

DÁIL ÉIREANN

A

JOINT SUB-COMMITTEE ON GLOBAL CORPORATE TAXATION

Dé Céadaoin, 18 Meán Fómhair 2013

Wednesday, 18 September 2013

The Joint Committee met at 2 p.m.

MEMBERS PRESENT:

| | |
|-------------------------|----------------------------|
| Deputy Pearse Doherty, | Senator Thomas Byrne, |
| Deputy Michael McGrath, | Senator Lorraine Higgins.* |
| Deputy Dara Murphy, | |

* In the absence of Senator Tom Sheahan.

DEPUTY LIAM TWOMEY IN THE CHAIR.

The joint sub-committee met in private session until 2.15 p.m.

Base Erosion and Profit Shifting: Discussion with Department of Finance and Revenue

Vice Chairman: We will discuss the review of the global taxation architecture in the context of base erosion and profit shifting. I welcome Mr. Gary Tobin and Ms Kate Levey from the Department of Finance. Mr. Eamonn O’Dea and Mr. John Fanning from the Revenue Commissioners are also in attendance. The format of the meeting will be that Mr. Tobin will make some opening remarks which will be followed by a question and answer session.

I advise witnesses that by virtue of section 17(2)(I) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. If you are directed by the committee to cease giving evidence in respect of a particular matter and you continue to so do, you are entitled thereafter only to a qualified privilege in respect of your evidence. You are directed that only evidence connected with the subject matter of these proceedings is to be given and you are asked to respect the parliamentary practice to the effect that, where possible, you should not criticise or make charges against any person or persons or an 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 House or an official either by name or in such a way as to make him or her identifiable.

Mr. Tobin, before we begin, do you mind if we publish your opening statement on the web, because it is eight pages long and I believe some short opening remarks will be sufficient?

Mr. Gary Tobin: Of course. I thank the Chairman and the committee for the invitation to attend. As the Chairman stated, I propose to refer to some key points in my opening statement to speed things along and allow as much opportunity as possible for the committee to ask questions.

I am joined today by Mr. Eamonn O’Dea, assistant secretary in the Office of the Revenue Commissioners, who will be answering questions with me. We will be talking today in general terms as we are precluded from discussing the affairs of any individual taxpayer. As the committee will appreciate, policy matters are a matter for the Minister for Finance and as we are only four weeks from the budget there may be some tax policy issues that I am unable to elaborate on at this time.

The tax arrangements of some multinational corporations have received a good deal of attention in recent times. It is now a mainstream issue of interest. Tax planning by multinationals has evolved to take advantage of the differences between jurisdictions’ tax codes which provide opportunities for some multinational corporations to reduce their tax liabilities. Some of the international rules are also perceived as being outdated. It is recognised as a complex global problem. The opportunity for this type of arrangement has come about because of the change from traditional business models to the new models involving integrated global supply chains and the digital economy, where national borders become less relevant and the location of profit

generation becomes more difficult to specify or identify.

The task facing tax policy makers and legislators throughout the world is to put the appropriate rules in place to ensure as much consistency as possible which, in turn, will provide tax authorities as well as international companies with a greater degree of certainty with regard to where and how income should be taxed.

The OECD is regarded as the pre-eminent authority on tax policy for international business. Policymakers face an increasingly difficult balancing act in the current environment. They must design tax rules which stimulate economic growth on the one hand while also managing to increase tax revenues. Tax policy is also at the core of national sovereignty and each country is free to devise its tax system in a way it considers most appropriate. OECD studies have indicated that international competitiveness concerns and pressures are felt in all countries. In addition, OECD research has shown that corporate taxation is the most harmful to economic growth prospects.

The base erosion and profit shifting project was born at OECD level backed by political stimulus. The G20 leaders meeting in Mexico in June 2012 explicitly referred to the need to prevent base erosion and profit shifting. The project has continued to be politically endorsed at the highest level internationally. In July the OECD's Pascal Saint-Amans told this sub-committee about the OECD plans for this project over the next two years, so I will not dwell on it here. In summary, international tax policy has always been complex and challenging, and an evolution in business models has heightened this complexity. There is a consensus that the global system needs fixing, which the OECD will look at and make recommendations. It will then be up to countries to consider the impact of the recommendations on their domestic systems.

Ireland fits into the global architecture on two levels. First, it participates in international forums, such as the OECD and, second, by reflecting internationally agreed principles in our domestic system, where appropriate. For example, Irish transfer pricing rules are based on the OECD global standard, and Ireland has full exchange of tax information with our tax treaty partners through our double taxation agreements and more than 20 tax information exchange agreements which are based on OECD model agreements. The recent OECD global forum peer review report on Ireland's legal and regulatory framework for transparency and exchange of information found that Ireland has an effective system for the exchange of information on tax matters and is fully compliant with OECD standards.

Ireland also recently pushed for the international tax reform agenda during our EU Presidency. We were also one of the early movers on new international initiatives on exchange of tax information, being only the fourth country in the world to have signed a Foreign Account Tax Compliance Act, FATCA, agreement with the US, which we did in December 2012.

Aggressive tax planning by companies relies to a great extent on mismatches between the domestic rules of different countries. It is clear, therefore, that these issues cannot be addressed at national level alone and a co-ordinated international response is needed. Ireland has been supportive of efforts at European and OECD level to develop this response.

The European Commission is reviewing the different tax ruling procedures in various EU member states to assess their ruling practice under EU state aid rules. Ireland is co-operating fully with the Commission in this exercise. It is important to state clearly for the committee that no formal EU state aid inquiry has been launched by the European Commission on this issue and that the European Commission is asking various member states to provide informa-

tion. In other words, this is not a county or company-specific issue. According to an article in last week's *Financial Times*, a Commission spokesperson said that they were simply gathering information. Ireland, as is the case with all member states, receives queries from the Commission on various issues, including tax. We always co-operate fully with such requests. In the majority of cases, such requests do not result in formal state aid inquiries. The essence of state aid is to aid a particular sector or type of investor. The Irish rules do not do this. As has been mentioned, Ireland does not do special tax rate deals with companies. We operate an open, transparent and statute-based system.

Throughout its recent Presidency of the EU, Ireland has been at the forefront of actions seeking to combat aggressive tax planning. We are also fully supportive of the OECD's base erosion and profit shifting, BEPS, project and will continue to work with our international partners to ensure fair tax competition. Given the OECD's pre-eminent role, its base erosion and profit shifting project represents the most effective global response to the international tax issue, and BEPS will be the main toolkit of the global effort to tackle these issues. We will participate fully in the various groups that are pushing forward the actions in the OECD's Action Plan on Base Erosion and Profit Shifting and we will consider the potential impact of the output of that work on our domestic tax system.

That concludes my opening statement. My colleague, Mr. O'Dea, and I will do our best to answer the committee's questions.

Vice Chairman: Thank you very much, Mr. Tobin. Deputy Michael McGrath will start off the questions.

Deputy Michael McGrath: I welcome Mr. Tobin, Ms Levey, Mr. O'Dea and Mr. Fanning, and I thank them for sending in their presentation which gave us an opportunity to read it through before the meeting.

I begin with the most topical issue of the European Commission's information request to Ireland along with two other countries on our arrangements with some multinational companies. When was the first contact made by the European Commission, what form did it take and what was the nature of the information sought from the Department?

Mr. Gary Tobin: The initial request was made over the summer, and I understand that that was also the case for the other countries as well. We must be mindful that the correspondence from the European Commission requesting the information is confidential. However, given the committee's interest, I will say that its key aspect is that the Commission is asking questions on how the Irish tax system operates and how the Revenue Commissioners interact with companies.

Much work has been done on administrative rulings over recent years and many issues have been raised on those rulings at global and European forums. In the past, many of those queries have focused on jurisdictions other than Ireland. In this instance, however, we are among a number of other countries that have been asked to provide information. I understand from what the European Commission has said that other countries may also be asked to provide information. Some recent media coverage has characterised the situation as being one in which only three countries are being asked to provide information. I do not think that that is necessarily exactly what the European Commission has been saying.

Deputy Michael McGrath: I am not asking Mr. Tobin to disclose to the committee what

information was sought, but he makes the Commission's request sound anodyne. I assume what was requested was specific and detailed. It might even have asked about the tax payments of individual corporations. Is it fair to say that the request was a specific one?

