DÁIL ÉIREANN

JOINT SUB-COMMITTEE ON GLOBAL CORPORATE TAXATION

Dé Céadaoin, 28 Bealtaine 2014

Wednesday, 28 May 2014

The Joint Committee met at 2 p.m.

MEMBERS PRESENT:

Deputy Richard Boyd Barrett,	Senator Thomas Byrne,
Deputy Michael McGrath,	Senator Denis O'Donovan. +
Deputy Dara Murphy,	
Deputy Brian Stanley,*	
Deputy Liam Twomey,	

* In the absence of Deputy Pearse Doherty.

+ In the absence of Senator Thomas Byrne for part of meeting.

DEPUTY CIARÁN LYNCH IN THE CHAIR.

The joint sub-committee met in private session until 2.10 p.m.

Ireland's Corporate Tax System: (Resumed) KPMG and Unite

Chairman: Before we commence, I remind members, delegates and those in the Visitors Gallery that all mobile phones must be switched off completely to avoid interference with the broadcasting of proceedings.

I welcome Mr. Conor O'Brien, head of tax and legal services at KPMG, Dublin, and Mr. Michael Taft, research officer with the Unite union. It is proposed that Mr. O'Brien and Mr. Taft will each make an opening statement of approximately ten minutes which will be followed by a question and answer session of around 15 minutes per person and then we will have a summary and conclusion. If the witnesses do not get everything covered in the opening address, I will create space at the end of the meeting for any further additional information they which to feed in. It is not for committee members to express their own narrative on what is at issue at this time. That will happen in the report. The purpose of our proceedings is to draw on the expertise of the witnesses and listen to members' views and explore the issues with them.

By virtue of section 17(2)(*l*) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by it to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against a person 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 by name in such a way to make him or her identifiable.

I invite Mr. O'Brien to make his opening statement and I will then call on Mr. Taft to follow.

Mr. Conor O'Brien: I thank the Chairman for inviting me to the joint committee today. A paper by KPMG completed in February 2014 was circulated and I may refer to the key points in it. The basis for some of the calculations in that paper is the Revenue Commissioners statistical paper, Corporation Tax Distribution Statistics, and I have copies of it for members.

There has been a great deal of discussion about the effective corporation tax rate in Ireland. The recent papers and articles published on the topic would suggest that there is a 2% effective tax rate in Ireland. That prompted us in KPMG to write the paper in February 2014. I will now go through some of its key points. Before members get into a discussion on what the effective tax rate is, there are a number of key concepts that are important in terms of the territorial scope of taxation.

The first question that one must ask is where a company is tax resident. That is a matter that has been determined in Ireland as a result of case law going back about 150 years. The leading case was the De Beers case in 1905. Our paper quotes part of the judgment which states:

> In applying the conception of residence to a Company, we ought, I think, to proceed as

> nearly as we can upon the analogy of an individual. A company cannot eat or sleep, but it can keep house and do business. We ought, therefore, to see whether (sic) [recte where] it really keeps house and does business. An individual may be of foreign nationality, and yet reside in the United Kingdom. So may a Company. Otherwise, it might have its chief seat of management and its centre of trading in England, under the protection of English law, and yet escape the appropriate taxation by the simple expedient of being registered abroad and distributing its dividends abroad.

It then refers to a case some 30 years earlier, which I presume was in 1875, which held that a company resides where its real business is carried on: "Those decisions have been acted upon ever since. I regard that as the true rule; and the real business is carried on where the central management and control actually abides."

Ireland inherited that rule of residence in 1922 when it became an independent State and inherited the then UK tax system. That has been a central point of our residence rule ever since. The principle of what exactly central management of control means has been evolved by the courts in case law over the years. Irish law follows those cases. I do not think the Irish rules on that are regarded as unusual.

The OECD in its model tax treaties over the years has laid down as the key test for residence of a company the centre of effective management, which is essentially the same test. We can see that as long ago as 1905, or perhaps 1875, the UK courts rejected the concept of incorporation as being the concept by which one should determine residence of a company and they went instead for the concept of management and control. One can see in their judgments that the increased possibilities of tax avoidance that would arise if one went with an incorporation test as distinct from a management and control test were one of the reasons that they went with a management and control test. We have inherited a residence test which is sensible and is based on management and control. Much of the published articles and papers over the past six or seven months have indicated that Irish companies have an effective rate of corporation tax of 2% by looking at the taxes paid by Irish incorporated companies that are not resident here. I do not think that makes sense.

The territorial scope of Irish corporate taxation, which is common to many countries in the world, is that if a company is resident here it pays tax on its worldwide profits, and if it suffers tax in other countries, it may get a credit for the tax suffered in another country. If a company is not resident here, and it could be incorporated in Ireland and not resident here, it will still pay tax in Ireland if it has a branch here. One may come across the phrase "permanent establishment". That is the phrase used in the OECD model treaty and it is essentially the same concept as a branch. Branch is the term used in Irish domestic law, while permanent establishment, or PE, is used in the OECD model tax treaties. If one has an office, a factory or personnel in Ireland, one will pay tax in Ireland notwithstanding the fact that one is not an Irish resident company. Equally, non-Irish incorporated companies that are managed and controlled in Ireland would pay full tax here on their worldwide profits. For example, companies that are incorporated in the Cayman Islands but are managed and controlled in Ireland pay full corporation tax here on their worldwide profits. An analysis that looks at trying to calculate the amount of tax companies pay based on where they are incorporated is completely flawed, in my view. It would have as much sense as saying: "How much tax does an Irish citizen living in Dubai pay in Ireland?" The concept of residence is where a company resides and where it exists.

We could, of course, if we wanted to, do as the United Kingdom did in the late 1980s and amend our rules to provide a dual test. We could provide that a company is resident in Ireland if it is managed and controlled here or if it is incorporated in Ireland. We could make that policy choice, but heretofore we have not done that. That is not a particularly unusual feature of the Irish tax system.

One needs data to see what effective taxes are paid. One needs to know how much tax is paid by Irish resident companies on their worldwide profits - that is both incorporated and non-Irish incorporated companies. One wants data on the amount of tax paid by non-Irish resident companies that have Irish branches. The best source is my view is to go to the Revenue Commissioners because it collects the data. All the companies have to file tax returns. They file CT1s, corporation tax returns, and that data is aggregated in the Revenue document which I distributed. If members turn to page 6 of that document, they will see the Revenue Commissioners have aggregated the data and have come up with gross trade profits of €73.8 billion being the gross profits earned by Irish resident companies and Irish branches of foreign companies. They deduct a number of expenses, which are not special tax breaks or reliefs but deductions for genuine business expenses. The document shows a figure of €8.5 billion for capital allowances. A capital allowance is essentially a deduction for the depreciation cost of an asset that one buys. As I note in my paper, the effective tax rate we produced in our calculations is understated. One of the reasons is that one does not obtain capital allowances on every asset one buys, which means companies buy certain assets for which they do not receive a tax reduction for depreciation.

Trade losses forward are a normal deductible expense. A company that makes a loss in one year can carry this forward to be offset against profits for the subsequent year. This is common practice in virtually every tax system in the world.

Current year trading losses occur where one makes a trading loss in one trade and offsets it with a second trade. This, too, is not an unusual deduction.

Trade charges refer to royalties, patent payments and so forth, which are deductible in every sensible corporation tax system in the world.

Group relief is where the tax system recognises where a group has profits in one company and losses in another. Again, virtually every corporation tax system in the world recognises that this type of relief should be available where one organic economic enterprise is split into different entities.

These are all normal deductions which reduce the figure for net profits to €38 billion. Tax should only be levied on net profits after legitimate expenses. One then has other items of income such as gross rental income and other normal deductions. The real net profit base in Ireland is €40 billion. This is the correct denominator in the calculation of an effective tax rate.

The figures on page 5 allow us to calculate the correct numerator. One starts off with a figure of €4.594 billion for the total tax less reliefs plus surcharges. This figure should then be adjusted for two items only, the first of which is research and development tax credits. These appear below the line with the €4.594 billion figure and two figures are shown. The first, €152.3 million, is an amount of research and development tax credits which were set against corporate tax liabilities. The second figure is a research and development tax credit of €106.2 million, which is the amount of research and development tax credits which are refunded to companies. This figure refers to research and development costs that are not offset against liabilities but refunded. These two items reduce the figure of €4.594 billion, whereas the other three items are not, in my view, adjusting items. I will discuss these relatively minor items in detail if members wish but the Department of Finance calculations treat them as adjusting items.

Another number should be added back. The table shows a figure for double taxation relief of €567.1 million. One could also do as the Department of Finance has done and produce two figures, one for before double tax relief and one for after double tax relief. Double tax relief is, however, a normal form of tax relief and should not be deducted.

This is how KPMG produced the numerator in our paper. Using this numerator and denominator, we arrived at an effective tax rate in Ireland of 12.24%. As I indicated, this is probably understated for a number of reasons. There are a number of items of genuine business expense for which tax deductions are not available in Ireland, for example, tax depreciation on certain assets and certain entertainment and other expenses. These figures must be added back. As the Revenue figures do not show these add-backs, the gross profit figure is somewhat overstated.

Ireland's loss relief rules are imperfect, which means companies receive loss relief in some but not all cases. On that basis, one could argue that the Revenue figure for total income is overstated. For example, the explanatory note accompanying the paper notes that, for example, the total net rental income in the State in the period in question amounted to a loss of €158 million, in other words, losses were made in aggregate as opposed to profits. Despite this, €520 million was charged in rental profits and, as such, the loss relief was imperfect. The paper also shows total trading losses forward of €150 million, yet this is not the number that emerges. Only a small portion of these losses are relievable.

The loss relief rules are imperfect and companies do not always receive relief for losses.

Deputy Richard Boyd Barrett: Will Mr. O'Brien repeat that?

Mr. Conor O'Brien: Companies do not always secure relief for all of their losses. A business that generates a profit in one area and loss in another may not be able to offset the loss. This means that a company which did not make a profit may still pay corporation tax. The numerator in the Revenue figures will only take into account the losses that have been relieved.

Deputy Richard Boyd Barrett: Losses that have-----

Mr. Conor O'Brien: These are losses for which a relief has been obtained and which the company has been able to offset against other profits. One could argue that where a business makes a loss of €1 million in one area and a profit of €1 million elsewhere, the number feeding into the numerator should be zero. However, the number that feeds in is actually €1 million if relief is not obtained for the loss.

We have not adjusted for any of these items in our 12.24% figure for the effective tax rate, which we consider to be a conservative figure. The effective tax rate is at least 12.24% and any talk of a 2% effective tax rate is completely wrong.

