twomey,	

+ In the absence of Senator Tom Sheahan, for part of meeting.

In attendance: Deputy Stephen S. Donnelly.

DEPUTY CIARÁN LYNCH IN THE CHAIR.

The joint sub-committee met in private session until 1.03 p.m.

Global Taxation Architecture: Discussion with Director of the OECD Centre for Tax Policy and Administration

Chairman: I welcome Mr. Pascal Saint-Amans, director of the OECD Centre for Tax Policy and Administration. The format of the meeting will be that Mr. Saint-Amans will make his opening remarks and we will then have a question-and-answer session. Before we commence business and given that we are on a live audiovisual link, I remind members, witnesses and those in the gallery that all mobile telephones must be switched off. If I hear a mobile telephone ringing in the gallery, I will ask its owner to leave. I am not asking people to switch their telephones to silent mode; I am requesting that they turn them off.

I wish to draw attention 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 this committee. However, if they are directed by the committee to cease giving evidence in respect of a particular matter and they continue to so do, they will be entitled thereafter only to a qualified privilege in respect of his evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise nor make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members are reminded of the long-standing ruling of the Chair to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I again welcome Mr. Saint-Amans and I appreciate him giving of his time to address the committee. I will now ask him to make his opening statement.

Mr. Pascal Saint-Amans: I thank the Chairman. It is a pleasure to be with the joint sub-committee, even if from a long distance away. I am Pascal Saint-Amans and I am director of the OECD Centre for Tax Policy and Administration. As the joint sub-committee is aware, the OECD is an organisation of 34 member countries, including Ireland. We work in many areas, including that which relates to tax. The OECD has a Committee on Fiscal Affairs - the membership of which comprises the tax policy directors of the member countries - that meets twice a year. We have many working parties which conduct our technical work. In their work, these committees and parties are serviced by the secretariat of which I am in charge. Some of our work relates to tax policy analysis and the economic aspects of such analysis. Mainly, however, our main work relates to international tax law, that is, international tax treaties to eliminate double taxation, transfer pricing rules and international corporations, which includes exchange of information. This work is based on the model tax convention, which was first elaborated by the League of Nations in the 1920s and which was taken on by the OECD in the 1950s. Our work is aimed at eliminating double taxation, favouring cross-border investment and encouraging better co-operation between governments in order to ensure that the tax sovereignty of states is protected.

I have been asked to testify before the joint sub-committee in order to outline some of the hot topics with which we are currently dealing. At the weekend, among the key topics discussed by G20 Finance Ministers were base erosion, profit shifting and the automatic exchange of information. In the context of combating base erosion and profit shifting, we launched a project last year which is being conducted within the OECD. We operate on a consensus basis in this regard and this means that progress cannot be made without all the countries involved either reaching agreement on a particular subject or at least not objecting to a particular course of action. Our work in this area is focused on addressing one of the key challenges which has arisen in the current international environment, namely, the fact that as a result of the gap between the way international tax rules have evolved and the way business has changed, there are now wide avenues which multinational companies that are exposed to international transactions can use in order to avoid paying tax anywhere. This is what a number of observers have referred to as double non-taxation. The action plan we have brought forward in the context of addressing this issue is based on the report we produced in February.

Our goal in this area is to ensure that companies pay taxes in at least one place and that we bring an end to the disconnect between the location of the profits and the location where the activity takes place while ensuring that we will continue with the elimination of double taxation. By reaching a balance in this regard, we are of the view that we will be in a position to ensure adherence to the international standards which are absolutely necessary in the context of creating certainty and providing a nice environment in which businesses can operate, invest and create growth and jobs.

Chairman: I thank Mr. Saint-Amans. I wish to provide Mr. Saint-Amans with an idea as to how we will proceed. I will begin by asking some questions and then each of the main spokespersons of the different parties will have ten minutes in which to make their opening contributions. I understand Mr. Saint-Amans will be with us for a maximum of two hours. On that basis, I will divide the remaining time to ensure that every other member of the committee will be able to engage with him on some level.

Mr. Saint-Amans will be aware that the Irish Government has recently been obliged to respond to media attention in respect of Ireland's perceived role with regard to the structures employed by multinational companies which operate in this country and elsewhere. There has been a perception that the problem is a global one and that this was created by mismatches or gaps between different countries' domestic systems. Is it best suited for Ireland to deal with these issues in a unilateral fashion in regard to the base erosion profit-shifting mechanism that the OECD is proposing or is that best done on a multilateral basis and dealt with as a multilateral solution? What is Mr. Saint-Amans's view on this issue? Can nations take unilateral positions on this or is a multilateral approach the only one to be taken?

Mr. Pascal Saint-Amans: The reason the OECD has been asked by many countries to carry on this work is precisely because it requires a multilateral approach. This should not prevent countries from taking their own decisions and implementing their own policy. If one wants to address this issue, as shown in the report we published in February, one needs to address issues in the area of international taxation and tax treaties. We are in charge of the model tax convention and bilateral tax treaties, which, by definition, involve more than one country. Especially in today's environment, where a chain of trade or business involves not only two countries but a series of countries and therefore a series of bilateral tax treaties, usually there is a need for a novel approach which would not be limited to one country. Moreover, the issue of transfer pricing, which is at the core of base erosion and profit shifting, is also related to the implementation of the article 9 of the model tax convention, which deals with transfer pricing which enshrines what we call the arm's length principle, which is a method to determine how a group of companies should price internal transactions, transactions internal to the group. The interpretation of the arm's length principle must be adopted by all the countries participating and not only by one. We have fought for years at the OECD to have international consensus on the way to interpret the arm's length principle or to play with it. If we have countries taking their own approaches, which would not be consensual, this would result in the increasing risk of double taxation, which is something we must avoid.

In a nutshell, this is a multilateral issue, which requires a multilateral response. A single country cannot address it and that is why we think a multilateral approach is the right one. That is why the Irish Government has been clear and active in supporting this project. The delegates of the Irish Government have attended all the meetings, have contributed and have been very active. Ireland also had the Presidency of the Council of the European Union and over the past six months it ensured that we would work well with the European Union while developing this action plan, but again that does not prevent countries from also taking unilateral measures if they want. We are not a harmonising organisation and we do not want to impede on the tax sovereignty on other countries.

Chairman: With that thought in mind - that the organisation is not about harmonisation and creating the same system right across the European Union - and bearing in mind that one of the cornerstones of the Irish economy has been our 12.5% corporation tax rate, about which there has been a great deal of confusion, whether deliberate of unintentional, some countries are currently coming up with regimes which would tend to undercut the 12.5% rate for certain activities. For instance, in the case of our closest neighbour, Britain, I heard the Prime Minister, Mr. Cameron, talk recently about the introduction of a new tax rate, with perhaps a patent box regime of 10%, or, in some cases, perhaps a zero rate in the area of innovation and development. These are the areas in which intellectual copyright is very prominent. What would be the view of the OECD on the introduction of such regimes?

Mr. Pascal Saint-Amans: There are two aspects to the Chairman's question. One is the rates that can be implemented in one country and the other aspect is the rate that can be targeted at what we tax people call patent boxes, to which the Chairman referred in the context of the UK. On the first aspect, since the late 1990s work has been carried out in this area. This area was then called the harmful tax practices work or unfair tax competition work and the consensus among OECD countries has been that countries are sovereign to decide their own tax rates, that fair tax competition is not the problem and, as a result, it means that countries should decide on their corporate income tax rates. Moreover, other work we have carried out on the tax policy analysis area has shown that the OECD favours rather low direct taxes, rather than high direct taxes, because they are pro-growth. What was highlighted at the end of the 1990s, and the rules have not changed since, are that harmful tax practices are to be condemned and harmful tax practices are those designed to attract mobile investment by being ring-fenced and also by offering a lack of transparency. This means that the 12.5% rate, which we understand is at the cornerstone of the Irish economy, is not questioned.