Mr. Gary Tobin: The Commission has acknowledged that this is a preliminary stage of its information gathering. Therefore, one could not characterise everything that it has asked for as being specific. It is interested in gathering a wide range of information.

It is important to state that Ireland, unlike a number of other European countries, does not do binding tax rulings. The Irish tax system is statute-based so Revenue is very much bound by the tax law. That is not the case in numerous other European countries, where there are completely different systems in place. The European Commission is trying to understand the different systems in the different countries.

Deputy Michael McGrath: What I am asking is whether the Commission sought information on specific companies.

Mr. Gary Tobin: The information requested was broad in scope, but it also went down to a level of specificity as well.

Deputy Michael McGrath: Did the Commission specify the provenance of its inquiries? Were they a result of a complaint lodged by another member state, for example? Mr Tobin inferred it is not surprising that, given the media coverage of the issues in recent months, the Commission would seek such information. Does he think that the request is linked directly to the hearings in the United States, for example? Is it because of correspondence that might have been sent to the Commission or is that not clear from the correspondence?

Mr. Gary Tobin: It is important to put this into a little bit of context. From time to time, and certainly in the seven years that I have worked in this area, we regularly get correspondence from the European Commission asking about taxation matters. For example, there have been numerous instances in which information has been requested on property relief schemes that have been terminated. A request from the Commission is not unusual. When things appear in the media, however, that often instigates an information request.

Deputy Michael McGrath: There is no reference to a complaint having made against Ireland.

Mr. Gary Tobin: Not that I am aware of.

Deputy Michael McGrath: When the issue was thrashed out in a public forum in the United States Senate committee - I know the Government undertook a diplomatic initiative through the ambassador in Washington, issuing a letter to the committee concerned - would there have been any direct contact between the Revenue Commissioners or the Department of Finance here and the authorities in the US on the concerns they raised and some of the allegations they made against Ireland at that time which have proven to be damaging?

Mr. Gary Tobin: We regularly meet our international colleagues at international forums, most notably the OECD. From time to time what happens in particular member states are discussed in their Parliaments or wherever such issues are discussed. As far as I am aware, no direct concerns have been expressed to us by the US authorities in this instance.

Deputy Michael McGrath: What I am asking about is whether we took the initiative to

contact the US authorities after the hearings. Given the information that they erroneously put into the public domain and the accusations that were made about Ireland were they challenged directly and presented with the facts?

Mr. Gary Tobin: From time to time, particularly at international forums, we engage with the US Treasury. In addition, our embassy in Washington is in regular contact with not only the administration but the staffers and Members of Congress. The Tánaiste was in the US recently and he met Senator McCain who is one of the ranking members of Permanent Sub-Committee on Investigations. That meeting was primarily concerned with immigration reform, but I am aware that corporation tax was also raised.

We certainly use whatever opportunities we have to talk to our American friends about these issues. In fairness to the company concerned the CEO came out soon after the hearings to clarify the record. To that extent I am not sure that it was wholly necessary for us to do what you suggested.

Deputy Michael McGrath: Has the European Commission been given everything that it has sought?

Mr. Gary Tobin: I will ask my colleague from the Revenue Commissioners to comment on this because they are providing the information to the European Commission.

Deputy Michael McGrath: Before the witness responds, I have a supplementary question. Does the Commission have the legal authority under EU rules to break the veil of confidentiality between the Revenue Commissioners and individual taxpayers?

Mr. Eamonn O’Dea: As has been stressed by ourselves and the Commission spokesperson, our approach to the preliminary inquiries is to provide a comprehensive response, so we have tried to provide everything that has been asked of us. To the extent that there has been, as Mr. Tobin referred to it, specificity involved - “specificity” is hard word to pronounce - we have taken seriously our duty of confidentiality to taxpayers and ensured that any responses we make are compatible with that requirement.

Deputy Michael McGrath: That does not answer my question, which is whether the European Commission has the authority to get the complete picture of information concerning the Revenue’s arrangements with individual taxpayers and whether all that it has sought has been provided.

Mr. Eamonn O’Dea: Please accept my apologies Deputy McGrath. We have taken legal advice which states that the European Commission has full authority under the European treaties to request such information as it considers necessary to make these preliminary inquiries.

Deputy Michael McGrath: It has been given what it sought at this stage. Did the Revenue notify individual taxpayers that information has been given to a third party, albeit legitimately?

Mr. Eamonn O’Dea: The requests for information were made within a specified time. As I mentioned, we inquired about and checked and ensured that full compliance with the requests would be compatible with our duty of confidentiality and, on that basis, we proceeded to provide the general and more specific responses requested. The companies involved were not notified because of the time in which the work had to be done.

Deputy Michael McGrath: I assume that they still have not been notified.

Mr. Eamonn O'Dea: Not at this stage.

Deputy Michael McGrath: Do we know when the European Commission will reach a conclusion about whether it will launch a formal state aid inquiry or draw a line under the matter and say that no further action is required? Are we talking about weeks or months?

Mr. Eamonn O'Dea: We are at the preliminary stage and it may not go beyond that. There is no indication how long the process might take.

Deputy Michael McGrath: Although the Commission's inquiries might be quite normal, the fact that they were reported in the media throughout the world has attracted publicity for Ireland and put the spotlight on our arrangements with multinational companies. It has in a sense put a question mark over the legitimacy of Ireland's corporation tax regime. I expect the Government and the authorities to put pressure on the European Commission to conclude the matter as quickly as possible. While we want it to be thorough, we also want to know as quickly as possible whether a full-scale inquiry will be undertaken or whether it does not intend to proceed any further.

Although I fully accept what Revenue has said today and in the past that no special deals are done with individual companies, I want to tease out that issue a little. I assume that when the IDA is trying to attract, for example, a large multinational client into Ireland, corporation tax is a key consideration for that company. Is it normal for a company to provide a *pro forma* of its proposed corporation tax structure and for that to be given to the Revenue for approval before the company makes a decision on whether to invest in Ireland? I assume that Revenue does not always react to events but looks at such proposed structures and gives its opinion and advice even before a company comes to Ireland.

Mr. Gary Tobin: Before Mr. O'Dea answers Deputy McGrath's question, I will make a couple of comments. In response to Deputy McGrath's previous question, we are in contact with the European Commission and we will do our utmost to ensure that the information request exercise is concluded as soon as possible. Deputy McGrath suggested that may put a question over the Irish tax regime. That is a matter of opinion. Commissioner Geoghegan-Quinn said yesterday that the exercise was an opportunity to clear the air, so the matter can be seen in either way.

On how companies interact with government when they are considering locating in Ireland, their primary front-of-house experience is with the IDA. The IDA has been in place for many years. It has its own in-house tax experts. A lot of the initial interaction would take place with the IDA. Sometimes it asks the Department of Finance to meet prospective foreign direct investors coming into Ireland. In such situations, we may outline many things, including the economic outlook for the country. In recent years, we have been explaining the route out of the ongoing external funding programme. We invariably get asked questions about the corporate tax regime, although those tend to be general in nature. That is generally how the Department of Finance interacts.

I hope that is helpful. I wanted to give Deputy McGrath a flavour of what happens. Mr. O'Dea will comment on the revenue aspect.

Deputy Michael McGrath: I would like to put a specific question to Revenue. The assertion being made is not that special deals are being done, rather it is that corporate structures for corporation tax purposes are being approved by Revenue and that an interpretation of these

structures from the point of view of taxation law in Ireland is being provided for consideration by a company in making a decision on whether to invest here for the first time, or whether to renew or extend an investment. I am asking whether that happens.

Mr. Eamonn O’Dea: Revenue’s function in terms of advance opinions is primarily to clarify the tax treatment of a proposed transaction or business activity under the applicable legislation and thereby enable companies to get their taxes right. By and large, we do not address hypothetical arrangements or transactions. One of the principal issues we might address in advance of a company definitively commencing business here might involve inquiring as to whether its activities would constitute trading. That might be an example of a company approaching us in advance of starting up. Multinationals do not tend to come to Revenue to seek approval, an opinion or a ruling on structures they might have put in place which are not actually part of the Irish tax code and have been brought into question. When multinationals put such arrangements in place, they usually take account of the laws of various jurisdictions. Such structures would not be specific to Ireland. We do not offer such structures as part of our code. Certainly, we would not be addressing that kind of issue in advance of a company arriving here.