More recently, some of the debate has shifted a little towards stating that while the rate is probably 12%, Ireland allows deductions for payments made to other countries and this reduces the rate. Deductions which are normal deductions on normal transfer price principles are deductible in every sensible tax system in the world. This is not an unusual feature of the Irish corporation tax regime. The United Kingdom has a 20% standard corporation tax rate and applies a 10% rate on some items. It allows payments for royalties, interest and management fees, irrespective of whether they go to tax havens. If one were to try to merge or average the tax rate between a tax haven sister company of a UK company and a UK company, one would obtain a rate that is lower than 20%. Ireland levies a 12.5% tax rate, by and large, on the profits properly attributable to Ireland. If one wishes to rationalise how one gets in and around 12.2%, one can see from the Revenue paper that approximately €260 million of research and development tax credits were granted in that year, resulting in a reduced effective tax rate. On the other hand, approximately €2 billion of profits were charged at the higher rate of 25%, which applies to passive income. This more or less cancelled out the cost of research and development tax credits. That is rationally how one gets close to the 12.5% figure. This is not surprising because the only significant tax break other than the 12.5% corporation tax rate is the research and development tax credit.

Mr. Michael Taft: On behalf of Unite, I thank the sub-committee for affording us an opportunity to make a submission on Ireland's effective corporate tax rate. Our submission will use the official data collected by national statistical agencies. We do not intend to directly address the issue of Ireland's role in the global tax avoidance network, which would have a different impact on any estimates from the macroeconomic data. In providing our estimate of the effective corporation tax, we will also place it in a European and an economic context.

There are two principal measurements of profit at a macroeconomic level. One measures against entrepreneurial income or net operating surplus. The Central Statistics Office and EUROSTAT regard entrepreneurial income as a more comprehensive measure of corporate profitability. According to the technical paper, Effective Rates of Corporation Tax in Ireland, produced by the Department of Finance, entrepreneurial income includes collective investment funds, which are not taxed at source. This becomes a problem for financial companies only as this inclusion makes little difference for non-financial companies. To arrive at a more robust and realistic rate and make it comparable across the European Union, one uses net operating surplus. This figure is produced by deducting depreciation charges and net indirect product taxes and subsidies from gross operating surplus. This is the standard international measurement used by EUROSTAT, the OECD and the United Nations.

Our submission shows a table setting out the effective tax rate of countries based on net operating surplus. This shows that three countries have an effective corporate tax rate of more than 30%. The mean average among other advanced European economies - namely, the 15 EU economies minus the poorer new member states - is 24%. In Ireland, which lies at the bottom of these, it is 9%. A useful comparison can be made with small open economies, because such economies have a structure very similar to ours. These economies have a small domestic market and, like us, are heavily reliant on export earnings. The IMF has used this benchmark from time to time in papers it published regarding Ireland during its period in the IMF programme. These small economies include Austria, Belgium, Denmark, Finland and Sweden. The effective tax rate of those countries is even higher than ours, at 26%.

Ireland's low effective tax rate is a historical phenomenon and not just something that occurred in the past couple of years because of the recession. The recession will impact sharply on corporate profitability, but over a ten-year period Ireland has consistently been at the bottom of the table of the advanced European economies.

Tax rates, whether headline or effective, are a result of policy. To put them in context, one of the goals of our tax rate policy is to encourage investment. To test how successful this is in comparison with other countries, it is useful to contrast the amount of corporate investment, of both financial and non-financial companies, as a proportion of their profits in net operating surplus. The first table on page 3 of my submission demonstrates that it is not unusual for European economies to have corporate investment that is higher than corporate profits. The average is about 1:1 but, as can be seen, Ireland is once again at the bottom of the table, as corporate investment here is just one-fifth of corporate profitability. Other measurements can be used. For instance, as a measure of GDP, one will find that on average over the last decade, corporate investment in the economy is about one third less than the average corporate investment in the EU 28.

Another stated policy goal is to use the low corporate tax rate to encourage increased expenditure in the domestic economy. Forfás regularly tracks this in its annual business surveys. Direct expenditure refers to two items: payroll, which is wages, salaries and social insurance contributions; and purchases from domestic companies, whether for materials or services. That is the direct expenditure. Forfás estimates that at the beginning of the last decade, over 37% of sales revenue of the current State agencies such as the IDA and Enterprise Ireland in the traded sector was returned to the economy through payroll and domestic purchases. However, this has fallen over the decade to about one quarter. Over that period, in real terms - that is, after inflation - direct expenditure by traded companies has fallen by 17%.

I would like to point out one further thing to the joint sub-committee. It would also be a goal of a low effective tax rate to boost the level of employee compensation. Obviously, if one is encouraging business activity and trying to give it an edge internationally with a corporate tax rate, and also encouraging certain types of high-value-added firm, one would expect that through the trickle-down process, this would impact strongly on employee compensation.

In the graph at the top of page 4, we find that whereas throughout the EU 28 employee compensation makes up nearly three times the level of profits in that operating surplus, in Ireland it is approximately 1:1. Ireland's relative low-wage standing should not come as a surprise. My own union, Unite, recently published an analysis based on EUROSTAT data showing that we lag far behind other European averages in terms of employee compensation. We lag 14% below other advanced European economies.

To come back to the question of small open economies with a structure just like our own, our employee compensation levels are 30% below the average of those economies. There are benefits and costs involved and it is up to the joint sub-committee to tease them out. One of the costs of a low effective tax rate and the negative differential between that and the tax rate of an average European economy is that it imposes higher costs on households. It does so either through higher taxation or through reduced expenditure on public services, social protection and investment.

We hope the joint sub-committee's exploration of the effective corporate tax rate will be just a first step in a wider analysis of its fiscal and economic impact. This would allow us to explore a number of other questions. Is it achieving its stated policy goals, such as encouraging investment, at least in comparison with other European countries? What would be the impact of an alternative system of corporation tax? For instance, what would be the impact of a regime with a higher nominal rate but which rewarded capital-intensive and other key value-added sectors for investment, thus hoping to boost corporate investment in the economy while still yielding higher tax revenues?

Clearly, when we compare ourselves to our peer group of other small open economies, they have a far higher effective corporate tax rate. It is nearly three times higher than Ireland's. At the same time, they have much higher levels of corporate investment and employee compensation. I would submit that, whatever about the successes or failures of the current system, there are other systems that seem to be working. It might be beneficial even to explore those systems to see how, with a higher tax rate, one can still generate considerably more investment and employee compensation or wages in the economy.

There is no doubt about the positive presence of foreign direct investment in key areas of the economy, including those that are in capital-intensive and globally networked sectors. The challenge for the joint sub-committee is to explore the deficits and benefits in order to see if some model comes through. There is a need to study the realistic tax rate in Ireland. We have just dealt with the macro-economic level; we have not dealt with the issues that Mr. O'Brien mentioned in terms of referencing, for instance, the work of Professor James Stewart. His work has identified that US multinationals based here have a tax rate of 2%, which is much closer to economies such as Bermuda and the UK's Caribbean islands than it is to Germany and France. The issue is how to explore that situation to see how we can improve it.

There is highly negative international opinion regarding our tax rates, whether it comes from the US Senate, the House of Commons or the EU investigation into our tax rates. It is also constantly mentioned in articles in prestigious financial newspapers, such as *The Wall Street Journal* or the *Financial Times*. This is causing considerable reputational damage to the Irish economy, to the point of ridicule. A recent article in *Forbes* magazine suggested that if they could not call Ireland a tax haven, they should call us a bagel. I suggest that is the type of publicity we could do without.

Chairman: I thank Mr. Taft for bringing it to our attention.

Mr. Michael Taft: In conclusion, I would urge the joint sub-committee, the Government and wider political opinion not to make the same mistake we made during the middle of the last decade. Then, everybody sensed that there was a problem with the asset bubble but few were willing to face up to it, never mind address it. Tax-driven industrial enterprise policy is problematic, especially where that tax structure is concerned. Many international commentaries and international organisations can be undermined by other economies seeking to do the same thing or possibly even better, as can international agencies that are attempting to address the widescale phenomenon of global tax avoidance. This structure could easily be undone by the proverbial stroke of a legislative pen in some other country. We must ensure that we are not heading blindly into another crisis because of a refusal to face up to reality or adapt to a changing environment. I thank the Chairman and the committee.

Chairman: Thank you Mr. Taft and Mr. O'Brien. We will now proceed with the questions. We will break the questions down into 15 minutes slots. These committee meetings are broadcast live either on a unified streaming platform, USP, the web and so forth. For a layperson looking in on this the easiest way to explain the effective tax rate for a PAYE worker is in terms of net take home pay as opposed to gross payment. We are discussing the net and gross payments of companies. Will you offer your judgment on it? When you analyse the effective tax rate paid by companies that are engaged in foreign direct investment here or structured in the country in different ways, does Ireland provide an opportunity for them such that we are a tax haven not by design but by accident? Perhaps Mr. O' Brien would like to address that?

Mr. Conor O'Brien: Not in my view, unless one takes the view that an effective tax rate in or around 12.2% or 12.5% constitutes a tax haven. That, in turn, depends on what one views as the minimum acceptable level of corporation tax. The 2% rate that has been quoted widely is a bogus rate based on companies that are not tax resident in Ireland. Such companies are incorporated in Ireland but that is a different concept. This bogus number has been picked up in the international press and repeated throughout the web and so on and it has been used to beat Ireland. It is most unfortunate that what I regard as an inaccurate or misleading statistic has been picked up in this way. I went through the matter in the paper and the Department of Finance paper comes to a similar conclusion. Mr. Taft's paper comes to a 9% rate, which is not a million miles away. It is probably too micro to get into the differences between the 9% rate and the 12.2% rate but certainly it is not 2%; that is simply misleading.

Under the Irish regime we have set out our stall under a 12.5% rate along with research and development tax credits, which can reduce the rates somewhat. That is what we offer to the world and we offer it based on profits that are properly allocated to Ireland. Broadly speaking, that is fine as an offering. It is similar to the offering of some other similar countries. For example, countries such as Singapore and Switzerland, which compete with us for foreign direct investment, offer similar regimes. We are not an outlier in that regard.

Across the Border in Northern Ireland, which has not had the benefit of as low a corporation tax rate, they are trying to catch up. The United Kingdom has introduced a 10% corporation tax rate for what is termed patent box activities. It has been publicly stated by officials in Northern Ireland that, as a result, projects that were due to come to the South went to Northern Ireland. Large multinationals in the UK have publicly stated that they have located projects in the UK as a result. The big four accounting firms in the UK have collectively said that they are now advising hundreds of companies which are considering relocating to the UK as a result of the UK undercutting our offering in many respects. What we offer is attractive but it is not a tax haven. Others are trying to do the same. In fact, others, including our nearest neighbour, are trying to undercut us.

Chairman: I will probably come back to you on the matter, Mr. O'Brien. My next question is in regard to the comparative nature of taxation. Mr. Taft, what is your definition?

Mr. Michael Taft: The question was whether we are inadvertently or otherwise being used as a tax haven. It depends on the definition. Are we being used as a tax haven? Are we a conduit tax haven? Companies set up here are able, as part of the global avoidance network, to shift from one jurisdiction or economy through here to move on to another economy. We did not particularly address that matter but there are numerous examples. In fact, legal and accounting firms publish brochures aimed at the markets in continental European countries. They suggest companies come to Ireland-----

(Interruptions).