The other part of the Chairman's question dealing with patent boxes needs to be looked at through the same angle, namely, are these practices harmful and what will be the criteria, namely, those included in the 1998 report, which was adopted by all OECD countries and which they consider to be the rules. Clearly, action 4 or 5 - the best action plan we have come up with publicly on 19 July - deals with harmful tax practices, the need to reinvigorate that work and to look at the regimes. Obviously patent boxes are regimes which will be looked at but they will be considered based on the existing criteria. If they are deemed to be harmful because they have some features which would make them harmful, they will considered in terms of being dismantled, but if they are not harmful, they will be maintained by the governments which installed them.

Chairman: I thank Mr. Saint-Amans. To move on to another area, much publicity in recently times has involved US multinationals and there have been a number of hearings in Washington and also some hearings in London concerning taxation and US multinationals. In Mr. Saint-Amans's opinion, how does the US view the BEPS, base erosion profit shifting, model?

Mr. Pascal Saint-Amans: In terms of my responding to that point on behalf of the US Government, I am an OECD official but I can-----

Chairman: What is Mr. Saint-Amans's interpretation of it?

Mr. Pascal Saint-Amans: -----give the Chairman my understanding from the my position as the head of the secretariat dealing with tax at the OECD. The tax action plan we submitted as well as the report we issued in February are the result of technical work by the delegates from all our member countries and by the delegates form a number of non-member countries, the G20 countries in particular, India, China, South Africa, Brazil, Indonesia, Russia and a few others. This work is consensual. We work by consensus at the OECD. Consensus means that a document, a recommendation or a report is adopted when nobody objects to it any more or, to put it more positively, when everybody agrees. It is my understanding that the US Government agrees with the action plan, as it is. Without unveiling secrets of negotiations, I can tell the Chairman that the US has been very active in promoting this work. This work was initiated last year and the US was very active in promoting this new approach to tackle base erosion profit shifting and it was also very active in developing the action plan. I think the US supports this report, as was shown at the Committee on Fiscal Affairs, the CFA, a few weeks ago where the action plan was adopted, and also more recently at the G20 meeting where all the G20 countries indicated that they fully endorsed, to use that term, this action plan.

Chairman: I thank Mr. Saint-Amans.

I wish to suspend for one or two minutes, as there is a technical glitch. We will drop the call for a moment, as we are hearing audio from Mr. Saint-Amans but we are not getting a picture.

Sitting suspended at 1.30 p.m. and resumed at 1.31 p.m.

Chairman: I thank Mr. Saint-Amans for his patience. Just before the brief interruption I invited Deputy Michael McGrath to ask him a few questions. He has ten minutes.

Deputy Michael McGrath: I thank Mr. Saint-Amans for giving us his time today. I will follow on with the questioning where the Chairman finished. As he is aware, the proceedings will be closely monitored not just in this country but internationally. Like most jurisdictions our priority in reading the report he has compiled is to inquire and interrogate its impact on our tax environment. In that regard I wish to put a question to him about the harsh criticism this country received in the US Senate sub-committee meeting concerning certain multinationals. An allegation was made that this country is essentially a tax haven. Could Mr. Saint-Amans give us the OECD response to the allegation, which was made in an important international forum, based on the agreed principles defining a tax haven, and with regard to this country's very transparent statute-based system?

Mr. Pascal Saint-Amans: The answer is very simple. Ireland is not a tax haven. There is only one definition which was internationally agreed on what a tax haven is, which is the definition that was included in the report I already mentioned that was issued in 1998. The report gives a four-tier definition of what a tax haven is. It is a jurisdiction where there is no tax or nominal tax, where there is no transparency, no exchange of information and no real activity. Those are the four criteria for the definition. Clearly, Ireland does not fall at all into this category. To respond to the question very bluntly, the answer is “No, sir”.

Deputy Michael McGrath: I thank Mr. Saint-Amans for clarifying the point. He has confirmed to the Chairman that the corporation tax rate in each country is a sovereign matter for that country, but when he was in Ireland recently he made a comment that if a country has a 12.5% rate then he would like to see companies actually paying 12.5%. That comment was seen very much in the context of the debate that has been ongoing from the US Senate hearings and the hearings in the House of Commons Public Accounts Committee as well. Is it not the case that Ireland operates a very transparent transfer pricing regime? Is it not also the case that when there is commentary that certain companies in Ireland are only paying a 2% rate it does not take account of the fact that we can only tax companies that are tax resident in this country and only on taxable profits? Is it not also the case that in arriving at a figure such as 2%, which I know Mr. Saint-Amans did not – I do not direct the accusation at him – people are confusing the profits of tax-resident Irish companies with companies which are connected but which are tax-resident elsewhere, and which, while they may be incorporated in Ireland, have no activities, assets, employees or income in Ireland? Could Mr. Saint-Amans clarify his position on that? He was very clear to the Chairman that the 12.5% rate is an Irish decision, and that is not on the table in any respect, but could he clarify what he means in terms of the actual rate that is paid and his comment that companies should pay 12.5% if the rate is 12.5%?

Mr. Pascal Saint-Amans: I thank Deputy McGrath for this question and for giving me the opportunity to clarify something which may have been misperceived. What I tried to say when I was in Ireland a few weeks ago was that what the world is currently concerned with – I understand there is consensus on that concern – is that we have moved from the elimination of double taxation to the facilitation of double non-taxation. We have been very clear in the OECD that it is not any country’s fault, nor is it the fault of the business; it is just a matter of fact or of law where one has some discrepancies or loopholes in the law. When I refer to law I am referring to the articulation between domestic tax rules and international tax rules as they have developed based on the model tax convention and the interpretation of transfer pricing. In other words, instead of having companies paying their corporate income tax at the rate which is paid in the country, the play on the different domestic rules, international rules and the gaps between tax sovereignties have resulted in lowering quite dramatically the effective tax rate of a number of companies. In general those companies are the internationally exposed companies - in other words, multinationals.

What I was trying to say is that 12.5% is not a problem. In the international environment, as is, there is consensus on the fact that it belongs to fair tax competition but there is concern when the articulation of the different rules will result in an effective tax rate which is dramatically different from the secondary tax rate in Ireland as in any other country. What is being attempted precisely is to make sure that we reconcile the location of the profits and the location of the real business so that we can reconcile the statutory tax rate with what companies are paying or there will always be a legislative gap between the effective tax rate and the secondary tax rate, which is not legitimate. What is no longer considered acceptable is that the gap would be justified by the inadequacy of international tax rules on how business currently operates. I hope that clarifies my previous statements.

Deputy Michael McGrath: Absolutely. I thank Mr. Saint-Amans for that. Would the full implementation of the report prepared by Mr. Saint-Amans make Ireland more or less attractive from a taxation point of view or would the difference only be around the margins? Does Mr. Saint-Amans have a view on that based on his knowledge and understanding of the Irish system and what impact the proposed changes would be likely to have on our corporation tax offering?

Mr. Pascal Saint-Amans: That is a difficult question because it would require some anticipation of being part of the action plan and the fact that it is properly and fully implemented. Let us assume that is the case because we have worked very hard to make this happen. That would mean we would reconcile the location of the real activity and the location of the profits. Companies would no longer be allowed to play on the rules to erode the basis in countries where they operate and locate the profits in jurisdictions where they do not operate. Of course it is hard to do such abstract reasoning. Deputy McGrath knows better than I that there is some special interaction between Ireland and the United States and the way the US tax system is designed. The action plan is not fit to change US domestic law. That is a question of tax sovereignty in the US. I am pretty sure Deputy McGrath knows as much as I do about the current political debate in the US which is happening on Capitol Hill, both in the House of Representatives and in the Senate, to change US tax law. The next action plan will have an impact but from an Irish perspective I guess it also depends on reform of tax policy in the United States.