Deputy Dara Murphy: I thank the officials from both parties for coming to the meeting. They will be aware that representatives of a number of groups have appeared before the committee. Officials from the OECD attended a meeting in July and Mr. Frank Barr of Trinity College Dublin was here yesterday. The allegation that our tax structure is somehow flawed and benefits multinationals has not been proved to date. No evidence to that effect has been presented. I would like to pick up on a couple of points that have been made. Do the officials know whether IDA Ireland provides tax advice separately from the advice given by the Revenue Commissioners? Does it have a specific division that provides such a service? Do Revenue and the Department of Finance talk to IDA Ireland before it talks to multinationals?

Mr. Gary Tobin: To be honest, I am not completely *au fait* with the workings of IDA Ireland. I understand a small number of tax people work for IDA Ireland. I think they provide general assistance for the IDA Ireland people out in the field in clarifying issues that companies might raise with them. The Deputy would probably have to ask IDA Ireland directly. I would not like to give the impression that it has a large tax department.

Deputy Dara Murphy: I just wanted to clarify whether there was a buffer between the two. Mr. Tobin has mentioned that a great deal of work has historically been done on the issue of double taxation. There is no doubt that there is now a move towards reaching the point at which no tax is paid. From a selfish Irish point of view, we have been extremely successful with the rate. What ongoing work is taking place globally to prepare for moving to the point at which corporations will have to pay tax somewhere? Have we started to position ourselves to retain our competitive advantage? There is competition between countries as companies examine tax regimes and we know that a move will take place globally. Are we positioning ourselves to continue to be No. 1 in the world, which is where we are according to some of the tables we have seen?

Mr. Gary Tobin: The Deputy’s characterisation of the position is completely correct. For many years the initial focus at OECD level was on trying to ensure there was no double taxation, but now things have almost flipped around completely. There is a concern about ensuring there is no double non-taxation. The primary focus on this issue is at OECD level through the BEPS project. It could be argued that if the project was not in place, we would almost have to create it at this point because there is such mainstream interest in the taxation of multinationals and such political desire for action to be taken. I am aware that Mr. Saint-Amans was here to

talk about the BEPS project. Those involved in it are planning to examine 15 areas in the next 24 months. Like all other OECD members, Ireland will be involved in the discussion groups and, obviously, we will try to do our level best to ensure the outcome is satisfactory from an Irish perspective.

In addition to the OECD initiative, ongoing discussions on taxation are taking place at European level. We have seen some developments in recent days with regard to the financial transactions tax. I understand this committee has asked some of my colleagues to appear before it in the next couple of weeks to discuss some issues in that area. There are ongoing talks on the common consolidated corporate tax base issue. During the course of the Irish Presidency we tried to help that discussion to move forward in what we felt was a realistic way. The international tax architecture is very complex. A number of things are happening in different places. We have prepared a slide - unfortunately, I do not have copies with me - that tries to map the international tax landscape. Many things are happening and there are many moving parts. It is quite a challenge for any jurisdiction, let alone a small jurisdiction, to try to stay aware of and involved in all of the things that are ongoing. As the Deputy said, we are trying to ensure Ireland remains competitive. At the same time, we want to make sure we are a good international partner with our colleague countries in the European Union and internationally.

Deputy Dara Murphy: When some of those who make this allegation which is completely unproven softly suggest no law is being broken, there is implicit criticism of the corporations. This is a matter for policymakers. Mr. Tobin states in his report that the OECD and the larger countries will drive it. I would like to ask the representatives of the Revenue Commissioners a question in that context. One rarely sees multinational corporations on the lists of defaulters published in newspapers. I do not think I have ever seen that happen, although I stand to be corrected. Are they given the same treatment? I am not asking about specific companies, but are they subject to the same indepth analysis? Are they subject to the random selection that happens in the case of other businesses? One sometimes hears that certain industries such as the hospitality sector are being targeted for examination. Is the same rigour applied to multinationals, even though they employ thousands of people?

Mr. Eamonn O'Dea: I think fair treatment across the board is a very basic aspect of working in the Revenue organisation. The same approach applies to companies, regardless of whether they are big or small. Of course, larger taxpayers account for a high percentage of the tax yield. Perhaps I need to check my figures, but I think the top 100 taxpayers contribute over half of the total annual corporation tax yield. For that reason, there is a particular focus on the larger companies and the multinationals, which is in line with best international practice. Over 200 Revenue officers are involved in our large cases division. They pay close attention to tax payments and compliance by large multinationals, as is appropriate and merited given the percentage of the yield accounted for by the large payments of these large taxpayers. One could say that rather than getting less attention they get a very focused attention. I take the Deputy's point about the defaulters list. It is the case, however, that in the case of multinationals, the issues that arise and which give rise to significant adjustments and settlements would more frequently tend to be technical issues based on interpretation of the law rather than perhaps outright evasion or whatever that might happen in other cases where simply receipts are suppressed or whatever and therefore end up in a publication situation.

Deputy Dara Murphy: It was interesting to hear Professor Barry from Trinity yesterday supporting the view that it is not damaging to our international reputation. I refer to an article in one of the American newspapers - it could be *The Washington Post*. Some people might make

the point that this is actually advertising to a continent that we have a very competitive tax regime in Ireland. One area where there was some confusion at the hearings was around what is termed “grandfathering”. I ask Mr. O’Dea to explain how that works in an Irish context. Is it the same for every corporation or is it dealt with on a case-by-case basis?

Mr. Eamonn O’Dea: It appears that some confusion may have arisen. To some extent it is speculation. We would not wish to speak about a particular case other than what was mentioned in public hearings and what may have been involved. An issue did arise going back to the 1980s. At that time export sales relief was still in place. This was the initial approach to a competitive corporation tax regime - and to which Professor Barry referred yesterday - which was introduced in the 1950s. However, that changed in 1980 when we moved to a 10% rate for manufacturing relief. There was a period from 1980 to 1990 when companies that had already been investing and had substantial operations in Ireland focused on exporting and availing of this export sales relief. Their profits continued to enjoy the benefits of this export sales relief for a further ten years from 1980 to 1990. Every walk of life has its own jargon or technicalities but certainly in tax there is often reference to grandfathering where an arrangement is carried over for a specified time. In this case the carryover arrangement was set out in law and it was part of our statute that while we were bringing in an effective 10% rate, by virtue of manufacturing relief, at the request of the European Union, for a transitional period, for a ten-year period, export sales relief would continue to be available for companies already entitled to it. That may have been what the references to grandfathering referred to.

Deputy Dara Murphy: I think that is the view expressed by Professor Barry. To be clear, since 1990, almost one quarter of a century ago, there are no special deals between the Revenue Commissioners or the Department of Finance with respect to Irish tax law.

Mr. Eamonn O’Dea: I emphasise that there have never been special deals on rates as between Revenue and companies. I emphasise that the transitional period for export sales relief was set out very clearly in the Finance Acts concerned. The qualifying conditions - what companies would continue to have the relief for this limited period of time - were set out in detail. There was no discretion left to Revenue in that matter as it was set out in legislation, in statute. The terminology of grandfathering used in that context is a little loose and it may have conveyed the impression that there was some kind of special arrangement but that is not the case.

Deputy Dara Murphy: I appreciate that “special deal” or “grandfathering” are the wrong terms, but no matter how it is defined on whatever side of the argument, since 1990, 23 years ago, none of them applies, no matter what one’s definition. It is now the same for everyone.

One of the key elements is the OECD’s definition of “tax haven” which is particularly loose. Are the witnesses absolutely satisfied that large multinationals and small limited companies trading in the Republic are all treated equally?

Mr. Gary Tobin: Yes. As far as we are concerned, all companies in Ireland, be they big or small, are fully chargeable to corporation tax of 12.5% on the profits of their trading activities in Ireland. This applies equally to multinationals as it does to Irish-owned companies. They are treated in the same way.