Chairman: Can I ask the two Deputies, please, to stop talking to one another. It is highly rude and it is intervening in the process we are trying to conduct. Can both of you please desist? Thank you.

Mr. Michael Taft: These brochures are targeted at continental Europe. The firms suggest companies come to Ireland and they will show those companies how to pay 2.5% tax. That may not represent a tax haven as such but it certainly provides a haven from higher taxation if companies are trying to move from a higher tax regime, such as Germany, France or possibly America, to here.

I offer one example. I realise Mr. O'Brien is coming at it from the accountancy and tax-based approach. I have come at it from the macroeconomic end. Anyway, the claim is that our corporate tax system is transparent. However, we cannot undertake key economic measurements because of what Forfás has termed multinational accountancy practices. For example, Forfás cannot measure Irish productivity, which is an incredible situation. As a result of the intervention of multinational accounting practices, which inflate gross value added and gross operating surplus in the multinational-dominated sectors, Forfás has to measure the productivity of the labour force in the United States and apply that measurement here. It is a highly unsatisfactory situation and possibly unique among western industrialised countries. I do not know of other countries which have to do that. That is an example of where the multinational accountancy practices actually undermine the basic data. That is the practice and consequently we cannot compare input and output tables throughout Europe, either through EUROSTAT or Central Statistics Office data. For similar reasons we cannot compare gross operating surplus or profits per employee in particular sectors because the data are way off the chart. If that is occurring then of course it is occurring in our tax base.

Chairman: That brings me to my next question, which relates to scrutiny that effective tax rates are given throughout the European Union and OECD countries. Let us consider the House of Commons report, the Senate report and so on. We must take into account the individual national motivation behind reports because we are in a competitive global economy and, therefore, taxation gives a competitive edge while reputational damage gives a competitive advantage to other countries and so forth. Anyway, with regard to the scrutiny applied to the comparative rate in Ireland and bearing in mind what you have said, Mr. Taft - I will follow on with the views of Mr. O’Brien - how does this measure up with scrutiny undertaken in other jurisdictions?

Mr. Michael Taft: Does the question relate to the scrutiny of other tax rates?

Chairman: For example, the French corporation tax rate is 20% or 26% but one could argue the effective tax rate there is actually lower than the Irish effective tax rate. Is our effective tax rate closer to what its says on the tin by comparison with other countries?

Mr. Michael Taft: I have shown this using the macroeconomic data available which, by the way, is close to the Irish data. I am referring to the CSO data because EUROSTAT data is collected from there and it is very close to the Revenue Commissioners data as well, as Mr. O’Brien pointed out. The French effective corporate tax rate is over 30%.

Chairman: What is the effective tax rate?

Mr. Michael Taft: The effective tax rate is over 30%. We did not look at the nominal rate in our submission. You may be referring to the PricewaterhouseCoopers report. To be fair to PwC, the firm never portrayed the exercise as an exercise in comparing effective tax rates. PwC took one company, the now famous pottery company of 50 employees, which was non-trading and which would have been allowed the lower French rate. The French have two corporate rates, one for smaller businesses. Ireland used to have such a lower corporate tax rate. The Chairman asked about scrutiny. Apparently, there is increasing scrutiny. The EU Commission has launched an investigation into the tax practices of Luxembourg, Netherlands and Ireland. The Netherlands has gone through a period of scrutinising itself and has started to renegotiate its double taxation treaties with other countries. The Finance Minister went so far as to apologise for allowing the country to be used as a tax conduit because he was very concerned by the reputational damage to the Netherlands.

Mr. Conor O’Brien: I believe there is increasing scrutiny in many countries. It is correct to say, however, as I am sure the officials from the Department of Finance have told the committee, that the Irish system is relatively transparent. The tax legislation is complicated but it will tell one the tax rates that will apply. No one will give a company a letter saying the rate is 12.5% but it can have a 3% rate. That does, in effect, happen in other countries which have special regimes that are quite opaque. For example, it is very difficult to understand how the tax rate evolves in Singapore but essentially a deal is cut between the taxpayer and the revenue authorities in many cases. That can also be the case in Switzerland, where there may be a different treatment in each of the 18 cantons. The rate is a quasi-negotiated rate in many cases.

Chairman: It is up to an individual nation state to decide on its corporation tax. We can decide whether it should be 99.9% or 1%. Scrutiny measures that apply across many OECD and European countries focus on the margin between the corporate rate and the effective rate. How does Ireland perform in that regard?

Mr. Conor O'Brien: Our effective rate is very close to our actual rate. Some other jurisdictions, which have been less transparent and have a wider gap between their effective rate and their actual rate, have tended to escape scrutiny because the headline rate looks high, but many corporations have paid lower rates. It is now possible for a company with headquarters in the UK to create a finance company with an effective tax rate of 5%, which is much less than our 12.5%. That is a deliberate policy decision in the UK. Its patent box regime is a 10% rate which also undercuts our 12.5% rate. The EU is now scrutinising the patent box regime. The UK is defending it but it is not inconceivable that it could be held to be contrary to EU law and it may have to be amended.

Chairman: I want to separate tax evasion from tax avoidance and tax compliance. Our main project here is to consider the architecture of the application of global taxation, considering what is happening in that arena and Ireland's place and position in that, what we can do, what we can not do, what we can do unilaterally and what we have to do in other contexts. To use the analogy I used earlier, for companies it is similar to the offside rule in soccer in that there is no point talking to Manchester United or Chelsea. One has to talk to UEFA and FIFA because they set the rules. The teams play within the rules and maximise them to their advantage. Will the announcement by the Minister for Finance in budget 2014 change the effective tax rate in this country or will it be neutral at the end of the year? I am talking about the residency issue.

Mr. Conor O'Brien: That particular measure would be neutral.

Chairman: There will be no change to the effective tax rate.

Mr. Conor O'Brien: I do not believe so. That particular measure was aimed at stateless companies, which was a rare phenomenon in any event. I imagine that anybody affected will restructure their operations to make some alternative arrangement.

Mr. Michael Taft: Only a handful of companies will be affected by it. It will not have a significant impact on tax revenue or the effective tax rate. The reason for investigation, analysis or criticism of the Irish corporate tax regime is not the effective tax rate but what is perceived as our role in the global tax avoidance network. The problem is not the tax rate, it is how we allow companies to use our economy as a transfer conduit. There is a big debate as to whether we do that in our law or whether it is a function of other countries' laws. The debate is not about the effective tax rate in that regard, it is whether we are a tax haven conduit.

Chairman: In the broad context, there is a strong argument that everybody must jump together on this issue if a solution is to be found. Is there anything we can do in isolation that adjusts the type of anomalies Mr. Taft has described, or can we do something to our effective tax rate system that makes it stand up better to scrutiny and comparative analysis with other regions?

Mr. Michael Taft: It will be a combination of both, but let us not forget that the current tax structure is our creation. No one else created it for us. We started to do this in the 1950s with the first tax reliefs for companies to come in here. One could say we created it therefore we can "un-create" it. We cannot, however, "un-create" something on which we based our policy for decades. In our submission we point out that other countries like our own, those heavily reliant on exports and with small domestic markets, have tax structures that are far different and seem to have a far better economic return. It is possible for us to get to that point but it is a long-term process, and the first thing one has to do is face up to the reality and not attempt to defend what is becoming increasingly difficult to defend in international circles.

Mr. Conor O'Brien: There are a range of policy options. One possibility is to increase our corporation tax rate. Mr. Taft mentioned earlier that a low corporation tax rate imposes costs on households because the gap in tax revenue needs to be made up elsewhere. I would not disagree with that but it assumes that if the corporation tax rate is increased, the total tax yield to the Exchequer will be increased. That is not necessarily the case. At the very least that is a debatable proposition. If we increase our corporation tax rate and, as a consequence, some of the companies based here leave and go elsewhere, to Singapore, Switzerland or the UK, and we lose all that corporation tax revenue, as well as the PAYE and PRSI take on all their employees, the VAT on local spend, plus the increased welfare payments to those unemployed as a result. We may in fact deprive Irish households of income and increase the burden on them. There is a point at which one can increase the corporation tax rate - and one can debate what that point is - beyond which the resources available to households will decrease. That is a key point. We have increased the corporation tax that we charge on international business. It used to be 0% until the 1980s, then it was 10%, and now it is 12.5%. Meanwhile competitors have reduced theirs.

Deputy Michael McGrath: I welcome Mr. Taft and Mr. O'Brien here to day and thank them for their presentations. Mr. Taft is working off a figure of 9.1% effective corporation tax rate based on Central Statistics Office, CSO, data. Is that correct?

Mr. Michael Taft: That is based on CSO and EUROSTAT data.

Deputy Michael McGrath: Mr. O'Brien said the KPMG report points to an effective rate of 12.2%.

Mr. Conor O'Brien: That is correct.

Deputy Michael McGrath: Can either witness reconcile the difference between those two figures?

Mr. Conor O'Brien: The Department of Finance paper attempts to reconcile them somewhat. I have not looked at the CSO data. Mr. Taft might comment. It states that the net operating surplus number from the CSO does not include a deduction which should be there for, I think, approximately €5 billion of interest which it treats as not being an expense.

Mr. Michael Taft: I think it is €2 billion, but I think Mr. O'Brien is correct.

Mr. Conor O'Brien: It says €5.2 billion on page five of the Department's document, if I am reading it correctly. It is possibly a reconciling item, but my view is that because the Revenue obviously gathers all the information from all the companies which are supposed to pay tax, that is the hardest information one can get.

Deputy Michael McGrath: Mr. O'Brien began by talking about the issue of residence and the management and control test. He said it would be open to us to add a second feature to residence - that any company incorporated here would be deemed to be resident here. What effect would this have?

Mr. Conor O'Brien: I think the effect would be relatively minor. The UK took this action in 1988 and the effect in the UK was relatively minor. The ability to have a company incorporated in Ireland but not resident in Ireland is not a significant feature of global tax planning for multinationals. I do not think it would have a significantly adverse effect on inward investment. In terms of that policy choice, one is looking at two factors, one being whether we should take the view that because we have allowed there to be Irish-incorporated but non-resident companies, and this has ended up attracting so much bad publicity - unfair publicity, I would argue, but that is perhaps a matter of opinion - one might decide that it should be changed in order to avoid such publicity in future, and decide to go down the route taken by the UK. As against that, one might take a view that asks why our tax system should be changed based on unfair criticism, and I think that may be how it will be weighed up. However, in terms of its effect, there would not be a big flood of extra revenue to the Exchequer because any company affected would simply restructure. Nor would there be a big outflow of foreign direct investment, because companies could restructure, and therefore I do not think it would be that big a deal for them.

Deputy Michael McGrath: Mr. Taft's point is that effective rate of tax is not so much the issue - as he sees it, the issue is that Ireland is a conduit for a global tax avoidance scheme where multinationals are concerned. I ask him to give his view as to how that is working and what the country can do to change that domestically. What role can we play in terms of any unilateral changes in order to have an impact?