To take some risk in responding to Deputy McGrath's very interesting question, I would say - and I am not saying this because I am addressing Irish parliamentarians - that the implementation of the action plan should not reduce Ireland's competitiveness but may result in more real business being located in Ireland and not real business moving away from Ireland. I do not see any negative impact but rather a positive impact because closing these avenues which facilitate double non-taxation will make it more interesting or important to locate the real profit in jurisdictions that are competitive with our tax system, which is the case-----

Deputy Michael McGrath: I thank Mr. Saint-Amans for that answer. My final question is to ask him to clarify his core objective with the report. Is it to get multinational companies to pay more tax globally on an overall aggregate basis or to redistribute where corporation tax is paid, depending on where the profits are finally residing? How confident is Mr. Saint-Amans that he will achieve progress in the timeline he has set out given that he is dealing with approximately 40 separate jurisdictions, all of which will be motivated, understandably, by their national self-interest?

Mr. Pascal Saint-Amans: On the first question, clearly it is to reconcile the location of the real activity and the location of the profit. It is to make sure that countries get the right to tax and do not face base erosion through artificial settings such as massive interest deductibility, the use of hybrid mismatches from entities or products and other harmful tax practices, but also through artificial shifting of permanent establishments by not meeting the current definition, abuse transfer pricing rules or just use of the transfer pricing rules, which we would then need to change.

As to whether we are confident to implement the action plan, I am paid to make sure we implement this action plan and I am paid to be optimistic and to turn optimism into action. I am confident we will be able to do it because we have political consensus on the action plan. The way we have played it has been to make sure that we would have an agreement on the sense of direction. What has been agreed and what was released a few days ago is an action plan which states: "These are the problems. These are the solutions. This is where we want to be in 18 to 24 months time". There is political consensus at the highest level, including among the G20 countries. It is not all about the G20 countries. We are servicing our member countries - the 34 member countries of which Ireland is one - but we also have the endorsement by the G20 countries, which means that we have reached out of the OECD membership. This has been endorsed and because of the political profile of that project, it has been endorsed by the governments, not only by tax people, and because we have political agreement, I believe it will be easier to turn to the tax people, the technical people, and tell them that they need to develop the instruments but that they know where they must be in two years' time because there is political agreement on the solution. That is why I believe we will implement this plan within the timeframe, which is ambitious, but on the other hand, if we said there was a major problem and we would take ten years to solve it, that is not solving it. That is why we thought we needed to have this ambitious political deadline of 18 to 24 months.

Deputy Michael McGrath: I thank Mr. Saint-Amans.

Chairman: I call Deputy Liam Twomey, who has two minutes to speak.

Deputy Liam Twomey: I welcome Mr. Saint-Amans. It is important that we put on record time and again that he is quite clear that Ireland is not a tax haven, and that we show that Ireland is active within the OECD. We must give credence to much of the good work done during Ireland's Presidency of the Council of the European Union in moving taxation issues forward. It is also important that Mr. Saint-Amans emphasise that no single country can address this issue.

On the work the OECD does, what can it do with regard to tax havens? In the United Kingdom, some of the British sovereign-----

Mr. Pascal Saint-Amans: Overseas territories-----

Deputy Liam Twomey: How much control does the OECD have over those, which clearly are tax havens? What can be done to stop money moving to those tax havens over time? Mr. Saint-Amans pointed out that this problem is massive in that the OECD countries have lost approximately €3,000 billion as a result of tax avoidance measures by multinationals. Will he give us some more information on how that figure was reached?

Regarding some of the meetings in the US House of Representatives, the chairman of the House Committee on Ways and Means, Mr. Camp, has made it clear that reforming the way taxes are gathered is the major issue and that the focus should not be on grilling corporations on their legal tax avoidance strategies. Does Mr. Saint-Amans have any comments to make on what the chairman, Mr. Camp, is doing? I know he does not want to comment specifically on the policies of other countries, but the Cut Unjustified Tax Loopholes Act was brought forward in the US Senate by Senator Levin. What is Mr. Saint-Amans' view on some of the proposals in that legislation?

Chairman: We might allow Mr. Saint-Amans to respond and the Deputy can put other questions to him later.

Mr. Pascal Saint-Amans: I thank the Deputy. My first reaction to the figures he has mentioned is that I do not know about them. I am surprised he found that in OECD documentation because I am always very careful not to quote any figure on a country. I am always clear to say that we do not know the amounts that are at stake. I do not know from where the €3,000 billion the Deputy mentioned comes. Sometimes I refer to one figure, which is the accumulated profit by US multinationals set offshore. That figure, which is available here and there, and is about \$2 trillion, \$2,000 billion. That is the US figure we are just quoting. The OECD has never given a figure as regards the potential tax gap resulting from either tax avoidance or tax evasion.

The Deputy's first question related to what we can do about the tax havens. Two issues arise. It is good that we do not only focus on the tax issue because the other issue is about transparency and exchange of information. The Deputy probably knows that the OECD has been to the forefront in the fight to improve transparency for the past years, if not decades. Recently, we facilitated the endorsement of exchange of information on request as the standard, which is now endorsed by all countries around the world, with the exception of Lebanon. We created a global forum on transparency and exchange of information and all the jurisdictions that formally qualified as tax havens have joined this global forum. They have committed to implementing the standard on exchange of information and they have started implementing this standard through the negotiation of bilateral agreements. We now have more than 1,000 agreements which have been negotiated versus 40 between 2000 and 2008. That is major progress. As we reported to the G20 a few days ago, we are now moving towards automatic exchange of information being a way to exchange financial information such as bank account balance, interest, dividends, sales proceeds and life insurance products on an automatic basis along the lines of what the US Foreign Account Tax Compliance Act, FATCA, has provided. I understand that Ireland has already signed a FATCA intergovernmental agreement with the US. That is what we are doing with what are now called tax jurisdictions. The next layer of pressure will be to get them signed up to an automatic exchange of information.

As regards their role, we are not trying to tackle countries or impede their sovereign jurisdictions. As the Chairman indicated, a number of them are UK overseas territories or Crown dependencies. Those two categories are included in UK law. Therefore it is not to impede sovereignty but rather to neutralise the schemes which would use them. In other words, instead of telling jurisdictions with no direct tax - and there are a number of them, in the Caribbean in particular - that they should have taxes, the action plan will try to neutralise the use of these jurisdictions to locate profits there artificially so that those profits are not taxed where they accrue - either in the source countries where the activities are deployed or in the residence countries where the companies' headquarters are located and financing is taking place.

We invoke these jurisdictions and push them to implement transparency standards and exchange information. This is being reviewed by the global forum. As regards tax avoidance or the BEST project, it is neutralising the schemes rather than getting jurisdictions to change their legislation, unless they are engaged in harmful tax practices.

I do not have much to say about what Chairman Kemp is proposing in the US, except that clearly one aspect of his proposal in the draft bill is entitled "Base Erosion". This clearly goes in the direction of what the international community has agreed with the action plan.

Deputy Liam Twomey: I have one final question. Why does Mr. Saint-Amans think this issue has become such a major one now, given that many of the taxation issues and multinationals' corporation policies would not have changed dramatically in the last few years? What does he think has currently brought this matter to such prominence?

Mr. Pascal Saint-Amans: I will give my personal assessment or view based on my experience at the OECD for the past four and a half years. This is due to the crisis and it is a political issue. The crisis has brought up the need for more transparency in governance all around the world. I remember the Irish Government was very active at that time, and still is, in fighting bank secrecy for tax purposes. That was the first layer of pressure.

We cannot buy out our financial industry - and I understand this is something that is very sensitive in Ireland - while this industry is facilitating tax fraud. In other words, we cannot put taxpayers' money on the table to buy out banks which facilitate tax evasion through their counterparts located in secretive jurisdictions. This triggered all the work, including that of the G20, on putting an end to bank secrecy for tax purposes.