On the question of which country is a tax haven or not, unfortunately I was only able to listen to some of Professor Barry’s contribution yesterday. He is my old economics professor and I always find him highly entertaining and very interesting and informative. However, part of his point was that the term “tax haven” is so loosely bandied about now that it is almost

meaningless. I watched a “Panorama” programme on Tuesday evening called, “Tax, Lies and Videotape”, where a BBC reporter asked a British tax minister whether the UK is becoming a tax haven. Under no circumstances do I think that Ireland or the UK are tax havens. The OECD general secretary was in Ireland last week to launch the OECD survey and he made the point that language tends to be very loosely used around terms like “tax haven”. He was also making the point that Ireland cannot in any way be regarded as a tax haven.

Deputy Pearse Doherty: I am a little disappointed that the Revenue has not placed its submission on the record although it is available from the Department of Finance. However, I would have liked to have seen Revenue’s submission considering that Revenue is central to these hearings. Perhaps the submission could be furnished to the committee later because members are asking questions blindly.

Since the early 1990s the Government of Ireland has calculated Apple’s taxable income in such a way as to produce an effective rate in single digits. The rate is varied from year to year but since 2003 it has been-----

Deputy Dara Murphy: On a point of order, we have not named any corporation to date and immediately, a very large employer in my constituency is being named again by Sinn Féin. This is totally unacceptable. The Revenue Commissioners have said they will not discuss cases. I ask the Vice Chairman to deal with this point of order.

Vice Chairman: I agree it is a point of order. The Revenue Commissioners and the Department of Finance have stated they will not comment on the tax affairs of any individual entity.

Deputy Dara Murphy: I suggest we all abide by that.

Deputy Pearse Doherty: If I may begin again. Since the early 1990s the Government of Ireland has calculated Apple’s taxable income in such a way as to produce an effective rate-----

Deputy Dara Murphy: I restate my objection.

Deputy Pearse Doherty: -----in the low single digits-----

Deputy Dara Murphy: Sinn Féin is again trying to drag the jobs of 4,500 people into question. It is appalling. For its own political gains, Sinn Féin is repeatedly naming an excellent company in this country. To date, in four hearings, not one shred of evidence has been brought to light against this company. It is absolutely appalling, bearing in mind that Sinn Féin has-----

Deputy Pearse Doherty: I appeal to the Chair-----

Deputy Dara Murphy: -----a Deputy in that constituency.

Deputy Pearse Doherty: -----to please shut the Deputy up. He has had his opportunity.

Deputy Dara Murphy: On a point of order, I do not like being told to shut up. These bully-boy tactics have worked for Sinn Féin in the past but they will not work here today.

Vice Chairman: I refer the Deputies to the warning on privilege which is read out before any meeting of the committee. We must endeavour not to make any charge against an individual or an entity.

Deputy Pearse Doherty: It is the job of the Chair to protect my space in which to ask questions of the witnesses-----

Vice Chairman: That is what-----

Deputy Pearse Doherty: If I was allowed to ask the question, it would be seen that I am not making any charge. I ask the Chair to please prevent the Deputy from interrupting me for the third time.

Vice Chairman: Every member is permitted to make a point of order and this will be taken into account also.

Deputy Pearse Doherty: The following statement was given by an Apple representative to the Senate sub-committee hearings:

Since the early 1990s the government of Ireland has calculated Apple's taxable income in such a way as to produce an effective rate in the low single digits. The rate has varied from year to year, but since 2003 has been 2% or less.

That statement is contained within the exhibits relating to the hearings and is also contained in the information supplied to the sub-committee by Apple. The charge contained therein is not one I am making but that Apple is making in regard to our Government and its predecessors. I am asking the officials from the Revenue Commissioners and the Department how they can dismiss that claim by Apple?

Mr. Eamonn O'Dea: I am pleased and eager to dismiss the claim as it is presented in the statement to which the Deputy referred. Indeed, as Mr. Tobin pointed out, Apple subsequently took the trouble to correct the record in that regard.

Coming back to the Deputy's initial remark, I fully accept that I neglected or overlooked to make a very brief opening statement. I am happy to do so now in the hope that it might partly address some of the issues he raised.

Deputy Pearse Doherty: Unfortunately, the clock is ticking in terms of the time allotted to me for questions and answers.

Vice Chairman: Mr. O'Dea might specifically address the issue raised by Deputy Doherty.

Mr. Eamonn O'Dea: I am happy to do so. On the issue of the tax rate being in the low single digits, I absolutely do not want to talk about any specific company. It is very important to make a distinction between the tax applicable to a multinational company or group and the tax arrangements of specific sovereign states. It is one of the privileges and entitlements of our sovereignty that we can set out our own law and must then respect what our law provides as opposed to the interaction of our law with the law of other countries and the opportunities that may or may not afford to individual multinational companies or groups to arrange their affairs to their best advantage within the interaction of those sets of legislation.

When we speak about the Irish legislation, it is absolutely clear, as has been emphasised by all spokespersons on behalf of Revenue and on behalf of the Government, that we have a very clear situation. That is, there is one general rate in Ireland, the 12.5% rate, as well as a 25% rate for investment income and a 33% rate for capital gains. I am sure the Deputy is aware of all of this. My apologies if I seem to be stating the obvious. It bears repeating, however, that we have a 12.5% rate which applies across the board. Deputy Dara Murphy asked whether we have the same rules for both large and small companies. The only real distinction in our law which Revenue could apply is the distinction for very small start-up companies whereby they are entitled to an exemption if their profits in the first three years are less than €40,000 or mar-

ginally between €40,000 and €60,000.

Deputy Pearse Doherty: I am well aware of the tax code in regard to small companies. The statement to which I referred was made to the Senate hearings by a representative of Apple. That company provided a lot of information to the hearing over a number of weeks because it was the case study. In disputing the claim, Mr. O’Dea is effectively saying it was blatantly wrong. Does he accept that?

Mr. Eamonn O’Dea: No. I said I did not want to speak about a particular corporation. Given that there has been some mention of a specific company, it is worthwhile and useful for the record of this sub-committee to note that the chief executive officer of the corporation in question went on the record to say that the way the information had been presented was mistaken and could have caused some confusion.

Deputy Pearse Doherty: Yes, that is very interesting. Can Mr. Tobin confirm whether he was the official in the Department of Finance who telephoned Apple after the hearing recommendations emerged? It is a matter of public record, as indicated by the Minister for Finance, that telephone calls were made to Apple after the publication of those recommendations on 21 May. The CEO of Apple subsequently indicated that the company had given the wrong information to the Senate hearings.

Mr. Gary Tobin: As I understand it, the testimony to the Senate sub-committee to which the Deputy referred came out the day before the actual hearings. It is certainly true that, when we saw that testimony, we contacted the company and asked it to explain the background to what it was saying. It was purely an information-gathering exercise. From my recollection, we certainly did not ask the company to say or do anything. I suppose we felt it would not be appropriate just to sit on our hands and do nothing if Ireland’s tax regime was being called into question. There was a duty on us at least to try to find out what exactly was going on. It was a relatively short telephone call with, as I recall, an official from the company in London.

Deputy Pearse Doherty: Is Mr. Tobin saying the call was unsolicited on a political level, that it came from the Department itself?

Mr. Gary Tobin: Yes. From our perspective we just wanted to understand exactly what was going on. There had been a number of hearings by the Senate sub-committee over several months involving a variety of other companies and nothing like this issue had ever come up before. We just wanted to understand what was happening.

Deputy Pearse Doherty: The company in question has a relationship with the Department of Finance in that its representatives would have met senior departmental officials under previous Governments. I find it astonishing, however, that the Secretary General of the Department would make a suggestion to the company that it should approach the Government to discuss improved adoption of Apple’s products. Would it be normal practice for senior people within a Department to approach a private company and suggest it go to Government to sell its product?

Mr. Gary Tobin: That is a completely separate situation to the issue we are discussing today. The Secretary General comes before the finance committee regularly and I am sure he will be happy to explain it. My understanding, and I am open to correction, is that he was simply in Cork on a particular day and, as he is wont to do, arranged to meet various business leaders, one of whom was the managing director of this particular company. That is completely separate from what we are discussing today. It was do with the use of ICT and so on.