Mr. Michael Taft: Others have made that claim and we have pointed out in our submission that this is an issue. We just want to deal with the macroeconomic data. Other people such as Professor James Stewart can address the issue of Ireland being considered a tax haven conduit. We do not have a particular position on that because, as a union, we have been focused on issues of fiscal and economic impact, not only the corporate tax rate but also other things. If I may make a point that goes some way towards answering the Deputy's question and following from Mr. O'Brien's points, there could likely be negative consequences if the corporate tax rate were to be unilaterally increased to whatever was decided and if that were the only action taken. There could be negative consequences if the country were to unilaterally move to break what it has been doing for the past two or three decades and on which it has based its industrial and enterprise policy for that time. The country has allowed a situation to arise whereby it has a multinational-dominated export sector, a multinational-dominated manufacturing sector that generates pretty much all the exports, a significant portion of the gross value-added products and the sales revenue. The idea that, using that base, the country can just play with the tax rate or play with the tax relief requires careful thought. That is the reason my union has said that defining the effective tax rate should be the first step in exploring a whole number of other questions. There is a need to take care because it is very wide and very deep and it is something we have been doing for a long time.

Deputy Michael McGrath: What is Mr. Taft advocating? Is it the union's position to advocate an increase in the headline rate?

Mr. Michael Taft: No. We do not have a position as such with regard to the next budget. Our hope in putting forward our submission was to point out a number of things. If it is the goal of a low-tax structure to generate investment compared to other European economies, we are doing pretty poorly. If it is the goal of the low-tax regime to generate direct expenditure by companies in the traded sectors - because that is where the tax rate is being directed - we are doing pretty poorly. If the low tax rate is supposed to bring companies that would generate high levels of employee compensation, we are doing pretty poorly. Other countries are doing a lot better. I ask what are they doing better that we are not doing, as they have effective tax rates up to three times ours and they have the same kinds of economic structure relying on exports. In the first instance, the issue is not the effective tax rate. In one sense it does not even matter whether it is the 2% rate on the US multinationals; at the end of the day, whether this committee decides it is a rate of 9% or 11% or 12% or 2%, companies are still doing what they do, whether here in Ireland or through Ireland. Those are the questions the committee needs to consider, but it does need to address the industrial enterprise base of the economy and make sure that is right before looking at issues such as changing tax rates and tax reliefs.

Deputy Michael McGrath: Mr. O'Brien referred to the UK situation a number of times and its improving offering of corporation tax, with a decrease in the headline rate and the patent box initiative. In his view as a practitioner, has the UK become more competitive than Ireland with regard to corporation tax? Is this beginning to have an impact on investment decisions?

Mr. Conor O'Brien: I started advising on tax just shy of 25 years ago. We meet businesses in foreign countries and we try to sell Ireland to them, not simply because we are patriots but because it is in our selfish interest, as they will become our clients when they come to this country. KPMG Ireland is effectively in competition with other countries and we see the offerings. Until relatively recently, if I went to a foreign business, many of them would say to me, "I want to go to the UK because it has a bigger labour pool, London is a big financial centre and it is easier to get my employees to go and live in London". My reply to them is, "That is fine, but you get a better tax answer if you come to Ireland." That is what gave us a competitive edge. Ireland is a more peripheral economy than the UK. However, the UK has all the advantages it has over Ireland and now it also has a 10% patent box tax rate, a 5% rate of tax for finance companies, a 10% rate of capital gains tax for entrepreneurs compared to a rate of 33% in Ireland, lower rates of income tax and all the other advantages. This has made a huge difference to the UK. If one searches on Google or reads the newspapers there is much public commentary from businesses that have specifically moved to the UK as a result of the policy. I am not surprised to see the UK economy starting to do quite well, and in my view this policy has been one of the big factors. In the past three to four years it has become very competitive and that has been its stated ambition. The UK authorities are out on the road selling the UK globally to attract investment and they have been quite successful.

Deputy Michael McGrath: Mr. Taft said that people are marketing Ireland abroad as the place where companies can pay 2% tax. He referred to taxation, legal and perhaps accountancy firms who are involved in this marketing. Is there any evidence of this?

Mr. Michael Taft: Yes. Arthur Cox published a particular document aimed at IP companies. I will supply that document to the committee.

Deputy Michael McGrath: Please do. It is important for us to read it. There has been reputational damage to Ireland as a result of the House of Commons hearings and the US Senate hearings. Mr. O'Brien is of the view that the commentary has been unfair because it has been based on a false premise and that the 2% effective rate has been put out there. What can we do, apart from explaining our position to all the stakeholders? What changes can Ireland make to address some of those concerns?

Mr. Conor O'Brien: As I mentioned earlier, one measure we could contemplate is a change to the residence rules. We could, for example, go down the same route as the United Kingdom in that regard. If we were to do that, however, we probably would have to allow companies which established themselves on the basis of the rules we have had for the past 150 years time to reorganise. If somebody did the types of calculation in five years time that were done previously on Irish-incorporated companies, having made all companies Irish resident over a reasonable period of time, the effective tax rate number would pop up as 12.5% or thereabouts instead of 2%. Doing that might address the adverse publicity we have seen. The only reason one might decide not to take that course of action would be based on the argument which could be made that it would be a case of allowing our tax system to be founded or designed on the basis of criticism that was unfair or ill-informed.

Deputy Michael McGrath: Will Mr. O'Brien comment on the issues of transfer pricing, intellectual property and royalty payments, and Ireland being a link in the chain whereby profits are shifted to jurisdictions where there effectively is no corporation tax? Is there action that can be taken in this regard?

Mr. Conor O'Brien: Historically, Ireland did not have very sophisticated transfer price rules, although there was always some element of transfer pricing principles in our law. Some years ago, we introduced OECD best practice transfer pricing rules into our tax system, which are now being applied and audited by Revenue. Our transfer pricing regime has been tightened up, which is an important aspect of the whole OECD base erosion and profit shifting, BEPS, initiative. Indeed, transfer pricing is a major part of the whole issue of taxation of global multinational entities.

There is a great deal of talk about the chain and Ireland being a conduit. One will find, for instance, that where a great deal of income ends up in the Caribbean, say, that is not the full picture. Under transfer pricing principles, the conduit will not end there. In fact, a great deal of that income will then be transfer-priced out by the United States tax authorities into their jurisdiction. They will say that it is the people in white coats in laboratories in California who are doing the research and will force those Caribbean companies to pay fees to the United States. One has to take that into account in order to see the complete chain. Transfer pricing certainly is and will continue to be part of the global response. The rules here in Ireland have been tightened up in this regard.

Deputy Dara Murphy: I welcome the delegates. Mr. Taft claimed that some countries with much higher effective rates of corporation tax than Ireland also have a much higher level of corporate investment. That is a rather nebulous statement. Will he explain what he means by "corporate investment"?

Mr. Michael Taft: Corporate investment is measured by EUROSTAT as gross fixed capital formation. It is the investment in a range of fixed assets.

Deputy Dara Murphy: Does it include investment by governments?

Mr. Michael Taft: No. There is total investment, which includes corporate, household and government investment.

Deputy Dara Murphy: Are we not talking about foreign corporate investment here?

Mr. Michael Taft: No. Corporate investment is different.

Deputy Dara Murphy: Does Mr. Taft accept that Ireland has the second highest figure per head of population for foreign direct corporate investment, after Singapore?

Mr. Michael Taft: Yes. However, there is a problem with the way the statistical agencies use the figure for foreign direct investment. The earnings of foreign companies that are reported in an economy but are not taken out - in other words, where money is coming in but is not taken out - are considered to be reinvested earnings, even though we have no idea how much is actually being reinvested. That makes up 60% of the FDI flow but, as we know, the bulk of that flow is into financial intermediation. Foreign direct investment is not investment into fixed assets.

Deputy Dara Murphy: I am asking a specific question to clarify the statement Mr. Taft made about corporate investment. The bottom line is that Ireland has an extremely high level of foreign direct investment.

Mr. Michael Taft: But not corporate investment.

Deputy Dara Murphy: Mr. Taft described Ireland's effective corporate tax rate as being at the lower end of the scale. Does he accept that when any consumer looks at a price list, the items or services with the lower prices will be more attractive?

Mr. Michael Taft: I suppose it depends on the product, but it is probably true in general.

Deputy Dara Murphy: Does he agree that this principle would apply to companies looking at effective tax rates in various jurisdictions? Mr. Taft said in response to questions from colleagues that the issue is not the effective corporate tax rate as such, but he certainly took a cut at it in his opening statement. Does Unite have many members working in foreign multinational companies?

Mr. Michael Taft: Yes. I do not have the numbers, but we have members in both manufacturing and financial institutions.

Deputy Dara Murphy: Mr. Taft made the point that Mr. O'Brien is representing the accounting and tax perspective, while Unite is taking a more macroeconomic position on these issues. Does he accept the basic economic principle of the law of diminishing returns? Does he accept, for example, that if we raise corporate tax rates, there is at least a potential risk in terms of the total revenue accrued?

Mr. Michael Taft: Yes. In fact, I made that point.

Deputy Dara Murphy: Does Mr. Taft then accept Mr. O'Brien's point that we should perhaps consider lowering the rate in order to compete with the United Kingdom?

Mr. Michael Taft: No.

Deputy Dara Murphy: Why not?

Mr. Michael Taft: Doing so would be to get into a corporate race to the bottom whereby competing jurisdictions would be obliged to continuously reduce their rates in order to compete. The cost of that is imposed on households through higher labour taxes and indirect taxes or through reduced expenditure on public services and social protection. The consequence is reduced economic growth.

Deputy Dara Murphy: Why then are we seeing economic growth in the United Kingdom in the wake of the changes that have been introduced there? I am not suggesting we should necessarily follow that country's lead, but there is a principle to be clarified here. Mr. Taft seems very critical of our having a very low, competitive effective tax rate and he is not willing to accept that raising the rate would be a bad thing.

Mr. Michael Taft: I cannot be any clearer in what I have said, but I will state my position a third time. Our industrial and enterprise policy has been based on low taxes. If we did not address any other aspect of that policy and simply started playing with tax rates, there probably would be negative consequences because, as I said, our industrial and enterprise policy going back decades has been fuelled by a low tax rate. It is important to emphasise, however, that companies make the decision to come to Ireland or any other country not just on the basis of effective tax rates. They also take account of such issues as whether, for instance, we have a first-class telecommunications system.

Deputy Dara Murphy: I take that point. Other factors are the quality of the workforce, access to markets and so on. I am not disputing that.

The other issue both of the delegates mentioned is the question of reputational damage. Is Mr. Taft really saying that there are people in other countries who decide not to buy Guinness or other Irish products because of our corporation tax rate? Does he not accept, on the contrary, that when the message is going around the world that Ireland has a very competitive tax regime, it is a message which indicates to companies that Ireland is a good place in which to invest and employ people? Mr. Taft referenced several comments about Ireland that have been made in *Forbes* magazine, but he did not mention the article that described Ireland as the best country in the world in which to set up a business. The point I am making is that, in reality, no reputational damage is being done to Ireland.