Tax avoidance is the second layer. It is hard for elected governments across the world - and I am talking to politicians who understand these things better than I do - to explain to their people that they have to increase direct and indirect taxes. Over the past three years, VAT has increased in 25 out of 33 OECD member countries. The US does not have VAT. Personal income tax has increased almost everywhere. I understand that personal income tax has increased quite significantly in Ireland.

Therefore, governments have to explain to the public that they are cutting expenditure and increasing taxes. Meanwhile, media campaigns explain that some large, profitable multinationals have an effective tax rate which is dramatically different from the statutory tax rate of the countries where they operate. That includes Ireland where the corporation tax rate is 12.5% while the effective tax rate of some such companies is between 3% and 5%. Therefore there is a political problem because it is hard to explain that this is the unintended outcome of an outdated international tax architecture, which has facilitated double non-taxation.

Chairman: We will suspend the sitting until we re-establish contact with Mr. Saint-Amans. We are over time also, but I will bring Deputy Twomey back in shortly.

Sitting suspended at 1.46 p.m. and resumed at 1.48 p.m.

Chairman: We are back in business. Before calling Deputy Doherty, I wish to thank Deputy Twomey for his contribution.

Deputy Liam Twomey: I wish to thank Mr. Saint-Amans. I have other questions for him but unfortunately I have run out of time.

Chairman: I will bring Deputy Twomey back in later if we have time. I now call Deputy Doherty who has ten minutes.

Deputy Pearse Doherty: Cuirim fáilte roimh an tUasal Saint-Amans. I welcome his contribution to the committee and particularly the last discussion about the justification, in the face of austerity, that multinational companies operating here and in other jurisdictions are paying a very low effective tax rate compared to the corporation tax rate we have set. As Mr. Saint-Amans has heard from other members of the committee, there has been much discussion on how Ireland's taxation policy facilitates multinational corporations accruing a low effective tax rate.

Mr. Saint-Amans mentioned earlier that Ireland is not a tax haven, which I agree with, under the OECD's criterion. However, is there any country in the world - currently using the same criteria - that is a tax haven?

Mr. Pascal Saint-Amans: As I indicated, the definition of a tax haven was elaborated in 1998 in a context where a large number of jurisdictions were attached to strict bank secrecy. The definition therefore focused on these aspects with no exchange of information and no transparency. Since 2008, major progress has been made in this domain with almost all jurisdictions now not only having committed to, but also having implemented, the standards on transparency and exchange of information. That would explain why the response to the Deputy's question is that we probably do not have many jurisdictions left, if any, which meet the definition of a tax haven. That said, I think the definition is still relevant. The two other aspects are no tax and no real business activity. If one puts aside the lack of transparency, there are a large number of jurisdictions meeting these criteria. This is not the comprehensive definition of what a tax haven is. However, there is no doubt Ireland is transparent and it is at the forefront of the fight for transparency. I understand that Ireland has taxation and attracts real business activity. It is very far from the definition of a tax haven.

Deputy Pearse Doherty: A country must meet all five criteria of the definition to be a tax haven. For clarity, the OECD, Organisation for Economic Co-operation and Development, does not see any jurisdiction in the world as a tax haven. The reason I make this point is that the accusation made by the US Senate committee was that we share the space with Bermuda and the Cayman Islands. One of those jurisdictions has over 150,000 registered companies at one address. We also know the US has over 200,000 companies at the one address. Sometimes one has the pot calling the kettle black.

The definition of a tax haven is outdated. We have seen multinational companies change but the OECD has not. In the US Senate Committee there has been a focus on one multinational company operating in this jurisdiction. The report correctly identified the discrepancy between domestic law here and in the United States. What effect would the implementation of the recommendations have on that Irish incorporated multinational company which is a non-tax resident both here and in the United States? It has not paid any tax on income of €70 billion over the past three years.

This report has happened as a result of political pressure within certain member states which were going to go alone which could have created double taxation issues. In the event of no consensus on these issues being reached, is it possible for Ireland to take on some of these issues on its own? For example, in 1998, the Department of Finance looked at a report on incorporated multinational companies which were not controlled here and were, accordingly non-tax resident, but deemed them automatically to be due to their incorporation to be tax resident here if they had no other interest in the State. This change was made to the Finance Act 15 years ago which exempted multinational companies referred to at the United States Senate hearings. Could we go it alone and make a company not paying tax in any jurisdiction but which is incorporated here a tax resident?

Mr. Pascal Saint-Amans: Yes, Ireland could definitely take the type of measures described. Again, it is Ireland's sovereignty to decide so.

Assuming the best action plan translates into domestic legislation in all countries, including the US, the companies in question would be taxable in the US and would not benefit from what they currently enjoy, which is double non-taxation.

Deputy Pearse Doherty: We know there is support for this taxation plan in the OECD and the G20 countries. Can we expect this to be translated into domestic legislation? Considering this State's heavy dependence on multinational companies from the United States locating here, would such a move have negative consequences for us?

Mr. Pascal Saint-Amans: Matters can be more complicated than what the Deputy has just described. If a country does not do anything and keeps going on with the current taxation regime, then it faces the risk that its partners will take defensive measures. To put it another way, what is at stake is our ability to protect the set of rules designed to eliminate double taxation. What do businesses need? They need to be taxed only once in cross-border investments. They cannot be taxed twice because this would have a major impact on the allocation of capital. This would not be good for economic growth or employment. What is at stake is reaching the balance where on the one hand all countries are keen on facilitating businesses headquartered on their territory but at the same time not offering them such a benefit that it will be rebuked by unilateral domestic legislation by other countries. That is why we have been able to reach an agreement on a plan in this regard even with countries that are hesitant about this. It is in the interests of all collectively that we have rules which work.

The real prize would be that corporation and income tax, as decided by individual countries, would be paid by companies which have used loopholes to avoid paying it before. At a time of fiscal constraint and financial and budgetary crises, one cannot afford to have implicit subsidies to companies.

Most of the plan will be OECD recommendations. Some of them will be to change domestic legislation to neutralise, for example, hybrid mismatches. Part of it will also be on changing tax treaties which will be international tax legislation, not domestic.

Deputy Pearse Doherty: I commend Mr. Saint-Amans on the work he has done in this area and wish him every success in getting co-operation on implementing these measures.

Another issue which has been in the public domain here and which was referred to by Mr. Saint-Amans is what is known as the double Irish Dutch sandwich. Is it possible for the State to end that practice and break that arrangement at this point in time, or is it just the case that the only problem is that it is called “Irish”? Some people have said that the only problem with the double Irish Dutch sandwich is that it has the word “Irish” in it. Based on Mr. Saint-Amans’s experience and expertise, can the State break that arrangement which we know has been used by many companies in the past?

Mr. Pascal Saint-Amans: My understanding is that what the Deputy calls the double Irish Dutch sandwich is not a piece of legislation in Ireland but is the result of the articulation of different domestic legislation, including Irish legislation, but also US legislation and the way international tax rules have been designed. It is not as simple as saying that in our tax code we have a provision that offers a product we would call the double Irish Dutch sandwich to all companies. This is the result of the articulation of different pieces of both domestic legislation and international tax law. Can Ireland fix all this on its own? The answer is “No”. Can Ireland contribute to changing all of this, including by unilateral moves? The answer is probably “Yes”, but that is for Ireland to consider, given the overall environment. Can the international community provide a comprehensive response in the limited timeframe for the action plan? The answer is “Yes”, and that is what we are pushing for.

Chairman: To clarify that, Ireland does not have tax treaties with the Caribbean tax havens. Is that correct? Is it Mr. Saint-Amans’s understanding that there is no Irish agreement with any tax haven in the Caribbean?

Mr. Pascal Saint-Amans: To my knowledge, Ireland does not have a double taxation convention but, fortunately, it has tax information exchange agreements to get information from them.

Chairman: Is there a Dutch arrangement with the Caribbean states in respect of how tax is held or not held?