Deputy Pearse Doherty: I accept that such meetings can be entirely innocent. I am aware that the Secretary General has met representatives of the company in question on two other occasions to discuss ICT, knowledge performance and so on. My question relates to the relationship between the company and the Department. It comes down not to the tax rate but the arrangements between the Department and certain multinational companies. Would it be the norm for a Secretary General of the Department of Finance, when meeting representatives of a company, to suggest that they approach the Government with a view to selling their products and for the CEO of that company to e-mail the Secretary General subsequently to ask that he meet a salesperson in Dublin on a particular date? Will Mr. Tobin indicate whether that type of thing is normal practice?

Mr. Gary Tobin: The Deputy might allow me to give an example as illustration of what we are talking about here. As he will recall, an informal ECOFIN meeting was held in Dublin Castle earlier this year, the largest informal gathering that took place during the Irish Presidency. On that occasion two ICT companies, neither of them the organisation we are discussing, provided tablet computers for the European finance Ministers. It was apparently the first paperless meeting of finance Ministers in the history of the EU. There are always situations where ICT companies are involved in discussions with the Department around e-Government type issues. I do not believe that is particularly unusual at all.

Deputy Pearse Doherty: What Mr. Tobin has described is perfectly normal and innocent. Companies tender for e-Government contracts all the time. It is increasingly the direction in which we are moving. That, however, is completely different from the issue I am raising today, as outlined in the documents before me and on the basis of the freedom of information request I submitted. The issue is that the Secretary General apparently said in conversation to the CEO of the company in question that it should approach Government. We have often discussed tendering processes and so on in the finance committee, but this is something completely different.

I wish to ask Mr. Tobin a question on a separate matter. Although Apple is involved, we will discuss it in general terms. There are companies incorporated in this State which are non-resident for tax purposes. These companies do not employ anyone. One of them, Apple Operations International, AOI, does not have any employees but it makes billions in profits. Companies of this sort are incorporated in Ireland but they are not tax resident here or anywhere else in the world. I know that, Mr. Tobin knows it and so does the Revenue. What are we going to do about this? Are we just going to leave matters stand?

Mr. Gary Tobin: There are a number of aspects to the question. In the first instance, there are a number of tax structures in place. Effectively, the Deputy is referring to registered non-resident companies. The tax structures to which I refer are not, as I am sure the Deputy is fully aware, particularly a provision of Irish tax law. They are arrangements arrived at through the interaction of the tax systems of numerous different countries. In this situation, what we are seeing almost amounts to tax planning. This is what tax planning is all about. Such planning involves tax practitioners arbitrating between different countries' tax systems, trying to identify where the differences exist and evaluating whether they can be exploited. This is just one example of that. At present, the OECD is examining this area internationally through the base erosion and profit shifting, BEPS, process. It has set a very aggressive timeframe in respect of the next 12 to 24 months. Once that happens, the question that will arise will relate to the likely response. For example, will the said response come at national or international level?

Deputy Pearse Doherty: Let us deal with BEPS. I hope the global architecture will be of assistance in resolving this matter. It is the best way to proceed, especially in light of the

specific interests of particular countries. Let us focus on the fact that certain companies incorporated in Ireland make billions of euro in profits and do not pay any tax to this State or any other. What are we going to do about that? Outside of BEPS and the OECD, does this country, as a sovereign state, have the power take action? I wish to put a suggestion to Mr. Tobin. I am sure he watched yesterday's proceedings or read the transcripts relating to them.

Mr. Gary Tobin: Some of them.

Deputy Pearse Doherty: The 1998 report compiled by the Department was very good, particularly because it examined the various loopholes. It is the job of companies to exploit loopholes and it is our job, as legislators, and that of the Department of Finance to close them. In 1998 the tax residency rules for companies were changed because it became evident that they were exploiting them. It was decided then that any company registered in the State which did not have a tax residency would automatically be regarded as being tax resident here. The only exception in this regard related to companies that were associated with other companies. The difficulty is that the companies to which I refer which are not paying tax anywhere in the world are associated with other companies. Would it be possible to amend the position, via the forthcoming finance Bill, whereby if a company which is incorporated in this State but which is not tax resident in any jurisdiction, would automatically become tax resident here?

Mr. Gary Tobin: The Deputy posed a couple of questions. I will try to address both because they are important. There has been a great deal of reference to the tax strategy group's paper from 1998. As the Deputy is aware, papers are prepared - as part of the annual process relating to the budget and the finance Bill - by the Department for consideration by the tax strategy group. These papers are published on the Department of Finance website each year at the conclusion of the process relating to the finance Bill. It is a very useful exercise for us because it puts on the record the issues under consideration at the time. When one is looking back ten or 15 years, one can see that an issue arose previously. The Deputy is correct in stating that the issue in question arose in respect of registered non-resident companies. As I understand it, however, the particular issue related to organised crime and activities such as money laundering, drug trafficking and the use of shelf companies.

Deputy Pearse Doherty: Mr. Tobin is right and it was effective in the context of dealing with that issue at the time. Another situation has arisen 15 years later in that, as everyone present is aware, there are companies which are registered here and which do not pay tax anywhere in the world. Would it be possible to include in the forthcoming finance Bill a mechanism similar to that which was used in 1998? It has already been done and it is effective and lawful. In circumstances where a company does not show that it is tax resident in another jurisdiction, would it be possible to make it tax resident here on foot of its incorporation in this State?

Mr. Gary Tobin: It is always possible to change our tax residency rules. It would, therefore, be possible to do what the Deputy suggests and this could have an impact on certain tax structures. The sad reality is that a variety of what are termed "two-tier" structures are in place. These are not in any way reliant on Ireland. If we unilaterally change our rules and nobody else changes theirs, the impact would, arguably, be very limited. That is why the work taking place at international level is so important. One of the things I did before this meeting was to read Mr. Pascal Saint-Amans testimony to it. Mr. Saint-Amans referred to an interesting matter and indicated, in his opinion and in answer to Deputy Boyd Barrett:

[W]e believe we first need collectively to address the deficiencies of some of the international tax rules ... 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

He seemed to be suggesting that - in his view - the international rules should change first and then the national rules should do so. Ultimately, it is a policy choice.

Deputy Pearse Doherty: So there is no truth in the report to the effect that the Department was seeking to clamp down on the double Irish and that either the formal investigation or the request for information scuppered that plan.

Mr. Gary Tobin: I also read *The Sunday Business Post*, which is always highly entertaining. At this time of year, we prepare tax strategy group papers for consideration by the Government. These will be published after the process relating to the budget and the finance Bill. Ultimately, we try to put policy options up to the Government. We try to set out what are the pros and cons. As already stated, it is kind of a policy choice. I will never be Minister for Finance but the Deputy may serve in that capacity one day. He might decide that acting unilaterally now would be the right thing to do. Others may say it would be better to wait and see how the international rules change and then decide how to respond. In the end, it comes down to a policy choice. It is those type of policy choices which we put up to Government for consideration. The Minister for Finance and the Government make the final decision rather than myself or Mr. O’Dea.

Vice Chairman: The Deputy has had 20 minutes. If he does not object, we will move on. I propose that we engage in another, shorter round of questions. There are two matters with which I wish to deal. Is it agreed that we should write to the Commission in order to try to elicit a response from it? Agreed. Perhaps Mr. Tobin could forward the map to which he referred in respect of taxes to the committee secretariat.

Mr. Gary Tobin: I will do so.

Vice Chairman: I presume that the information given out yesterday was supplied to the Department.

Mr. Gary Tobin: I will be honest, we received it quite late.

Vice Chairman: One interesting aspect of it relates to the fact that Senator Levin, the chairman of the US Congress sub-committee, made it clear that “check-the-box” tax regulations introduced in the United States in 1997 and the “look-through” rule first enacted by Congress in 2006 seemed to have facilitated significant offshore profit shifting in that jurisdiction. I have been involved with this committee since 2002 and even then issues were being raised in the US with regard to multinational companies moving their operations to Ireland and other countries in Europe.