Mr. Michael Taft: That is a position one may take.

Deputy Dara Murphy: Will Mr. Taft define "reputational damage"?

Mr. Michael Taft: I agree with Mr. O'Brien that Ireland should not change its corporate tax rate because of outside criticism. Instead, we should examine our corporate tax rate to see whether it is in line with our stated policy goals of encouraging investment. The reality is that it is not encouraging investment. Ireland's rate of corporate investment is one of the lowest in the EU 15 on any metric. We have to examine whether it is encouraging direct expenditure-----

Deputy Dara Murphy: I have already made the point about foreign direct investment.

Mr. Michael Taft: We must ask whether it is helping us to achieve our policy goals. We can dance around talking about foreign direct investment and whether having the bulk of it going into financial intermeditation is really having a positive impact on the domestic economy. Let us have that discussion. I would contend that it is difficult to argue that having retained earnings counted as an investment flow is somehow having a positive impact. We want companies to come here and invest in greenfield sites, as they did last year to the tune of €4 billion. That is a very positive thing, involving investment in plant and machinery that will put people back to work. Other countries with small open economies are even more successful in that regard than Ireland, but they have much higher effective corporate tax rates.

Deputy Dara Murphy: To which countries is Mr. Taft referring?

Mr. Michael Taft: I am referring to those with small open economies.

Deputy Dara Murphy: Will Mr. Taft name them?

Mr. Michael Taft: I referred to them in my submission. They are Austria, Belgium, Finland, Denmark and Sweden - the countries the IMF uses as the benchmark in the context of the advanced European economy.

Deputy Dara Murphy: Mr. Taft has named some of the richest countries in the world. In his submission Mr. O'Brien asserts that there are no glaring examples of Ireland being at variance with the global taxation system and no issues in respect of which we could make changes here. I would have expected that there would be some areas in which we might have been able to act unilaterally. Has this process not proved that while there has been some criticism from abroad of Ireland's ability to attract foreign direct investment, our tax system is transparent, fair and open and that difficulties of tax avoidance are international in nature and can only be dealt with by means of the BEPS and other OECD systems to which Ireland fully subscribes?

Mr. Michael Taft: That is a legitimate position. On being open and transparent, I provided an example of multinational accounting practices. They involve generating tax competitiveness and their impact is such that we cannot even do the basic things other countries can do such as measuring our own productivity, input-output levels, the amount of value added per employee or the gross operating surplus per employee. We should be careful about using terms such as "transparent" and also about being so defensive. The first thing to do is engage in an honest examination.

Deputy Dara Murphy: We should also be careful that we do not undermine Irish corporations which operate here. The sub-committee occasionally tends to focus too much on the big bad multinationals. Ireland and many other countries are now involved with the BEPS process. Mr. O'Brien has mentioned that he has studied other tax systems. In that context, will he indicate if there are matters on which we should be working in order that Ireland might remain attractive as a destination for foreign direct investment?

Mr. Conor O'Brien: As stated, the United Kingdom has become a serious competitive threat and projects which might previously have come to Ireland are now going there. That said, however, the Irish system remains attractive. A consultation process took place in respect of the special assignee relief programme, SARP, and the foreign earnings deduction, as part of which we submitted a paper. Essentially, the SARP is the tax system which governs those from abroad who come to work here. We regard it as uncompetitive and are aware of projects that were lost to Ireland as a result. In 2006, without consultation, what had previously been an attractive tax regime for foreigners working here - it had been in place since 1922 and was advertised by IDA Ireland and others as part of our offering to international business - was removed at the stroke of a pen. I will not go into detail, but there were good reasons some reforms were needed at the time. We do not really provide a competitive offering for foreign workers in coming here, whereas many other countries do. If I was asked to identify one area in which we could do better, this is the one I would highlight.

Deputy Dara Murphy: Would one of the reasons to which Mr. O'Brien refers be the need to maintain employment levels among indigenous workers? Is there an argument that the change should not be reversed while unemployment levels remain high?

Mr. Conor O'Brien: When we seek to attract international businesses to Ireland, we inform them about the corporation tax regime which remains relatively attractive and competitive. They then ask how much their chief executives will be obliged to pay in tax if they relocate here from, for example, Boston. If the rate is unattractive, it may be difficult to persuade such executives to move. If it is difficult to persuade a chief executive to move, getting the relevant business to do so may not be possible. Other countries recognise this and offer tax reliefs to individuals in such circumstances. Since the removal of the previous regime in 2006, there has not been a major flood of employment. I do not believe one can see any positive result from what was done. We are aware of projects which, as a result of that change, failed to come to Ireland and which could have resulted in hundreds of jobs being created.

Deputy Dara Murphy: Was that hundreds of jobs-----

Mr. Conor O'Brien: Hundreds of jobs per project.

Deputy Dara Murphy: I am fascinated by the issue of reputational damage. Mr. O'Brien has stated KPMG meets representatives of foreign companies in the interests of trying to promote Ireland. Has any company ever stated our tax rate is too low and that it is having an adverse impact on its operations?

Mr. Conor O'Brien: They have not said that.

Deputy Dara Murphy: I am sorry, that was probably somewhat flippant. What reputational damage, if any, has been done?

Mr. Conor O'Brien: It is unfortunate that some of the reputational damage has been self-inflicted. We shot ourselves in the foot. A great deal of the international press coverage arose as a result of international news agencies picking up reports or articles published by Irish persons or Irish newspapers. These reports and articles did not make a distinction, for example, between place of residence, place of incorporation and so on. That was unfortunate.

Deputy Dara Murphy: We are not responsible for what those in opposition say in trying to get a headline.

Mr. Conor O'Brien: The Deputy asked if there could even be a positive aspect involved if it brings to attention the fact that we have a low tax rate. There is that positive, but the negative is that people wonder if the tax regime in Ireland is sustainable if it is subject to so much criticism. That is a question which arises. We inform clients that one of the strengths of the Irish tax regime is that it has been remarkably stable since the 1950s. I mentioned the attractions of the UK regime and we point out to our clients that these have only been in place for three or four years. Ireland has had a stable regime since the 1950s and kept the promises it has made to companies which have located their operations here. When Ireland moved its tax regime, this was the result of pressure from the European Union. The stability to which I refer is a major positive.

Deputy Dara Murphy: Does Mr. O'Brien believe our corporation tax regime will remain sustainable?

Mr. Conor O'Brien: My own view is that it is sustainable. Obviously, however, it is a policy choice for the Dáil as to whether it is sustained. It can be sustained if that is what we wish to do.

Deputy Brian Stanley: I wish to focus on some of the figures Mr. Taft put forward in his submission for wages, corporate investment and trade. He has shown that those countries with higher effective corporation tax rates are more successful in terms of the amount of money that comes back into their economies in the form of wages, investment and trade. Does Mr. O'Brien accept the figures put forward by Mr. Taft? It is not possible to be 100% accurate, particularly as there are numerous ways of computing the figures, but does Mr. O'Brien broadly accept the figures? If he does, will he explain why what is outlined is the case? Mr. Taft's evidence appears to go against the laws of capitalism.

Mr. Conor O'Brien: I am sure Mr. Taft's figures are correct. However, I am out in the world trying to persuade companies to come to Ireland. The low corporation tax rate is the most significant weapon in our armoury in trying to do this. I come up against competitors from countries such as Switzerland and Singapore, both of which have low rates of corporation tax and which are two of the richest countries in the world. I have not carried out an analysis, but I presume wages, etc., in both jurisdictions are extremely high. There is one example to which I refer in this regard, namely, Northern Ireland. Northern Ireland, on this island, has had a higher rate of corporation tax. It has had its political troubles but there has been a ceasefire since 1994. We have done better than Northern Ireland in terms of attracting investment during the past 20 years and it is seeking to have the same corporation tax rate as we have because it recognises that it is an aid in bringing in business. If one brings in business and US multinationals and they employ people, take people off the dole and pay them salaries, and income tax is deducted from those salaries and corporation tax is paid over, then it seems that is potentially a win-win situation for Ireland. I accept that whether 12.5% is the rate that optimises the yield to the Exchequer and the return to the economy - or a rate of 15%, 20%, 30% or 40%, or 6% 7% or 10% - is a matter for debate, but I do not think it is obvious that it is the highest rate that necessarily is the right rate. From my experience, in trying to get business in here, the rate that we have is a big selling point.

Deputy Brian Stanley: On the 12.5% rate, I support it from the point of view that, on balance, we feel that it may achieve something, although it may not be fair. Unfortunately, the word "fair" has not been mentioned. The discussion has been about economics but in dealing with members of the human race the word "fair" needs to be brought into the equation. It has been missing from the discussion around taxation rates and international capitalism, and that is unfortunate.

The second question I wish to ask Mr. O'Brien relates to an issue that has been flagged for years whereby if taxation is increased there may be evidence to show that some workers at the upper end of the scale might emigrate. With regard to the scenario in which, if the upper rate was increased from 12.5% to 14%, multinationals would flee the country, Mr. Taft has shown grids and graphs in that respect, which Mr. Connor said he accepts. Where is the evidence to show that? Are there concrete examples of countries that upped their corporation tax rate, either the effective or the overall rate - obviously companies take note of the effective rate - and in which companies suddenly companies shut down business? We know that companies relocate because of wage rates. We have seen how ruthless companies have been when they squeezed the last drop of blood out of workers in this country, and when they can hire workers at a quarter of the wage rate in Asia or some other part of the world, they will move their operations there. That applies in particular to labour-intensive industries. Are there clear examples in which a government has said it wants a better effective rate or it wants to increase the overall rate and close off the loopholes?

Mr. Conor O'Brien: I will deal with the theory first and then go into the specifics. I presume we would probably all accept that if we had, say, a 110% corporation tax rate, probably no company - certainly no foreign company - would set up here, but, equally, we would probably all accept that 0% is not the proper rate either. The rate that probably would encourage the maximum amount of investment in Ireland is somewhere between 0% and 100%, and we can have a big debate as to what that rate is. I would point out that our rate was 0% from the 1950s until the EU forced us to increase our rate from 0% in the 1980s; our rate increased to 10% and then it increased to 12.5%. An insight I can bring to the committee, which perhaps only people in our profession could bring, is that we talk to companies all of the time. We go to meeting rooms where there are people representing companies that intend to set up new operations and they have flipcharts showing the advantages of setting up in various countries. I will be there from Ireland along with a guy from my firm in France, Germany, Switzerland or wherever, and they will line up the pros and cons of where to set up their new venture. I can certainly say that corporation tax rate is a factor; it is not the only factor, but it is a factor in their decision making. If the 12.5% rate was increased to 12.51% I do not believe that would make any difference, but at some point increasing the rate would make a difference and it is very hard to get that precisely right. I am certainly aware of projects in recent years - as I said, some of this can be found publicly on the web - that have gone to the UK that might have gone to Ireland because of the fact that our rate is now 12.5% while in the UK one can *de facto* get a 10% rate. Even with our rate being 12.5%, we are losing out on getting some projects. I do not know what is the optimal rate - that is a matter for debate - but certainly a lower rate gives us a better chance of attracting projects. That is common sense.