Mr. Pascal Saint-Amans: I would need to cross-check. I do not know, but I think the

Netherlands has something like a treaty with some of its former dependencies. I do not know the states in question.

Chairman: So there is a historical context with the Netherlands and the Caribbean which is completely different to Ireland's relationship with the Caribbean?

Mr. Pascal Saint-Amans: I think so.

Deputy Aodhán Ó Ríordáin: I welcome Mr. Saint-Amans. One comment he made earlier that interested me was that the OECD's position was that low direct taxes are pro-growth. Could he expand on that?

Mr. Pascal Saint-Amans: We issued a report three years ago on tax and growth. This is an economic piece. It is not about low tax but about the economic analysis of tax policies. The findings of this report were that indirect taxes were more favourable or less distortive and, therefore, more favourable to growth than direct taxes. One of the recommendations of this report was that more emphasis should be placed on property taxes rather than increasing direct tax rates. Overall, we recommended in terms of policy a shift towards indirect taxes rather than direct taxes. In the field of indirect taxes, we thought property taxes had good potential for raising revenue while not being too distortive of growth.

Deputy Aodhán Ó Ríordáin: Mr. Saint-Amans made the welcome statement that Ireland is not a tax haven and has said that part of what he wants to do is to improve transparency and the automatic exchange of information. How difficult will that process be?

Mr. Pascal Saint-Amans: I think we are making tremendous progress in the area of exchange of information. Five years ago, bank secrecy was the rule in a large number of major financial centres which completely refused to engage on this. We are now in a situation in which all the jurisdictions have committed to exchange information and have taken all the steps necessary to carry out exchange of information on request with a very strong peer review mechanism organised by the Global Forum on Transparency and Exchange of Information for Tax Purposes, which now includes 120 member countries on an equal footing. As I indicated, because of the dynamic of the Foreign Account Tax Compliance Act, FATCA, and critical concerns expressed about offshore leaks recently, there is a new layer of pressure and interest. We saw the case of the French budget minister who had to resign for having lied to the French National Assembly about bank accounts in Switzerland and Singapore. We are moving to the automatic exchange of information. As we reported to the G20 meeting of finance and labour Ministers in Moscow last weekend, we recommend that the content of the information that the US will get through FATCA should be the contents of a multilateral standard for automatic exchange of information, which is now becoming the standard. We are developing a multilateral platform to operate this exchange of information on a multilateral basis. There is a pilot initiative within the EU, which I think Ireland has joined, to multilateralise FATCA-type agreements. Finally, we are providing for a legal platform with a multilateral convention on mutual assistance, which has now been signed by more than 60 countries, which the UK dependencies are joining and which can provide for automatic exchange of information. What we expect in terms of the calendar is that in 2014, this new standard will be up and running and will, probably before the end of the year, create within the global forum a group for the automatic exchange of information so that all the global forum members would move to this new standard while keeping their commitment to exchange information on request. So we are getting there, which is tremendous progress given where we were five years ago.

Deputy Aodhán Ó Ríordáin: Does Mr. Saint-Amans think the date of 2014 can be achieved?

Mr. Pascal Saint-Amans: I beg your pardon?

Deputy Aodhán Ó Ríordáin: Does he think that the new standard can be up and running by 2014?

Mr. Pascal Saint-Amans: Yes, absolutely.

Deputy Aodhán Ó Ríordáin: He made a point earlier about the balance that must be struck between not impinging on sovereignty and neutralising schemes that are used. It sounds like a pretty difficult balance to strike. A previous question was asked about why this was at the forefront of the international agenda. How difficult would it be to strike that balance between national sovereignty and neutralising schemes and to keep this issue at the forefront of the international agenda?

Mr. Pascal Saint-Amans: I am not sure I would agree with the Deputy's assessment that neutralising schemes would impinge on sovereignty or would potentially be in conflict with protecting sovereignty. The area where such a risk could exist is that of tax co-operation, because tax co-operation means giving up something to another country which also gives it up in a reciprocal manner so that both countries can co-operate. In respect of neutralising schemes, a simple example may help members to understand what we have in mind. The example is a hybrid product between two continental European countries with high taxes. From my accent, members will know I am French, so I will take the example of a company with headquarters in France and a subsidiary in Germany. This French company has some cash, but the German subsidiary is making a profit and does not really need cash. The French company decides to lend money to its subsidiary through a hybrid product which is a bond convertible into a share which is designed to be a bond from a German domestic perspective and is, therefore, an interest-deductible, which is paid out of the German subsidiary, which counts as a deduction to the profit. However, in France it has been designed to be a share, and therefore a dividend is perceived which is tax-exempt because of the apparent subsidiary exemption. As a result of that, between two high-tax countries we have, through the use of the hybrid instruments, a deduction in one country and no taxation in the other country, which is double non-taxation. The deductibility in one country can erase the profit in this country without augmenting the profit in the other country. This is a hybrid. We will include in the recommendation to be developed on hybrid mismatches, which is No. 2 or 3 of the action plan, that countries put in place legislation which would neutralise the hybrid mismatch. In other words, Germany examines what France is doing, and if France is exempting a product Germany would tax it and not allow deductibility of interest, or *vice versa*. We will develop that. Such a recommendation would not impinge on the sovereignty of France or Germany. We are restoring the sovereignties which were put at risk because of these gaps between sovereignties and the fact that the business operates globally and no longer only in one market.

Deputy Aodhán Ó Ríordáin: I appreciate where Mr. Saint-Amans is coming from. My point was more about the politics of these things rather than the sovereignty. I thank him for his interaction. I appreciate his comments very much.

Deputy Richard Boyd Barrett: Mr. Saint-Amans may have gathered from quite a few of the questioners that there is a consensus in this country that we are not a tax haven and he has given some comfort to that consensus by suggesting that we are not a tax haven. The definition of “tax haven” Mr. Saint-Amans is using, which is current, is meaningless. It is just another thing the multinationals have spread around. The phrase “double Irish” makes it clear that the tax and legal situation in this country is such that multinationals can exploit it to facilitate enormous tax avoidance. From a moral point of view and from the point of view of the ordinary lay citizen, particularly in this country where people are being crucified with taxes, austerity and cuts, that makes us in any meaningful sense a tax haven because we are facilitating aggressive, large-scale tax avoidance by some of the wealthiest corporations in the world.

Mr. Pascal Saint-Amans: I am not sure I see the question in Deputy Boyd Barrett’s statement. I fully understand his statement. I am not a big fan of the phrase “tax haven” because many people have their own interpretation. There are as many definitions as there are people thinking of it. In the late 1990s the OECD tried to provide an objective definition which was focused primarily on transparency, because we were at a time when refusing to exchange information or accepting international businesses in a country without knowing who was behind them was the rule. The definition of “tax haven” was designed to address this issue. I do not disagree with Deputy Boyd Barrett that this definition is outdated. I am not sad that it is outdated and I would not rush to try to define something I am not that interested in defining. From the international perspective, Ireland is not a tax haven-----

Deputy Richard Boyd Barrett: Then why does the term “double Irish” exist?

Mr. Pascal Saint-Amans: In the international framework as it is, there are opportunities for companies to play on hybridity, transfer pricing holes, the definition of the permanent establishment as is, the lack of definition of beneficial ownership or the limitation of benefits in tax treaties, and the differences between domestic tax legislation regimes which facilitate the location of profits in jurisdictions where nothing is happening, such as some of the Caribbean jurisdictions mentioned. These differences are the result of domestic legislation in Ireland, the Netherlands, Switzerland, France, Germany and many other countries, including the US. Because Ireland has been competitive in its corporate income tax, it has obviously been used by a number of US multinationals, as has the Netherlands.

Deputy Richard Boyd Barrett: Mr. Saint-Amans has not answered the question of why the concept is called “double Irish”. It is not called double German, double French-----

Deputy Aodhán Ó Ríordáin: It could be called double Dutch.