The double-Irish issue was relatively new to most of us when we first heard about it this year. I am concerned about the approach that has been taken by Westminster and the Houses of Congress to Ireland. It is not that we are insecure but what is the status of the Caribbean in that regard? From reading about economics in recent years one would have thought that most of the discussion would have been based on a number of so-called tax havens in the Caribbean, yet in recent years there has been talk about this country and The Netherlands. I presume they are also subject to the EU inquiry as well. What does Mr. Tobin consider to be the basis for

the current position? There could be hundreds of billions at this stage in offshore accounts and perhaps politicians in America saw it as an opportunity for US multinationals to have access to cheap money in order to expand internationally but the tipping point might have been reached and the discussions are as much about politics as tax avoidance.

Mr. Gary Tobin: The Vice Chairman raised some interesting questions. Undoubtedly, the current demand for action flows from the financial crisis and the fact that taxpayers feel they are having to live with austerity. Historically, it seems that whenever there is a global recession, international tax rules tend to be looked at. In the 1960s when the US was in similar trouble it introduced its subpart F rules, which introduced certain restrictions. That is the context. You are right, Vice Chairman. There are many large multinational companies that have been in this country for more than 30 years. They were here long before some of the international rules and US rules were in place. It is not my job to try to defend multinational companies. They can do that themselves but to be fair, in certain situations what one has seen are companies responding to changes in rules that happen in the US and elsewhere and they build structures around those rules. Some companies were in Ireland and elsewhere long before some of the rules were put in place. For example, the check-the-box rules to which reference was made, were only introduced in the US in the late 1990s. One could certainly argue that those companies did not come to this country to exploit those rules because they were here before the rules existed.

Deputy Doherty quoted from the testimony that was presented to the Senate hearing. On page 40, which I think is the last page of the report, it said that Congress can change these incentives by closing offshore tax loopholes and strengthening US tax law. In fairness to the Senate hearing, there is an acknowledgement that some of the issues are not necessarily Irish ones but are for others to consider.

Vice Chairman: When Congress held separate inquiries it was even more emphatic when it stated that the US has a huge role to play in closing off many of the loopholes.

Mr. Gary Tobin: Absolutely.

Deputy Michael McGrath: Mr. Tobin referred to the double-Irish and he said that similar two-tier structures, as he put it, apply elsewhere. Could he tell us where else there are similar examples or alternatives to the Irish incorporated non-resident company system?

Does the United Kingdom patent box regime, which attracts a rate of 10% corporation tax for certain types of income related to patents, pose a threat to Ireland? Is the issue currently on Mr. Tobin's radar? While there is much attention on this country, the 12.5% rate and on the wider application of the regime by way of arrangements with multinationals, is our relative competitiveness from a corporation tax offering point of view getting enough attention?

Mr. Gary Tobin: I thank Deputy McGrath for those interesting questions. I will deal with the second question first. The Deputy is correct that a number of European countries are in the process of introducing ring-fenced regimes for certain types of income. In the case of the UK, it is planning to introduce a 10% regime by 2018 but there are a number of other jurisdictions that have those regimes in place. The Netherlands has what it calls an innovation box and there is also one in Cyprus and Spain. It is a matter of public record that a number of countries have raised concerns around some of those regimes. Even the German Finance Minister, Mr. Schäuble went on public record essentially criticising those types of regime. He said that he would not particularly be in favour of them. It is also a matter of public record that some of those regimes are being examined at a European level in terms of their appropriateness. We are

certainly aware of those regimes but given the question mark that is over the patent box regimes internationally at the moment it is questionable whether this country should be thinking about introducing such a regime when it is so controversial. I would expect that when those discussions happen at a European level it may become clearer whether such regimes are regarded as fair tax competition. We will wait and see. We are certainly aware of what is going on and are following developments. It is one tax controversy that at the moment we are not involved in and we do not have any desire to get involved in it.

In regard to other jurisdictions that have two-tier structures, again, I emphasise that the whole issue is around mismatches between different tax codes. I would prefer not to name countries but there are other two-tier structures which do not involve this country. They are used and we must be mindful that if we make a change to our tax regime we will not solve the problem of two-tier structures. It is an international issue. Part of it is around adopting the appropriate transfer price for extremely valuable intellectual property. Those kinds of decisions must be taken at an international level and essentially by the OECD. That is why it is open to question as to whether unilateral action or multilateral action is the appropriate way to go. I hope I have answered the question.

Deputy Dara Murphy: One of the questions Mr. Tobin answered earlier relates to the nub of the issue. He mentioned that the tax changes we can put on the Statute Book are a policy issue. I suggest it is a bit more nuanced than that. We know what happened with Dell in Limerick. The cost of doing business in this country was significantly greater than in Poland and Dell left. At the moment we have a very competitive tax architecture and if we increase taxes in any way multinationals will take note. Have the Revenue Commissioners or the Department done studies that link the statistics of multinational investment with the tax regimes in a country? Having met politicians from higher tax countries such as Portugal, I know they believe that to be the case.

Mr. Gary Tobin: Again, that is a really interesting question. The OECD has done a lot of work on the issues of tax and growth. It carried out some major research on this subject back in 2008 and then engaged in further research in 2010. Without going into masses of detail, essentially, what it found was that, broadly, a 1% increase in the corporation tax rate internationally tended to reduce foreign direct investment in the country concerned by approximately 3.7%. For example, if there was an increase of 2.5% in the corporation tax rate, it would reduce foreign direct investment in the country concerned by approximately 10%. This is an OECD study which is not Ireland-specific and some would argue that were one to apply such methodology to Ireland, the figure would actually be higher. In other words, were there to be a 2.5% increase in the Irish corporation tax rate, the fall-off in foreign direct investment would actually be higher than 10%. There appears to be a strong and statistically significant link between the corporation tax rate and the attractiveness for foreign direct investment in the country in question. Again, I have to hand a chart that I photocopied and which I can distribute to members, if they wish. It shows effective corporation tax rates across the European Union, as measured by the European Commission's methodology. It tends to show that countries in the core European Union tend to have higher corporation tax rates than those on the periphery. When one observes this on a colour graph, it is very obvious and from an economic perspective, that the reasoning behind this is quite clear, that multinational companies tend to locate in countries that have big markets because they wish to be near these markets. Therefore, to get them to locate in more peripheral locations, other factors must come into play. Even if one considers Scandinavian countries which we traditionally perceive to be high tax entities, their effective corporation tax rates actually are not very high. Consequently, there is a strong, recognised and acknowledged

link between foreign direct investment and corporation tax rates.

Deputy Dara Murphy: I thank Mr. Tobin for his reply.

Vice Chairman: Does Deputy Pearse Doherty wish to come in?

Deputy Pearse Doherty: Yes, I wish to come in on a few points, although I may not get the time to do so. It is a pity there has not been a greater attendance of the membership at today's meeting as both players are central to the hearings. If I have time, I will come in on the question of corporation tax and the effective tax rate. I have a question regarding the Revenue Commissioners and non-resident incorporated companies. Is it the case that they must inform Revenue where they are tax resident?

Mr. Eamonn O'Dea: Yes, section 882 of the Taxes Consolidation Act requires companies to specify where they are resident if they are not actually resident in Ireland.

Deputy Pearse Doherty: Consequently, as a body, Revenue would have been aware that the company in question at the hearings was not tax resident anywhere in the world.

Mr. Eamonn O'Dea: Certainly, in the context of the completion of the form concerned however many years ago it was, that information could have been available from it.

Deputy Pearse Doherty: This is interesting because the question arises as to whether the company in question did or did not tell Revenue it was tax resident somewhere else at the time. I acknowledge that the delegates cannot provide members with that information because it is confidential and I do not expect it to receive it. However, I tabled a parliamentary question to the Minister for Finance asking how many companies were registered in the State that were not tax resident in the State or anywhere else in the world. Given that section 82 of the Finance Act 1999 requires every company to tell the Revenue Commissioners where it is tax resident, the Revenue Commissioners should have that information. However, they cannot provide it.

Mr. Eamonn O'Dea: I believe what we stated at the time was that we did not compile that information specifically. If I could revert to a point the Deputy raised about the effective rates, all countries will have their rules in respect of companies being resident or otherwise. I am speaking only in generalities, but if they are not resident within the country, they will be chargeable on their branch income. A company might have no branch or presence in the country and might simply be not resident, even despite the fact that it is incorporated here. That is what is stated in our legislation.