Deputy Brian Stanley: I will put that question to Mr. Taft to get his view on that.

Mr. Michael Taft: Regarding what would happen?

Deputy Brian Stanley: Is Mr. Taft aware of evidence of companies that have moved their operations out of countries that have increased their overall corporation tax rate, or made the effective rate stick in terms of having a better system of collection and closing tax loopholes?

Mr. Michael Taft: The problem is that during the past ten or 15 years, if anything, the pressure on corporate tax rates has been downwards in terms of providing reliefs and allowances for that tax competitiveness. The Deputy will not be able to find any examples of countries that increased their tax rates only to experience a loss of business. In other words, would companies move their operations if we increased our corporate tax rate from 12.5% to 15%? That is something one cannot test until one does it. The nominal tax rate for most multinationals prior to the merging of the two rates - we used to have the 40% rate and a 10% rate for manufacturing tax relief - was 10%, and that increased to 12.5%, but the increase did not have any negative impact. An alternative system - this is something to be examined and from which we should not shy away - could be to increase the nominal rate and through a series of reliefs, allowances and rewards for investments to target those sectors that our indigenous sector would find difficult to generate - capital-intensive sectors such as the chemical and pharmaceutical sectors or other key global network sectors. That would be possible. In other words, there are more ways to use the tax system rather than just through the rate. We have a whole array of instruments at our disposal. We could increase the nominal tax rate and still have particular reliefs. If we look back on the beginnings of the Celtic tiger boom in the 1990s - what is always considered the good phase - one will see that we used to have two rates, a 40% tax rate, essentially for domestic companies, and a 10% rate, or in some cases a 0% rate, for multinationals. It did not stop new start-up companies in the domestic sector from generating business - those at the 40% tax rate - or from increasing economic activity during that period. They were then brought together because there was an EU requirement for us to have one single rate. In one sense, by using a nominal rate with an array of very targeted instruments in the key sectors, we could maintain and possibly even boost investment where we wanted to while still yielding higher tax revenues without any loss.

Deputy Brian Stanley: On the figures Mr. Taft produced on trading in goods and services, corporate investment and wages, and assuming his figures are correct, can he give an explanation as to why those countries are more successful than we are in terms of extracting more overall benefit from having multinationals in three areas - higher wages, higher investment and higher trading in goods and services by those multinationals? It is because those grants are net figures? That is assuming they are not using instruments such as the ones he mentioned in his reply to my previous question. In other words, the grants he has set out are based on net figures. Why is that the case?

Mr. Michael Taft: The Deputy means the tax rate on the surplus - on the profit base.

Deputy Brian Stanley: I understand that.

Mr. Michael Taft: That is the effective one.

Deputy Brian Stanley: I understand that.

Mr. Michael Taft: In terms of explanation, I do not believe there is a person who could give the Deputy the answer to that, because it is mired in decades of policy and the way we approach enterprise development. I will give one example of why we might be different from small open economies. This has to do with the extent to which we have privileged the multinational sector, because we need everything possible to bring in companies that are going to invest. I do not refer to foreign direct investment but investment on the ground that will create jobs and economic activity. We have neglected the indigenous sector. If one takes into account the proportions of the economies, we would have to increase employment in our indigenous manufacturing sector by 100,000 people just to reach the average of the indigenous manufacturing sector in small local economies.

As to why we have not done that, one should not forget that for a decade prior to the crash we were too busy providing reliefs for a different kind of investment, which was not nearly as productive. I suggest that if we had 100,000 more people in indigenous manufacturing employment one would have a sizeable increase in investment and direct expenditure because indigenous firms, according to Forfás, are much more likely to source domestically so one would have that impact. Those domestic firms that are being sourced will then in turn because of the economic activity, generate their own investment to increase capacity and then one has an upwards spiral. I suggest that it begins with the need to build a strong indigenous enterprise. That goes back to the Telesis report in the 1980s which everyone ran away from. If we were to do that we could link that with a strong multinational sector but one coming in to engage in productive investment. That is a win-win.

Deputy Brian Stanley: I welcome the witnesses. Given his involvement in the financial services sector, does Mr. Conor Murphy or his company envisage a problem with the Government and Revenue collecting data on profits made and tax paid by multinational companies *vis-à-vis* people who are self-employed and small and medium enterprises?

Mr. Conor O'Brien: No.

Deputy Brian Stanley: Would Mr. Taft have a problem if the information was set out individually on profits and tax paid? I refer to the Government publishing profits and rates of tax of multinational companies.

Mr. Michael Taft: That would be of huge benefit to the economy and to economic policy because so many companies are not legally required to make a public declaration of their profits. That is the case with a lot of private domestic companies and foreign branches of multinational sectors. That would be very helpful because classic economics, as much as we might criticise it, has one key point that is applicable to all economic theory, namely, that one needs to have symmetry of information. If companies are able to withhold information it puts the Government at a disadvantage. It also puts the workforce at a disadvantage when it comes to wage contract bargaining. Further, it puts society at a disadvantage. The more openness and transparency we can have the better policy decisions we will get.

Chairman: I will continue a point made by Deputy Stanley on a proposed re-examination of the Irish corporation tax rate. A multiplicity of factors are involved; there is the impact on the FDI currently resident in Ireland and also in terms of the situation for Mr. O'Brien with regard to future FDI. Is there a possibility of damage if one starts to move the figure around? What are the implications if we make the change, whether we go up or down, on future FDI? Existing companies might be compliant and happy to pay it but does it create a situation where the market perception is that one even if the change is only 1% or 2% it could change again and gives rise to uncertainty for long-term planning?

Mr. Michael Taft: If one starts playing around with changes of 1%, 2% or 3%, whether it is a case of cutting it in the hope of getting more FDI or increasing it and getting more tax revenue that is almost the end game. That is the last piece of the puzzle. If one wants to create a corporate tax structure and a corporate sector that more mirrors our peer group – small open economies – that is probably the last thing one would address because there are so many other issues. That is one part of the response to Deputy Stanley's questions. If one has such a poor indigenous enterprise base-----

Chairman: My question relates to Deputy Murphy's question on reputational damage. One person's reputational damage could be interpreted by others as an advertisement for this country. My question relates to certainty. If one moves the figure one will create uncertainty as to where the figure will go in the future. What are the implications arising from the uncertainty?

Mr. Michael Taft: If one begins to increase the rate, uncertainty would be created. Businesses are making long-term plans for their investment and those that are here for productive investment where there is a considerable amount being invested will want certainty over the long term. Therefore one must provide the certainty in order to tell them what is the end game, as part of a new repackaging of corporate tax structure that is fit for the 21st century.

Chairman: Mr. O'Brien is in the international market. Is certainty an asset or would there be a concern if there was a question mark over it?

Mr. Conor O'Brien: Certainty is a big selling point for Ireland. The fact that the regime has been so stable for so long and that we can point to the fact that the low rate of corporation tax is supported by all the main parties in the Dáil and that it survived so many changes of Government over so many decades, can be pointed to and contrasted with other countries. I am aware, for example, of proposed changes in rules in other jurisdictions and of companies moving businesses because of a proposal which might not have happened, but the companies decide to move anyway because of the uncertainty about the country on the basis that the regime cannot be trusted. If a company is investing hundreds of millions of euro, in many cases it is for the long term, in factories and plants. That means that if one changes the regime, for example, by increasing the corporate tax rate, the effect on operations which are already here would be less because if one has built one's factory and employed people it will not be as easy to leave. One has made a massive investment and it will take a lot to cause one to move that.

When one talks to subsidiaries of multinationals in Ireland they say, for example, that the changes in the UK will not affect existing operations but it means new projects will not go there. The most immediate impact would be on new projects that might have come that otherwise do not come. People closing down and moving out is a more radical decision.

Deputy Richard Boyd Barrett: Does Mr. O'Brien think morality and fairness should come into tax policy and corporate tax policy?

Mr. Conor O'Brien: Yes.

Deputy Richard Boyd Barrett: Does he think it is moral or fair that the cleaning lady who cleans the floors and toilets in a multinational company pays twice or possibly three times the proportion of her income in tax than the shareholder who buys shares in a multinational and does nothing?

Mr. Conor O'Brien: I should say that in my capacity as a representative of KPMG, it is not a political organisation so we are agnostic on what one might call ideological issues. I have my own personal views on such matters but I probably should not make political or ideological-----

Chairman: There are ethics involved. I was at a chartered accountancy event and ethics in business is an issue.

Mr. Conor O'Brien: Sure. I will speak about that a little.

Deputy Richard Boyd Barrett: I asked Mr. Coffey, who is our economic expert and rapporteur, for the effective tax rate for the average worker in this country. Most cleaning ladies would probably earn less than the average. Let us take the average worker who pays 25% of his or her income in tax as against the effective tax rate for the corporations for whom the cleaning lady works. I would argue that the corporations that cleaning lady works for pay well below the 12.5% but even if it were 12.5%, could any fair person describe that as fair or just?

Mr. Conor O'Brien: I think they could, and I will explain the reason. Something to bear in mind is that a corporation does not actually exist. Under corporate law 101, a corporation is a legal fiction. When the Deputy says the corporation is paying a 12.5% rate of tax, it is not as if there is a corporation in an armchair in a mansion on top of a hill rubbing its hands with glee because it has a low tax rate. Corporations do not exist. They are a vehicle for collective investment and pooling of funds by shareholders. All taxes are ultimately borne by individuals. Corporation tax is a double tax on investors in shares. For example, if somebody has a pension fund and that pension fund invests in, say, a United States multinational company, that US multinational invests in Ireland and pays 12.5% tax in Ireland. When those profits are repatriated to the US, a further 22.5% of tax will be paid. Meanwhile, the pension fund is paying in Ireland 0.75% of the capital value of the fund under the pension levy. That is on the capital, not on the income. In some years there might be no income because the company might make losses. Risk-free returns are 2% or 3%, which are the current interest rates, and 0.75% is perhaps 20% or 25% of the risk-free return, the risk-adjusted return.

Deputy Richard Boyd Barrett: If I could interrupt Mr. O'Brien, I get his point-----

Mr. Conor O'Brien: I was not finished. Can I finish? The pension levy is a double tax. When the pension fund then distributes the income to the pension holder, if they are paying the top rate of tax in Ireland they are paying a further 55%. The Deputy should bear in mind that corporations do not exist. It is a double tax on the profits of investors and by the time one works one's way through the chain and the money comes back in the hands of the investor, they could be up at an 80% tax rate.

Deputy Richard Boyd Barrett: That interesting justification does not explain how the chief executive officers and the major shareholders in these companies are astronomically rich compared with the cleaning lady who is cleaning their toilets.

Mr. Conor O'Brien: The Deputy's specific question was on the tax rate. Corporation tax is a double tax on investors. Corporations are not people.