Deputy Richard Boyd Barrett: Yes; it is double Dutch. The only explanation Mr. Saint-Amans seems to be giving is that our low corporate tax rate seems to attract companies involved in this aggressive tax avoidance. For the benefit of people trying to understand this situation, is the following brief description, given to me by former Google workers, an accurate description of how Ireland functions as a facilitator of tax avoidance?

> Google’s advertising is a digital product. They sell that product to customers in Europe, the Middle East, and Africa from their Dublin HQ - and as such don’t have to pay taxes on that anywhere except Ireland because the sale of that good is deemed under international law to have taken place in Ireland.
>
> The profit they make from all those advertising sales is eaten up by a charge levied by Google Ireland Limited’s holding company - which (conveniently) tends to be almost the exact amount of profit they make. The little bit that is left is charged at the standard 12.5%.
>
> The holding company’s profits aren’t taxed because of Irish law waiving corporation

tax on certain profits made from intellectual property royalties and/or because the company isn't managed or controlled in Ireland. That money then tends to be routed through further subsidiaries in Holland before moving to the Caribbean.

Is that a fairly accurate description of the double Irish?

Mr. Pascal Saint-Amans: It is a description of the Google operation. I have no comment on the operations of private companies because I do not necessarily know them. Does this result in having large profits located in no-tax jurisdictions? The answer is yes, and this is why we are pushing for the best project. When I said the double Irish exists because Ireland is attractive with the 12.5% tax rate, we need to understand how it works. This is related to the way the US articulates Subpart F with check-the-box rules. Companies will locate real activity in Ireland for the 12.5% rate and then create all these chains of entities under the check-the-box rules, which will allow them to shift the profits, using international tax rules such as transfer pricing, to no-tax jurisdictions. Thus they avoid taxation in both the US and Ireland at 12.5%. That is the overall picture, which explains why the double Irish is now known in the world.

Deputy Richard Boyd Barrett: To close the double Irish loophole, is it not simple for Ireland, first, to stop giving tax breaks on intangible assets through the corporate tax system, which is the main reason we have a much lower effective tax rate than the nominal rate, as Mr. Saint-Amans has acknowledged? Second, we could simply change the law so any company that is incorporated here in Ireland pays tax here in Ireland, as, for example, is the case in the United States.

Mr. Pascal Saint-Amans: That could be a solution. Ireland should also consider it is not the only country in the world and there is an interaction with other countries. For example, part of the tax is due in the US rather than in Ireland for the simple reason that the intangible has been developed in the US, is owned by the US and should be taxable in the US, so there is a reason to tax profit which is not accruing in Ireland. Therefore, this issue cannot be solved unilaterally and there is need for interaction with another country in order to deal with this.

As I indicated earlier, we believe we first need collectively to address the deficiencies of some of the international tax rules, in particular the transfer pricing rules in the area of intangibles. The Deputy is 100% right to note there is a serious issue in this area but it is not something to be addressed unilaterally by one country as we need an international consensus to change the rules. The current rules in Ireland are compatible with the international consensus. What is wrong is not the current rules in Ireland, it is the international consensus. We agree that needs to change. Afterwards, as I indicated, countries can take the unilateral decisions they have to take, and it is within their own sovereignty to do so.

Deputy Richard Boyd Barrett: To confirm, the rules around intangible assets in this country were introduced in the Taxes Consolidation Act 1997 and allow those things to be deductible against income earned by those companies. However, there is nothing to stop us changing those rules so that those things, for example, are not tax deductible and, similarly, there is nothing to stop us changing the rules around tax residency such that any company that is incorporated here would be taxed here. Consequently, companies that are currently based here, but are paying tax nowhere, would be taxed here. That would close off those loopholes. There is nothing to stop us doing that, is there?

Mr. Pascal Saint-Amans: As I indicated, we fully respect tax sovereignty and there is certainly no power of the OECD to stop any country doing anything. While I am not an expert on Irish legislation like the Deputy, I would draw his attention to the fact that some of what he describes is actually consistent with the international tax rules. Therefore, what needs to be changed is the international tax rules. That said, on the question of whether there is room for Ireland to take its own measures to change things which go beyond the international tax rules, the answer is yes, of course, as is the case in all countries.

Chairman: I thank Deputy Boyd Barrett. Before moving to the second round of questions, I will summarise the position. What I am hearing from Mr. Saint-Amans in response to the committee's questions is that the kernel of global taxation of multinational enterprise profits is the balance between taxation at source and that of residency, and those two different areas are ultimately where the dilemma lies. The difficulty is the sharing of the tax take between the sovereign states in a fair and equitable fashion that bestows no singular advantage on one state over another. Ultimately, what we are dealing with here is an issue of architecture, and the different nation member states of the OECD would have to agree to that overall architecture. This is what Mr. Saint-Amans is proposing in his report. Is that correct?

Mr. Pascal Saint-Amans: Yes.

Chairman: Mr. Saint-Amans's report states on page 8 that "These developments have opened up opportunities for MNEs to greatly minimise their tax burden", and that, ultimately, Governments are harmed, taxpayers are harmed and businesses are harmed. Will Mr. Saint-Amans expand on those three points?

Mr. Pascal Saint-Amans: The government part is quite easy to understand. Not just Ireland but all countries of the world do not collect some taxes that they should collect. I say "they should collect" because they never intended to let that tax go, or if they did let it go, it was implicitly, and they now think this time is over. Therefore, the position of governments is straightforward.

For companies, there are two dimensions. The first, which is quite obvious, is that because companies are exposed to international transactions and, therefore, can use the deficiencies which may exist in the international framework, one cannot give them a competitive advantage compared to purely domestic businesses which cannot do that. When one looks at benchmarks in many countries, one can see there is a significant gap between the effective tax rate of multinationals and purely domestic companies. This is a distortion which is not good for investment.

Second, for companies, double non-taxation actually undermines the international consensus on the need to eliminate double taxation. Where there is such a situation, at some point one may face the risk of some countries walking away from the consensus and introducing unilateral measures to protect their tax bases without trying to co-operate with the others. This would be very bad because it would restore double taxation and might even, in a worst case scenario, end with triple, quadruple or multiple taxation.

Finally, for the taxpayers, given the fact that some do not pay what they should pay if the laws were designed in a way that ensured there were no loopholes - in talking about the law, I am talking about the international tax architecture - when one does not collect what one has to collect, it is the others who will have to pay it, that is, individuals or other businesses. This is why it is not good for ordinary taxpayers. In addition, it undermines confidence in the tax system and, therefore, the perception that the tax system is unfair results in general in lower compliance and makes the life of tax commissioners much more difficult.

Chairman: The US Senate committee carried out its inquiry for American interests and the House of Commons report most certainly carried out its investigations for British interests. That may also be the case with this Irish committee, although given some of the remarks he might have heard here, Mr. Saint-Amans might not guess it is being carried out in Irish interests. To take one point, the American system of deferral, which has been the practice in place since the 1950s, or at least since Kennedy's time, means an American company can operate abroad and can defer unquantifiable sums of money indefinitely, and if it repatriates the money, it pays tax on it there and then. There is no compound or simple interest; the tax comes in at that moment in time and the tax is paid. When a deferred sum comes into play, it is just paid in a once-off fashion. Is that correct?

Mr. Pascal Saint-Amans: That is my understanding.

Chairman: In her 2006 study, Lundan suggested that 40% of US foreign direct investment in Europe is taking place through deferred taxes that are not paid in the US. It has also been suggested that the cost of funds to finance overseas investments is actually a corporate structure designed by the US that allows companies to invest money overseas by having their tax deferred. If such a company loses money, it means that the money can be written off, so there is actually a great advantage to American companies in having this system in place, and the American authorities are well aware of this. Ultimately, as this money can be deferred indefinitely under US taxation law, what is basically happening is that the US Department of the Treasury, or its Internal Revenue Service, gives interest-free loans to American companies forever. Is this correct?