Deputy Pearse Doherty: We do not know how many companies are using this state. They are incorporated in the State, not paying any tax in the State and not paying any other tax. They are using our system because we deem tax residency to be based on control and management and such companies are exploiting the difference between us and others. However, we do not have a clue as to how many companies are involved. Is it correct to state we have no idea whether it is ten, 100, 200 or 1,000?

Mr. Eamonn O'Dea: We do not keep a specific compilation of that information. However, as we have discussed, the companies that might have no real connection with the country end up being treated as resident here. If, as the Deputy stated, a company is simply using the country, we have taken measures to try to address this.

Deputy Pearse Doherty: The other claim one hears continually which I have heard again

today and from Government sources is that we do not do special tax rate arrangements. No one is making that accusation. I have not heard anyone make that accusation against the State. The accusation, right or wrong, is that there are special arrangements. I hear the delegates continually deny a charge that has not been put. The question is not whether there is a special tax rate for companies but whether there is a special arrangement for certain companies. Throughout the world tax authorities negotiate with multinational companies on their tax bill. Many multinational companies use the cost plus arrangements in which they look at the cost of doing business and then the operating cost in the State and so on. They add a percentage and then go into negotiations. What formula is used by the Revenue Commissioners in such negotiations or interactions with multinational companies in the State?

Mr. Eamonn O’Dea: I thank the Deputy for that question because it is very useful to clarify emphatically that it is not a question of semantics. There is no question of only saying we do not do a special deal or we do not do a special rate deal. We simply do not do special arrangements as such. As for the suggestion that if we do not do special rate deals and do not have some kind of special rate for large companies, we might have a special formula that reduces the base, thereby effectively giving them a low rate, the answer is “No, we do not.” We deal with the facts and circumstances of the companies in question. They will set out for us what their operations in the country comprise and how they relate to other parts of the company if it is a branch located here. Consequently, it is on that basis, looking at the specifics, that it could be cost plus, cost plus and a percentage of receipts, or a profit split. There are various methods, but it depends on the facts and circumstances involved. We do not have a formula that we will apply on a rule of thumb basis to these companies in general. Moreover, it is standard practice internationally to be obliged to deal with the attribution of profit to the branch. That is an important point, coming back to the earlier point that I only want to speak about in general terms, that one could attribute a low percentage rate to Ireland. One can only do so if one takes non-Irish profits, that is, profits not attributable to the operations of an Irish branch, into the reckoning or equally, were one to take in-----

Deputy Pearse Doherty: That is the entire point, namely, whether the State facilitates arrangements. Perhaps the Revenue Commissioners are only implementing what is contained in the Finance Act and the question arises as to who has influence in the drafting of legislation to facilitate such companies. However, I will turn to the issue of the transfer of royalties. While there has been much emphasis on the American hearings, there are many other companies in which one can discern profit-shifting. I refer to figures provided by the Revenue Commissioners on the transfer of royalties in 2007, 2010 and 2012. The value of the royalties transferred in 2007 was €18.6 billion. Five years later, in 2012, it was €32 billion, which almost amounts to a 50% increase in the royalties transferred. However, the profits recorded by the same companies went from €26.5 billion to €25.16 billion. The profits of the companies went down but the royalties that they transferred out of the country nearly doubled. What are the Revenue’s arrangements?

It is difficult to get under the cover here. The Revenue officials stated that Revenue provides advanced opinions to multinational companies. The Revenue engages with these multinational companies on a regular and frequent basis. I do not know how many opinions the Revenue will give a multinational companies but in the case of royalties, will the Revenue talk about those figures that show the companies are being facilitated in transferring twice as many royalties out over the past five years and yet their profits have decreased, which means the State gets less tax? This means the Government then screws others through property tax and septic tank charges and cuts to services because these multinationals are legally transferring profits out.

Mr. Eamonn O’Dea: I am not immediately familiar with the specific figures to which Deputy Doherty refers. Taking 2010, for example, there would have been charges deducted in computing profits a significant proportion of which could have been royalties but not near the figure that he mentions.

The main point is that where royalties are paid to companies that are resident abroad, typically, it is for assets that were developed outside the country. They could have been developed on the US west coast, in Silicon Valley or wherever. They have been funded abroad, they have been patented abroad and they are licensed abroad. They do not have a connection with the country other than there is licensing in for production and manufacture here, for services that are rendered from Ireland or whatever, and they have to be remunerated. In many of the high-profile cases, they are fairly unique world-leading intangibles and, unsurprisingly, they get a remuneration that is proportionate to their status and value.

Deputy Pearse Doherty: Is it not questionable? These multinational companies’ profits remain the same - their profits actually dipped over the five-year period - but the royalties they ship out of the country for intellectual property has nearly doubled. From looking at this here, it is clear that multinational companies know how much tax they want to pay in this State and they are keeping their tax payment roughly even. They keep the Revenue Commissioners and the State happy. They keep it at that, and because they are making more profit, they siphon more off in royalties. Can the Revenue come down on this? Those figures speak volumes, they speak for themselves.

Mr. Eamonn O’Dea: The figures would speak volumes if we had somehow created the intangibles concerned, if we had funded the research and development of those intangibles, if the ownership, the licensing, the registration, etc., were here, and if they were our assets that we were entitled to take the return on and charge. However, in this country, as in other countries, if the property is created outside the State, has no connection with the State and is owned by companies that simply are not Irish resident - they do not have a connection - they have to be remunerated.

Profitability may vary. I am not familiar with the particular figures Deputy Pearse Doherty quotes but the intangibles concerned have to be remunerated. They are not Irish assets and the remuneration of those assets is not Irish income on which we are losing out tax in some way or other. They are a cost of the business that is being done here - the manufacturing, the production, the services or whatever - and what we do at the outset is try to establish, if it is a branch operation here, a proper attribution to the activity that is here proportionate to the activities here, taking account of the functions, the assets used and the personnel involved, here and elsewhere.

We take a facts and circumstance approach. There is no standard approach. There is no rule of thumb. We are not somehow letting a chargeable income that should be chargeable here drift off to some other jurisdiction.

The fact is there are in many cases extremely, uniquely valuable assets held outside the State and they have to be remunerated. They were not created here and if the company or branch that is operating here wishes to license in those, it has to pay for them.

Deputy Pearse Doherty: I have one final simple question. I will not go into the effective tax rate because I do not think we have time but I would like to go into that. It is a quick question.

On the investigation that has been launched by the European Commission, we can play around with words stating that it is requiring information, etc. It is requiring information about specific companies. I note that the Commission asks for information on taxes and state aid regularly enough, but I would say it is rare that it has pinpointed specific companies, the Revenue's rulings on specific companies and the assurances the Revenue has given in relation to specific companies. I would hope that the Commission does not ask for this regularly in terms of rulings.

The question I am asking is simple. Would this have a major impact, if the Commission found that the Revenue was in breach of state aid? As I understand it, there would be a requirement on the State to carry out certain actions to recoup that money. Can Mr. O'Dea assure the committee that neither the Department of Finance, past or present, nor the Revenue Commissioners, past or present, has given any assurance, either in writing or verbally, to any company that how its operational structure interacts with the tax code would not be changed?

Mr. Eamonn O'Dea: I stated already that Revenue does not deal with companies based on international structures. We address the facts and circumstances arising here in the country that are relevant to the Irish tax liabilities of the companies concerned.

The issue in relation to state aid is, as has already been explained by Mr. Tobin, whether there might be any kind of discriminatory approach to a particular sector or a particular group of companies. What we have attempted to emphasise and be very emphatic about is that there is no such approach here, that we deal with the facts and circumstances of particular cases by reference to international principles in attributing the profits to those companies. There are no special arrangements. There is no discriminatory approach. We do not address international structures.

The point I tried to make early on, in response to the valid question, was that it is important to make clear the distinction between the rates that transnational companies or transnational groups of companies might be able to achieve and what a sovereign nation offers. We need global rules for global entities but we have our national rules for the national profits arising. It is understandable how people would be concerned if high-profile and, apparently, very highly-profitable companies end up paying low average rates across jurisdictions. That may well be understandably a source of concern. However, in terms of Ireland's role and the role of the Revenue Commissioners, we ensure that the branches and companies operating here are taxed according to the same rule that goes across all companies and there is no discriminatory aspect.