Deputy Richard Boyd Barrett: I could point out that the average worker, having paid their 25% in tax, then pays double tax in the form of parking charges, water charges, property tax, VAT and so on.

Mr. Conor O'Brien: I do not say it is fair. I am saying an argument can be made. It is an ideological question on which, as a firm, we do not have a view.

Deputy Richard Boyd Barrett: I refer to the issue of effective tax rates and Mr. O'Brien's claim that they are higher than some are claiming. We can see some of the figures, and they were alluded to by Mr. O'Brien in his introduction. I got this table about a year and a half ago and tried to draw some points out of it publicly because I was quite shocked by what I consider to be the effective rate, which is the amount of tax paid by companies, particularly the very profitable multinational companies. As the figures are broken down by the degree of profitability and size of those companies, we see that of the €73 billion in total profits, €52 billion of those profits are made by 480 companies that earn profits in excess of €10 million a year but only pay €3.3 billion in tax, which is probably about 7%. In terms of the EUROSTAT figures, which I have also alluded to in terms of effective rates, and I got this information from the Oireachtas library and research service, it states that the effective rate in Ireland is 6.8%, 18.9% for Denmark, 18% for Finland, 23.6% for Norway and 27.2% for Sweden, for example. What I do not understand is if the way we get from €70 billion to €4 billion is normal accountancy practice, why is our implicit rate so much lower than all of those other countries which presumably use the same accountancy practices as we do here?

Mr. Conor O'Brien: Understood, yes. If we deal with the Revenue Commissioners' data first and the €70 billion number, the €70 billion number is not the net profit number. Again, if-----

Deputy Richard Boyd Barrett: No. It is a gross profit figure.

Mr. Conor O'Brien: Correct, but in calculating the effective tax rate-----

Deputy Richard Boyd Barrett: Forget about Revenue for a minute. I am talking about EUROSTAT. Clearly, EUROSTAT is taking gross profit and the actual amount of tax paid as a proportion of gross profit and working out the effective rate, what it calls the implicit rate, from that. Is that not what it is doing?

Mr. Conor O’Brien: I have to say I am not an expert on the EUROSTAT figures but the Department of Finance paper looked at the EUROSTAT figures and it said the reason the EUROSTAT figures give a low rate is because it includes within them investment funds. It points out that because we have a large fund management industry in Ireland, there is €1 trillion in investment funds based in Ireland. Those funds pay no tax. That is what is dragging down the average in the EUROSTAT figures, and that is explained in the Department of Finance figures. If someone goes into the AIB investment fund, the fund itself pays no tax. On distribution to the unit holder, a tax is paid by the unit holder, in effect. That is the Department of Finance’s explanation for the difference, and that makes sense to me. That rationalises-----

Deputy Richard Boyd Barrett: Is it not more to do with the amount that is written off taxable profit in the form of what are called trade charges? Just €14 billion of the €73 billion pre-tax profits are royalty payments paid by a multinational to the exact same multinational. That multinational decides how much it will charge itself for the right to use patents and intellectual property rights because that is such a huge proportion of the element of gross profits that is written down to the point where it pays tax on far less. Is that not the real reason?

Mr. Conor O’Brien: The Deputy has identified an important point. I mentioned earlier that corporation tax can only be charged on the net profit arising to a company. It is well known that the classic kind of case we are talking about is a US multinational that places intellectual property, say, a brand or technology, into a tax haven - we will say Bermuda for the sake of argument. It then creates a factory in Ireland. The factory in Ireland does not own the intellectual property. It manufactures goods and sells them. Revenue from the sale of goods comes into Ireland and Ireland pays - I think this is what the Deputy is alluding to with the trade charges - royalties for the use of that intellectual property.

Deputy Richard Boyd Barrett: I put it to-----

Chairman: To assist the Deputy-----

Deputy Richard Boyd Barrett: I hope I get the time back.

Chairman: I will give the Deputy the time. In a situation where the intellectual arm of the company is taking intellectual copyright money and another arm of the company funds the development of the construction of that factory in Ireland and puts a base interest rate on the repayment of that loan, which would be well above what would be bought in the market, that comes into the equation. Is that right?

Mr. Conor O’Brien: Potentially, that is right but the Chairman should bear in mind that for those expenses to be tax deductible in Ireland, they have to meet certain criteria, the first of which is they have to be wholly and exclusively laid out for the purpose of the trade, that is, they have to be a genuine business expense and they have to be at an arm’s length price, namely, the same price one would pay a third party if the third party were licensing that technology to one or if that third party were lending one money. That is the classic-----

Deputy Richard Boyd Barrett: I want to drill down into that but in the short time available we will not have enough time to do that in the detail in which it should be done. When a multinational is selling stuff to itself, is it not the case that it can charge what it likes in reality? It is very convenient if it charges a very high price for that because it writes down the amount of profits that are then liable for tax.

Mr. Conor O’Brien: It is based on the arm’s length pricing principle. It can only charge and get a deduction for the price it would have been able to charge a third party.

Deputy Richard Boyd Barrett: But it does not sell this stuff to third parties because the whole point with regard to the companies with which we are dealing-----

Mr. Conor O'Brien: True.

Deputy Richard Boyd Barrett: ----- and precisely what characterises them is they keep their stuff to themselves. They keep their intellectual property, patents, software systems or whatever it is to themselves and sell the product precisely on the basis that one buys it uniquely from them and can get it from nobody else.

Mr. Conor O'Brien: The Deputy is absolutely right and that is the reason there is an industry of transfer pricing experts. We have a substantial team of transfer pricing experts in our office, as do many of the companies and the revenue authorities all over the world. The Deputy is right that in this case, one is selling to oneself and consequently, the question is how do we know if the price is at arm's length. What they do is to find comparable situations, insofar as they can, where a third party is involved. For example, many sophisticated manufacturing companies and many sophisticated brands get their manufacturing done by third parties, that is, by contract manufacturers as they call them. Transfer pricing experts try to ascertain what profit margin is retained by a contract manufacturer and what profit accrues to the brand owner. Thereafter, one has a debate with the tax authorities as to what is the appropriate pricing. That is an entire industry.

Deputy Richard Boyd Barrett: To use a phrase, it strikes me that there are lies, damned lies and multinational accountancy practices and that there is enormous scope for abuse with regard to how the company quantifies the cost and value of these patents. It strikes me that this is one of the key mechanisms that allows such companies to write down their taxable profits and that this area must be examined a hell of a lot more. I have absolutely no doubt but that this explains why, according to European comparisons, Ireland's implicit rate is so much lower than everywhere else, because a lot of the companies engaged in this particular practice are based here.

Mr. Conor O'Brien: On the first point, I agree with the Deputy that it is a very important tax issue. I think that tax authorities are awake to it and police it and it is getting increasing focus. Part of the base erosion and profit shifting, BEPS, project is to examine the entire area of transfer pricing. As for the difference between the EUROSTAT effective tax rate, I think the funds issue explains it and that Ireland's effective tax rate is in or around the 12% rate I mentioned earlier. Ireland is not unusual in allowing deduction for these types of payments. Every sensible tax system in the world allows for deduction for such payments. There is of course a further piece of the jigsaw, which is that the United States has decided under its tax rules that it will allow such payments to go from countries like Ireland, the United Kingdom and Germany to the Caribbean and when they arrive in the Caribbean, they are not taxed. This is allowed in the US tax system and that is a tax policy choice by the United States.

Chairman: The Deputy has two minutes left.

Deputy Richard Boyd Barrett: My last question is about incorporation versus management control, which is another mechanism through which another whole raft of profits - not even included in these figures - are simply not discussed or included at all. Are the management and control criteria for tax residency completely archaic and out of date in the modern globalised economy? Where does one define this in a multinational company that has branches and subsidiaries all over the place and has a whole series of different hubs of management, control, added value and so on? How can one possibly state it is all managed in the United States, even though it has sizeable investments, operations and so on in Ireland and elsewhere that it somehow can evade? I put this question to both witnesses.

Mr. Conor O'Brien: While one certainly could argue that, in one sense one could argue the place of residence is irrelevant. This is because no matter where a company is resident, its pays tax wherever it has a taxable presence, that is, a permanent establishment or a branch and I note the threshold for having a branch is very low. Consequently, even if a company is not resident in Ireland, it pays tax here if it has an office or staff here and so on. It pays tax here and has a taxable presence here. The companies that have attracted attention are companies that are Irish-incorporated but which have no presence here whatsoever. Consequently, wherever they should pay tax, it certainly should not be in Ireland. For me personally, the residence issue is a little bit of a red herring because of what happens if one has a taxable presence - a branch - here in Ireland. The Deputy mentioned a multinational company that might have hubs and offices all over the world but if it has, it will pay tax and have taxable presences in each of those countries.

Deputy Richard Boyd Barrett: Does Mr. Taft wish to comment?

Mr. Michael Taft: No, I do not wish to comment specifically on the issue of management control.

Deputy Richard Boyd Barrett: May I ask one further question?

Chairman: Yes, if it is short.

Deputy Richard Boyd Barrett: On the alternative position put by Mr. Taft, he has suggested that were we to adjust the tax position, on its own it could have an impact on the levels of investment. How does he tally that with his other argument, which is that as a result of Ireland's low tax rate, we have a low level of corporate investment when compared with our European neighbours? I do not quite discern how these two things square. If our tax is not a major contributor, when compared with our European neighbours, to significant levels of corporate investment, why would increasing the effective rate or the nominal rate by some degree have any particular effect on the levels of corporate investment?

Mr. Michael Taft: As I stated, we do not know. It may well reduce the number of companies who wish to come here because a number may believe we are on a slippery slope whereby the rate increased to 15% but that might increase to 18% next year and to 20% after that. However, we do not know. I made the point that back in the 1990s, when the headline tax rate of 10% was increased to 12.5%, there was no appreciable damage. It is possible to argue the toss and there are all sorts of arguments but one will not be able to come to any certainty until one actually does it.

Chairman: Deputy Dara Murphy, briefly.

Deputy Dara Murphy: Everyone should acknowledge that thanks to multinationals, more people are working in cleaning, catering, warehousing and in all levels of companies. This must be acknowledged rather than simply-----

Chairman: Deputy, your question.

Deputy Dara Murphy: I was very interested when Mr. Taft spoke about targeting certain industries - he mentioned the chemical and perhaps the pharmaceutical sectors - with some additional reliefs that might stimulate them to come into the country. This perhaps would move into a space in which other countries are to be found. I was interested to hear Mr. Taft say this because essentially, this would mean placing small Irish businesses at a disadvantage because in effect, they would be paying a higher corporation tax rate than such pharmaceutical and multinational entities.

Mr. Michael Taft: No, not at all. To suggest that increasing corporate taxation on small and medium-sized enterprises in the indigenous sector or increasing the social wage, which essentially is the employers' PRSI contributions, automatically will entail a disadvantage of those companies-----

Deputy Dara Murphy: No, if one reduces the net tax through reliefs by targeting multinational companies in the chemical or pharmaceutical sectors, then QED, in comparative terms Irish indigenous small coffee shops and other limited companies will be paying more tax than them.