Mr. Pascal Saint-Amans: It is not incorrect, but I am not sure where the Chairman wants to drive me or whether it is appropriate for me to comment further on the US system as I have not prepared on this topic. I will, however, make an overall comment. Earlier I stated governments had accepted the opening of some loopholes in their tax legislation which facilitated or favoured their champions or multinationals. An example in Europe is the watering down of controlled foreign corporation legislation as a way to protect one's tax base in a territorial system. The United States introduced the check-the-box system which some then tried to repeal when they realised its major impact. Companies indicated that they would be put at a competitive disadvantage if the US system was repealed because of European countries with weakly controlled foreign corporation legislation. This is the type of implicit behaviour which has taken place. All countries, including the United States, European countries, Japan and other G20 countries, now have the will to put an end to this type of practice. That is why the base erosion and profit shifting project has such support. Countries are also concerned with levelling the playing field and ensuring they move in the same direction at the same time.

Chairman: The parliamentary finance committees of various nation states carry out investigations for their own reasons. Mr. Saint-Amans and I are of the same opinion that the US deferral system can be interpreted as an interest-free loan for an indefinite period of time. My understanding of European law is that it is not possible for a nation state in Europe to do this because of competition law, but for some reason or another the US system can allow a loan forever without interest being applied because tax can be deferred forever.

Mr. Saint-Amans has probably examined the US Senate report which had much to say about Ireland. Did it make a recommendation about what it might do about this taxation?

Mr. Pascal Saint-Amans: I am afraid I cannot respond to this question because I must confess I have not read the document.

Chairman: My recollection of the Senate report is that it had nothing to say about US deferral of taxation. It had much to say about Ireland but little to say about getting its own house and affairs in order. Is that correct?

Mr. Pascal Saint-Amans: I am sorry; as I have not read the report, it would not be fair of me to comment.

Chairman: That is my interpretation and Mr. Saint-Amans might correspond with me after the meeting on the matter. I would hate to be incorrect, but as far as I know, I am not. If I am incorrect, I ask Mr. Saint-Amans to let me know.

Deputy Dara Murphy: I thank Mr. Saint-Amans for his time. Various jurisdictions have conducted parliamentary inquiries and many of the companies listed in the two big inquiries held across the water on both sides of us are located in Ireland. Our focus is different in this regard, as these companies employ tens of thousands of Irish people and we can understand why there is a degree of jealousy in other jurisdictions. In the US Senate Ireland was described as a tax haven. Mr. Saint-Amans has stated that not only is Ireland not a tax haven but it is far from being one. Is the suggestion Ireland is a tax haven very wrong?

Mr. Pascal Saint-Amans: As I indicated, Ireland is not a tax haven based on the OECD's definition. Committee members have commented that the definition does not cover anyone, but I have stated Ireland does not meet the criteria used. I have also indicated everyone has his or her own view on what is a tax haven.

Deputy Dara Murphy: Mr. Saint-Amans has also stated Ireland is very far from being a tax haven. The difficulty we have with double non-taxation is there is a lack of action by governments. Multinational companies are doing nothing wrong and those based in Ireland do not break international or Irish law.

Mr. Pascal Saint-Amans: That is what the report we issued in February states. It states base erosion and profit shifting planning are legal; therefore, it is avoidance, not evasion. Another concept is aggressive tax planning which leads to a grey area of when it becomes unacceptable and, therefore, is not avoidance. Our message is that it is legal and that if one does not like it, one must change the law.

Deputy Dara Murphy: Does Mr. Saint-Amans accept that profits taxed in Ireland reflect the functions, assets, risks and costs associated with the economic activity of a company in this country?

Mr. Pascal Saint-Amans: Of course, in Ireland, as well as in all other countries.

Deputy Dara Murphy: As an international expert on this matter, does Mr. Saint-Amans believe Ireland has a very attractive tax offering for multinationals?

Mr. Pascal Saint-Amans: Ireland has a nice package because it attracts a number of companies and part of the package, as I indicated, is the very attractive 12.5% rate. The stability of a regime is important and the fact that this rate has been in place for quite some time and that Ireland has been quite resistant to attacks on it provides certainty for business, which is an important part of the package.

Deputy Dara Murphy: Mr. Saint-Amans has mentioned low taxes are pro-growth and that the evidence supports this. Would Mr. Saint-Amans encourage the Irish Government to continue along the path it has been on for a number of years because it works for multinationals and the Irish people working for them?

Mr. Pascal Saint-Amans: I would encourage the Irish Government to take care of the country's growth, design an appropriate tax system and participate in international work to fix the issue of base erosion and profit shifting, neutralise hybrid mismatches and introduce protection for the base through various legislation and also join the international effort to adapt the transfer pricing rules.

Deputy Dara Murphy: Mr. Saint-Amans has stated that to date the Irish Government has been extremely co-operative with the OECD in this regard. Does he accept that, in the main, it must be driven by the very large countries and blocs and that smaller countries such as Ireland, while being supportive, cannot unilaterally change anything in the international context?

Mr. Pascal Saint-Amans: The world is made up of small and large countries and the balance between them is as it is and will not change. The beauty of international organisations is that we try to level the playing field by putting all countries on an equal footing. This gives more power to small countries than they would otherwise have in the international community jungle if we did not have some policing through international organisations. This process is driven by large countries. Small open economies - I do not like using the terms "large" and "small" - such as Ireland have been active, as they understand that their interest in this game is to have an international consensus that is accepted by all governments, preventing them from walking away and taking unilateral measures. Ireland must participate. It can always change some pieces of domestic legislation.

Deputy Dara Murphy: Ireland has a flat corporate tax rate regardless of whether a company is large, a multinational, an exporter or a local supplier. Is this preferable, or is there scope for different rates depending on a company's function? I am asking for Mr. Saint-Amans's personal observation.

Mr. Pascal Saint-Amans: Tax people, such as I am, are narrow-minded and obsessed with one rule, that being, it is better to have a large base and a lower rate than to apply exemptions or differentiating rates. The answer that a normal tax man will give is that one rate is better than a range of rates.

Deputy Dara Murphy: *Merci bien*.

Deputy Stephen S. Donnelly: I thank Mr. Saint-Amans for his time. This has been useful. He mentioned that the OECD did not possess an analysis of the potential winners and losers of the implementation of the 15 action items specified in the report. Obviously, this will be of interest to every country involved. Does Mr. Saint-Amans know of any organisation, be it a national government or a multinational, that has conducted an analysis of the potential winners and losers were the OECD recommendations implemented?

Mr. Pascal Saint-Amans: No. However, action No. 11 in the action plan is on dealing with the spillover effects of our work. I understand that the IMF is also willing to work in this area. We would welcome this complementary analysis.

We gathered evidence in February. We found some in the analysis of the effective tax rate of a number of companies. We also found some evidence in the indicators of foreign direct investment, FDI. For example, when the British Virgin Islands is one of the top five investors in China, the Netherlands, Russia and elsewhere, it gives the sense that something is happening.

Even though we did not have a figure to indicate the loss, the elements we possessed led us to believe that something was happening to jeopardise the revenues of member countries.

Deputy Stephen S. Donnelly: I thank Mr. Saint-Amans. I wish to discuss loopholes in Ireland. One of the sub-committee's objectives, and certainly the reason for setting it up, is to identify the loopholes in Irish law being exploited by multinationals. Mr. Saint-Amans's point was well made, in that these are multinational problems and should be solved internationally. The international taxation regime is complex. Are a small number of Irish taxation laws being exploited to a large degree? A full analysis might show hundreds of laws and sub-clauses, but could we close one or two large loopholes that are being used by multinational corporations?

Mr. Pascal Saint-Amans: That is a good question. I would need to understand the Irish system further to provide the right answer. I am not a specialist in the Irish tax system, nor am I on any system except for international tax rules. I would be happy to revert to the Deputy on his question.