Deputy Pearse Doherty: That is not the question I asked. The question I asked is about assurances of changes. For example, hypothetically speaking, I am asking them to state that the Revenue or the Department did not say, for example, that it was giving such companies an assurance that Ireland will not change its tax residency position. We are aware there is aggressive tax planning in the State. There must be when companies incorporated here do not pay any tax anywhere in the world. Have any assurances been given that the structure that these companies have put in place in this jurisdiction will remain and we will not close down any loopholes that they may have identified?

Mr. Gary Tobin: The only assurance that I am aware we ever give to companies - we repeat it in every budget - is that we are absolutely committed to the 12.5% corporation tax rate. That is the only assurance that I am aware we have ever given to any company. In fairness, companies know that it is the sovereign right of this Parliament to decide to change the tax law whenever it votes to change it. That is the right of Parliament. It is the way it is.

Deputy Dara Murphy: The Commission has clearly requested some documentation. We must all acknowledge we live in a competitive world and are competing with countries in Europe. Politicians in Britain and France, for example, have commented on us in the past. To be clear, neither the Commission nor any other arm of the European Union has a role in tax policy in Ireland, as we saw in respect of the financial transaction tax, corporation tax and income taxes. The Commission's role is purely to assess whether we are keeping the rules we set. If we are found to be keeping to our own rules, as I hope will be the case, it will have nowhere else to go, even if some politicians in Europe do not like the fact that we have a successful tax regime for attracting multinational companies. Do I understand that correctly?

Mr. Gary Tobin: Yes, I totally agree with Deputy Murphy. The Commission has a duty to protect the treaties and ensure state aid is not featuring. That is taken as read.

On taxation matters in general, the Deputy will be aware that all matters regarding direct taxation at European level are a matter for unanimity. All countries must agree before any tax change. This is completely separate from state aid but, before any agreement would be made, on any major tax policy matter, for example, there would be a requirement for unanimity. We are very well protected in terms of our sovereign rights regarding tax policy. In fairness to the European Commission, I have been at meetings held by it where it said absolutely that it is not interested in or in the business of seeking to harmonise corporation tax rates. It wants to ensure, however, that corporation tax rates are generally applied across the board. Obviously, in the past, we would have had regimes, including that allowing for the manufacturing relief of 10%, that would have had State aid approval at the time. It would have been approved at EU level. Over time, there has been a move towards general corporation tax rates. That is up to individual member states to determine. That is just the way it is.

Deputy Pearse Doherty: The committee discussed the effective tax rate quite a bit yesterday. It would be useful to put to Mr. Gary Tobin the point made yesterday by me and the professor from Trinity College. Mr. Tobin has not circulated his presentation but I assume it is the one that shows the effective tax rate in the State is 11.8%.

Mr. Gary Tobin: The calculation of effective tax rates is an art rather than a science. There is a range of different estimations of what constitute effective corporation tax rates. For example, Professor Barry quoted 11.1% yesterday. That was the one bit of his presentation I did hear. The European Commission, for example, estimated, on the basis of a study by Spengel, that the effective corporation tax rate in Ireland is 14.4%. Therefore, there is a range of calculations using different bases. There is no agreed methodology for what constitutes an effective corporation tax rate. We sometimes get lost down culs-de-sac when we focus on it.

Deputy Pearse Doherty: I fully agree. Another report shows the effective tax rate in this State is 6%. Other estimates are way higher. I ask my question because the Department relies on an effective tax rate of 11.8%. It provides information to the Minister that relies on a rate of 11.8%.

Mr. Gary Tobin: The World Bank study.

Deputy Pearse Doherty: It is the World Bank study.

Mr. Gary Tobin: I would certainly not say that we rely on that. That is one calculation of a measurement. Yesterday, issues were raised in regard to that. We do not rely on it at all. It is quoted from time to time. The first time I saw it was when it was in *The Irish Times*.

Deputy Pearse Doherty: What figure is in the presentation Mr. Gary Tobin said he was going to circulate?

Mr. Gary Tobin: It states 14.4%, which is based on a European Commission analysis.

Deputy Pearse Doherty: Very good. I do not believe anybody would believe multinationals are paying 14.4%.

Mr. Gary Tobin: It is a European Commission study.

Deputy Pearse Doherty: It is a good effort anyway. Why does the Department or the office of the Revenue Commissioners not actually collect the information and analyse the profits of multinational companies? Why do they not examine the trend in transfer pricing, the growth in group holding companies and the number of incorporated non-resident accounts? If our effective tax rate is so close to the rate of 12.5% and if it is so transparent, why do we not collect information and state indisputably the effective tax rate of the State?

Mr. Gary Tobin: That would be a huge task. If two companies are operating side by side on a high street, in Donegal or elsewhere, and one of them claims the research and development tax credit and one does not, and one has losses while the other does not, they will have different effective corporation tax rates as result. There is nothing wrong with that; it is just reflective of the business they are in and what they are doing. It can be challenging, even at company level, to try to work out the effective corporation tax rate. Aggregating the figures is an absolutely massive task. The resource implications could be quite considerable. I do not know whether the Office of the Revenue Commissioners wants to comment on that.

Mr. Eamonn O’Dea: We have made some efforts regarding aggregation in recent years. The results point to a figure very close to 12.5%. The differences are made up by specific credits. Included would be double taxation relief, which is substantial, manufacturing reliefs for 2010 – there were still some them – and the research and development credit. The latter would have accounted for some of the difference. The figure was quite close to 12.5%.

Deputy Pearse Doherty: It would be very helpful if that information could be furnished to the committee.

Vice Chairman: Much of the debate has focused on what Ireland is doing. The European Union authorities are meeting representatives from Ireland but also representatives from other countries. Much of the issue concerns tax avoidance, a global issue. The corporation tax rate is crystal clear; it is fairly straightforward. As the Office of the Revenue Commissioners has just pointed out, at all times one works according to legislation. There is no toing and froing or horse trading; the system works according to what the legislation states. Are we involved in the global picture? This is an issue that was mentioned during the G20 discussions.

During yesterday’s presentation, reference was made to jurisdictions that are well known to those who concern themselves with taxation issues. These countries include Bermuda, the Bahamas, the British Virgin Islands, Jersey, Gibraltar and even Switzerland. Are there are discussions at European level on this issue? Are there discussions on what is happening within Europe and between Europe and perhaps the United States? How does the Caribbean come into that? Are we involved in that discussion? Much of the discussion is trying to paint us as the bad boys but that is far from the reality. As I pointed out, even US Senators McCain and Levin voted for the legislation supporting the check-box issue. What is our stance on examining this as a global issue rather than one that affects only Ireland and multinational companies

in the State?

Mr. Gary Tobin: Certainly, we are very involved. During the Irish Presidency, there was a discussion at the informal ECOFIN meeting that the Minister for Finance hosted in Dublin Castle on the issue of aggressive tax planning and tax avoidance. On foot of that, the Minister and Commissioner Semeta wrote a letter to all European Finance Ministers suggesting a seven-point plan that could be agreed in regard to tackling aggressive tax planning. By the end of our Presidency, we had five of the seven points agreed. The following two are being followed up by the Lithuanians, who currently hold the Presidency. Aside from that, there is a variety of fora. For example, at European level there is a group on harmful tax competition, called the code of conduct group. That group, in which both myself and Mr. O’Dea are involved, is concerned with how the European Union interacts with third countries outside the EU. Sometimes it can seem as if it is always one European country having issues with another European country when, in fact, a lot of the time it is Europe versus other countries with which we are having some problems.

The code of conduct group is examining our relationship with third countries. I am hopeful that some of the more aggressive tax structures that are in place in third country jurisdictions, which impact on Europeans, could be tackled through the code of conduct group.

Vice Chairman: I thank Mr. Tobin. I wish to thank all the officials, both from the Department of Finance and the Revenue Commissioners, for attending this discussion. It will certainly add to what the sub-committee intends to publish in the foreseeable future. I appreciate the witnesses giving of their time here today.

As there is no other business, the joint sub-committee stands adjourned *sine die*.

The joint sub-committee adjourned at 4 p.m. *sine die*.