Mr. Michael Taft: Yes.

Deputy Dara Murphy: Why would we do that?

Mr. Michael Taft: Sorry, if I may finish the answer, I was answering that. The idea that increasing taxes on such firms or indeed increasing the social wage - which is employers' social contribution and which, together with the corporate tax rate, also is one of the lowest in advanced European economies - would disadvantage firms is incorrect. This is because the whole idea of increasing tax revenue and increasing the social wage is that there is more investment into public services, which generates its own economic activity and its own domestic demand. Even if-----

Deputy Dara Murphy: Is it not that-----

Mr. Michael Taft: If I may finish, if firms such as coffee shops, bookies and stores in the retail sector, which is a non-traded sector, were disadvantaged by high tax rates, why are they not disadvantaged in other countries? The fact is that they are not. That is because they have-----

Deputy Dara Murphy: But they are.

Mr. Michael Taft: ----- an alternative systemic approach and because they have targeted domestic demand. They have higher wages and a higher social wage. They have higher government investment into public services and that is how they are able to cope with a small domestic market.

Deputy Dara Murphy: Is it not the fact that the fairest part of Ireland's corporation tax regime is that everyone pays the same rate? I ask Mr. O'Brien to respond.

Mr. Conor O'Brien: Yes, one certainly can say that. As I stated, I think questions of fairness are ideological questions. However, I note that Ireland was forced by the European Union to have a single rate of corporation tax. Previously, we had differential rates and targeted rates. There are arguments in favour of targeted rates and there are arguments in favour of a general low rate, but it was the EU that forced us to a single rate.

Deputy Dara Murphy: If we are forced to have the same rate, why does the United Kingdom have different rates?

Mr. Conor O'Brien: This is why the UK's patent box regime is under investigation by the EU. The EU has stated in its tax policy that one potential exception to the state aid rules is in relation to research and development, which is why we and the UK are allowed to have research and development tax credits. The UK is arguing that the patent box comes into that research and development category and, therefore, ought to be okay as the one exception that is allowed. It remains to be seen whether the EU ultimately agrees with that.

Deputy Richard Boyd Barrett: The Chairman gave Deputy Dara Murphy a second round. Can I have a second?

Chairman: I gave Deputy Boyd Barrett a couple of minutes overtime. If it will be short rather than a Second Stage speech, I will let him in.

Deputy Richard Boyd Barrett: It is not a Second Stage speech and the Chairman allowed Deputy Dara Murphy three extra questions. I just want one.

Chairman: It takes Deputy Boyd Barrett the same length of time to ask one question. He should ask a question.

Deputy Richard Boyd Barrett: Given what Mr. Taft stated about higher effective rates elsewhere not being detrimental to the levels of corporate investment, is there any evidence to suggest that if, for example, we applied a minimum effective rate to gross profits of, say, 12.5% or increased the nominal rate to approximately 15%, which would still leave our effective and nominal rates significantly lower than everywhere else in Europe, it would have any detrimental effect on our economy?

Chairman: Question made. Mr. O'Brien, then Mr. Taft and then we will wrap it up.

Mr. Conor O'Brien: Can I ask Deputy Boyd Barrett to clarify the first part of the question? What does he mean by "gross profits"?

Deputy Richard Boyd Barrett: I mean if one applied a minimum effective rate of 12.5% on the gross profits of €70 million.

Mr. Conor O'Brien: That is the amount before trade charges and some of these other items listed on that schedule.

Deputy Richard Boyd Barrett: Then one could have all of the allowances and deductions kicking in after one paid 12.5%.

Deputy Dara Murphy: It is a new system. Nowhere else in the world uses it.

Deputy Richard Boyd Barrett: We have it on income tax and it is not new.

Deputy Dara Murphy: Not for corporations.

Deputy Richard Boyd Barrett: We have it on income tax.

Chairman: Question and answer, please.

Mr. Conor O'Brien: The first suggestion, that there be 12.5% charged on that gross profit number in those Revenue statistics which excludes matters such as certain royalty payments and interest payments, which are payments which pretty much everywhere else in the world are deductible because they are viewed as being normal expenses of earning the profits of one's business, would be in a corporation tax context very unusual. I am not aware of that in a corporation tax context. Deputy Boyd Barrett is correct that there are alternative minimum taxes, and we have one in Ireland on income tax. However, on corporation tax, that would be exceptional, and it would be exceptionally adverse in that one would not be allowing deductions that everywhere else in the world allows.

Deputy Richard Boyd Barrett: It would not make much difference if the real effective rate is 12.5%.

Chairman: I will move on to the round-up, if Deputy Boyd Barrett keeps interrupting.

Deputy Richard Boyd Barrett: The Chairman let Deputy Dara Murphy in three times.

Chairman: Time is what I allocate. One can use one's time to ask three questions or ask one, but Deputy Boyd Barrett's questions go on and on.

Deputy Richard Boyd Barrett: My question was considerably shorter than even one of Deputy Dara Murphy's.

Chairman: Deputy Boyd Barrett should do himself a favour and ask short questions.

Deputy Richard Boyd Barrett: The Chairman certainly will not be doing me a favour. That is for sure.

Mr. Conor O'Brien: It would vary from company to company as well. Some companies may not have those kinds of expenses and the impact might be minimal. However, assume a company that has €1 million of gross income and is paying €800,000 in royalty payments which are legitimate genuine expenses of its business and other trade charges - there are other items below that line - so that its income is €200,000, and now one has levied a charge of 12.5% on that €1 million. Some €125,000, as a percentage of its €200,000, is a tax rate of 60% plus, which would be completely uncompetitive. I certainly would not go with that one.

In terms of the-----

Deputy Richard Boyd Barrett: Even though implicit rates are higher than that everywhere else in Europe, according to Oireachtas figures.

Chairman: That one is fine. I want to go on to Mr. Taft. Let Mr. O'Brien answer the question. Then we will ask Mr. Taft. If Deputy Boyd Barrett interrupts once more, I will bring the question to an end.

Mr. Conor O'Brien: On the example I went through there, one could have some companies where one would end up with an effective tax rate of 60% if one did that. It would have no effect on some companies because they may not have any of those expenses. Personally, I would not recommend that. Perhaps we do not have time to go into much more detail than that.

Chairman: You do not.

Mr. Conor O'Brien: On the 15% one, it comes back to what we stated earlier. Already, I am aware of projects that we have lost because the 12.5% is being undercut by some countries and, at 15%, I am sure we would lose more projects. As I stated, the optimal rate that maximises the benefit to the economy is a matter for debate and I could not scientifically prove it to Deputy Boyd Barrett.

Mr. Michael Taft: In terms of the idea of a minimum effective tax rate, which was the question, we have to be careful because those companies, whether multinational or indigenous, which deal in the productive sector of the economy, particularly in capital intensive sectors, would have a lot of legitimate allowances. Such allowances would form part of any progressive corporate tax strategy because we want to encourage that type of investment in the economy. We would have to be careful of a minimum effective tax because, as Mr. O'Brien stated, company A is not like company B or company C, as they work in different sectors. As always, no matter how we refigure, rethink or play out scenarios, the key is whether this tax rate will generate revenue for the State, whether it will promote investment and whether it will help boast employee compensation. A tax rate cannot do all of those things. It has to be integrated into broader policy. However, that is the key. Other countries seem to have found the key or at least a room that gets them into the big room. We are still outside in the hallway.

Chairman: To clear up a couple of matters, Deputy McGrath asked Mr. Taft to provide additional information. Maybe Mr. O'Brien could provide the committee with a similar calculation of effective tax rates from other European countries where that is working out. It would assist us.

Mr. Conor O'Brien: I will see if I have the data. If I have it, I will provide it.

Chairman: We would be very grateful for that. I ask Mr. O'Brien and Mr. Taft to make their own final conclusions. On a final matter, on the transfer pricing arrangements, should we be charging some sort of percentage rate of tax or withholding tax on these transfers?

Mr. Conor O'Brien: I would suggest not. The reason I would suggest not is because were we to do so, a substantial number of companies that rely on the ability to pay royalties to such countries would potentially decamp from the country and we would lose the corporation tax revenues, the PAYE revenues and other revenues associated with those companies and it would render us uncompetitive with other jurisdictions.

Chairman: Have analytical figures been run on what the incomes might be?

Mr. Conor O'Brien: I cannot give the committee accurate statistical figures but I can certainly tell the committee, anecdotally, from businesses we advise - we advise more businesses on their tax affairs than any other firm in Ireland - that such would have a significantly negative impact on investment in the country.

Mr. Michael Taft: If the Chairman is suggesting a withholding tax, it would be withheld until such time as the company produces the information and receives the full benefit. The only reason I could see any company would be resistant to that or would see that as a problem would be that it may not want its accountancy practices to be fully exposed. I would not see why that should make a difference but I can see that in some cases it would.

Chairman: If they would like to go into their own summation, Mr. O'Brien can add the point he wants and then I will go back to Mr. Taft who can conclude also.

Mr. Conor O'Brien: Based on Mr. Taft's answer, I am not sure if I understood the Chairman's previous question and I may have answered it incorrectly. Would the Chairman repeat the question?

Chairman: Should we charge a withholding tax on the way the transfer pricing is done?

Mr. Conor O'Brien: I had understood the Chairman to mean should we withhold tax on the payment of royalties, for example, from an Irish company to a company in Bermuda.

Chairman: We will take both contexts so.

Mr. Conor O'Brien: What was the other context?

Chairman: In terms of transfer pricing, the way that it is worked out. How do we charge a withholding tax on the transfers?

Mr. Conor O'Brien: If I understand the Chairman's question correctly to be whether we should withhold tax on payments of royalties and payments for other intellectual property from Ireland,-----

Chairman: It would be like a financial transaction tax, FTT.

Mr. Conor O'Brien: -----that would be a real cost to companies, not a refundable cost. As an additional cost on business that other countries do not levy, that would render us uncompetitive.

Chairman: Does Mr. Taft wish to make any further comment or address any points raised before we conclude?

Mr. Michael Taft: I thank the committee for inviting us. I would urge members to examine the effective tax rate as a first step and to actively avoid comfort zones. We should neither be defensive nor assert that things are going well, but should ask hard, critical questions of ourselves. That is a good exercise, even if we decide at the end of the day that everything is all right the way it is. If we do not ask the hard questions, we may not be able to come up with better answers.

Chairman: Does Mr. O'Brien have anything to add?

Mr. Conor O'Brien: No, other than to thank the committee for giving me the opportunity to speak here today.

Chairman: I will bring matters to a conclusion now. I thank Mr. O'Brien and Mr. Taft for coming before the committee. We appreciate their expertise, understanding and experience and thank them for assisting the committee in its work. As there is no other business, the meeting is now adjourned.

The joint sub-committee adjourned at 4.20 p.m until 2 p.m. on Wednesday, 11 June 2014.