Some of the Deputy's colleagues mentioned the issue of residency and whether it should be applied to companies based on their levels of activity. Such an approach has been taken in the current environment, but it takes two to tango, as it is said in English, and one must always mind the interactions with legislation in other countries. The residency approach has been well used.

Deputy Stephen S. Donnelly: If Mr. Saint-Amans or his team was willing to send us a document with a considered opinion in response to my question - for example, if the opinion was that 80% of the problem could be fixed through addressing two or three particular taxation laws in Ireland - it would be interesting and useful.

Mr. Pascal Saint-Amans: If I understand the Deputy's request on 80% of the problem, I am unsure as to how that problem is defined. Is the problem the fact that Ireland does not tax what he believes it should be taxing, or is it that US multinationals are not paying that tax in the US? If a company was otherwise taxed in the US, would the same result not be achieved by using a Dutch company, one that would be deemed as being resident in the Netherlands? This is a complex issue, for which reason my response is short. I would be happy to examine the various schemes further, but defining the problem in this instance is difficult, as the international environment and interactions between various legislative measures make solving the situation unilaterally difficult.

Deputy Stephen S. Donnelly: I would be willing to be led by Mr. Saint-Amans's definition of the problem. For what it is worth, my definition comprises two elements. First, the macro-problem is that of multinational corporations not paying any tax to sovereign states, which means that non-multinationals and citizens are required to take up the burden. Second, the micro-problem is ensuring that taxes are collected in the jurisdiction in which the value is created. If Mr. Saint-Amans or his team could revert with thoughts on what could be done in Ireland to address both issues, it would be useful.

I also seek Mr. Saint-Amans's opinion on the OECD's taxation principle and the principle behind the common consolidated corporate tax base, CCCTB, an EU proposal that is technically flawed and politically motivated and should be resisted by this country and Europe in general. As Mr. Saint-Amans knows, the principle is that taxation would be applied according to three elements - assets, labour and sales. I have an issue with this because, if a microchip is manufactured in Ireland using intellectual property, IP, developed in Ireland and is sold in Germany, the German Government should not derive any taxation benefit bar what VAT it desires.

My understanding of the report is that the OECD's principle is for corporate tax to be applied at the location of value creation. Is it therefore the case that the OECD's proposal for the international principles of corporation tax are contrary, at least in part, to the CCCTB proposal?

Mr. Pascal Saint-Amans: It is a good question.

Deputy Stephen S. Donnelly: I thank Mr. Saint-Amans.

Mr. Pascal Saint-Amans: The current rules under Article 9 of the OECD and UN model tax conventions provide for international transactions within a group to be priced at arm's length, which means as if the transactions had been concluded with independent parties. As a result, the countries should tax the profit accruing in their jurisdictions - in other words, the value creation that Deputy Donnelly referred to.

It is my understanding that the CCCTB proposal is about establishing a consolidated common base for corporate income tax with a number of criteria to allocate the right to tax. Deputy Donnelly's description is right, but I am not sure I would have reached the same conclusion. It all depends on the selection of the criteria. Perhaps the criteria will be defined to ensure that taxation takes place where profits accrue and where value is created. There are interesting and fascinating debates among OECD members, and also among non-OECD members such as India and China, on what value creation means. Not long ago, a Chinese delegate publicly indicated that when a German-manufactured car is sold in China, the value creation is in China where the sale takes place. Therefore, it is a Chinese citizen that gives the value, because he or she has bought the car. As the committee will know, there are many different interpretations. Clearly, the Chinese case that I described is not the consensus.

Deputy Donnelly reached the conclusion that there is a contradiction. I would not reach the same conclusion, because there may be another way to approach the matter. What is for sure - this is my comment on the CCCTB - is that it would require a consensus on the criteria to share the profits, and I do not see that happening outside the European Union for a while. A number of people on the NGO side are asking for unified taxation. I am sorry, but I do not see that happening. I am not even sure I am sorry because I am not sure it would be better. However, I am more than happy to examine and consider the matter. I do not see it happening because there is no consensus on criteria and consensus is not possible in the short, medium and, probably, long-term. I have sympathy for my colleagues in the European Commission who are pushing the initiative, because it does not seem to have consensus either.

Chairman: Before I call Deputy Donnelly I wish to remind the committee that we are due to conclude at 3 p.m. When Mr. Saint-Amans answers the Deputy's last question I will allow a question from some other members and time for a composite response. I will allow questions, not comment. If members make comments then I will have to cut them off.

Deputy Stephen S. Donnelly: The OECD recommended 15 actions. Does Mr. Saint-Amans think the committee should focus on the actions, if any, that apply to Ireland?

Deputy Richard Boyd Barrett: I want to ask Mr. Saint-Amans about his study on an effective tax rate, because earlier he referred to an effective tax rate of between 3% and 5% in this country as against the nominal rate of 12.5%. There is considerable dispute in this country about the rate.

Chairman: I will not allow comments to be made.

Deputy Richard Boyd Barrett: I have a question. What does Mr. Saint-Amans consider to be the effective tax rate?

Deputy Liam Twomey: Are some of the OECD recommendations more suitable for larger economies than smaller ones?

Deputy Pearse Doherty: I want to again ask about the potential of these recommendations. When will we see the effects on the ground? Mr. Saint-Amans referenced the 1998 report whose first recommendation was on foreign-controlled companies. We know from the Senate hearings that there is a company incorporated here that has abused the system.

Chairman: The Deputy is making a statement. I will only allow a question.

Deputy Pearse Doherty: The company has existed for over 30 years but has not paid a penny of tax anywhere in the world. The OECD's recommendation 15 years ago would have addressed the issue but was not implemented. How likely are we to see the recommendations fully implemented? What is the timeframe envisaged for the full implementation of these measures?

Deputy Michael McGrath: My question is on the key issues of base erosion and profit shifting that were addressed in the report by Mr. Saint-Amans. Is there anything unique about Ireland's corporation tax regime that has contributed to these two problems?

Mr. Paschal Saint-Amans: On the question of whether any of the 15 actions are more relevant to Ireland, the answer is "No". It is a comprehensive action plan, because the 15 actions address all of the issues. If a country were to address one part without addressing the others, it would just shift the problem away. All of the 15 actions are relevant to Ireland.

I do not have a figure for the average effective tax rate for multinational companies operating in Ireland. Our report, which was published in February, identified some effective tax rates for multinationals throughout the EU, but it was not done country by country because we do not have such data. I wish to draw the committee's attention to the fact that we are trying to develop models to survey the effective tax rates of companies, particularly in the area of intangibles.

I will respond to the question of whether the actions are more suited to larger countries than smaller ones. No; they should suit all of them. It is one-size-fits-all, and that is always a challenge. One-size-fits-all never looks that good, but that is what we intended. It should give countries the instruments to neutralise the use of no-tax jurisdictions where companies artificially locate profit.

When will we see the effects on the ground? We have an action plan that provides actions to be completed at our level, which is defining recommendations or providing instruments for government to implement in the next 18 to 24 months. We expect that this sense of direction will inspire countries and, more importantly, the business community to change some of their legislation or tax practices.

Is there something unique in Ireland? I am not sure of that. Ireland has been very good at attracting companies with its very low corporate income tax of 12.5%. That is very low when compared with other countries. It has also been used through what is called the double Irish arrangement, and some others, because of the articulation with US legislation.

Chairman: We will be very punctual and will finish at 3 p.m. I thank Mr. Saint-Amans for attending this afternoon and for his detailed and comprehensive presentation and responses. The OECD report was published last Friday and was perfectly timed. I thank him for making himself available to the committee so soon after its publication and being able to discuss it in detail. Today's meeting is the first in a series of meetings on the matter. Mr. Saint-Amans has made a valuable contribution to the committee's work this afternoon and we appreciate it. I thank him for his co-operation, assistance and informed discussion with us.

The joint sub-committee adjourned at 3 p.m. until 2 p.m. on Wednesday, 18 September 2013.