EU/US Company Structures

Assessing the viability of company structures in the face of changing regulations

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Introduction

- Ireland and Europe have for a long time been seen as attractive locations for businesses to invest resources.
- Many of the United States most innovative and popular multinationals have used Ireland to set-up their European Headquarters including Facebook, Boston Scientific, Tyco, Google, Apple, eBay and many more.
- In fact since 1990 US companies have invested over $277bn in Ireland.

facebook tyco Boston Scientific

ebay Google

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Examples of US Companies Operating in Ireland

Company	Turnover (€)*	CT Liability (€) *	No of employees	Physical locations	Operating Since
Facebook	4.8bn	3.4m	1300	2	2008
Apple	6.9bn	Undisclosed*	5000	1	1980
Google	18.27bn	41.46m	5000	1	2003
Boston Scientific	4.9bn	59.35m	2000	3	1990

* In 2013 Apple CEO Tim Cook admitted Apple had a “tax incentive arrangement” whereby Apple would pay as little as 2% in Corporation Tax would be paid by it’s Irish subsidiaries

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Ireland’s view on US Investment

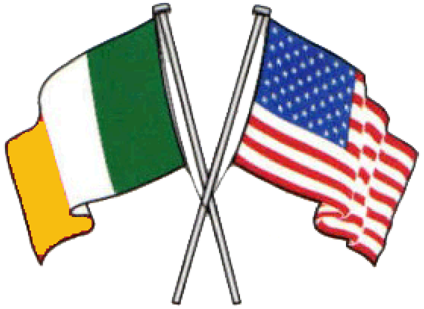
- The investments made by US companies in Ireland are viewed by us as hugely important:

1. The Irish Exchequer receives $3bn in taxes and an additional $13bn in expenditure into the Irish economy.

2. Over 76% of Ireland’s inward investment in 2015 was from the US.

3. There are 140,000 people employed by over 700 US companies in Ireland.

4. In 2015 there were 12,000 new overseas jobs confirmed by the IDA in Ireland, 75% of these jobs are from US companies.



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Data courtesy of American Chamber and IDA Ireland

UK view on US Investment

- The investments made by US companies in the UK have become increasingly scrutinised by the UK public and politicians due to the perceived tax avoidance by many companies.
- Companies like Starbucks, who between 1998 and 2013 paid £8.6m in tax on £3bn worth of sales, have brought the issue firmly to the forefront.
- The UK became the first country to implement the “Diverted Profits Tax”. This is aimed at multinationals who divert profits from the UK to a more tax cost friendly jurisdiction.
- This year Google reached an agreement with the HMRC where they will have to pay back-taxes of £130m for the periods 2005 – 2015.
- Facebook have also agreed to make voluntary changes whereby it will stop routing large UK sales through Ireland, thus paying more tax in the UK.

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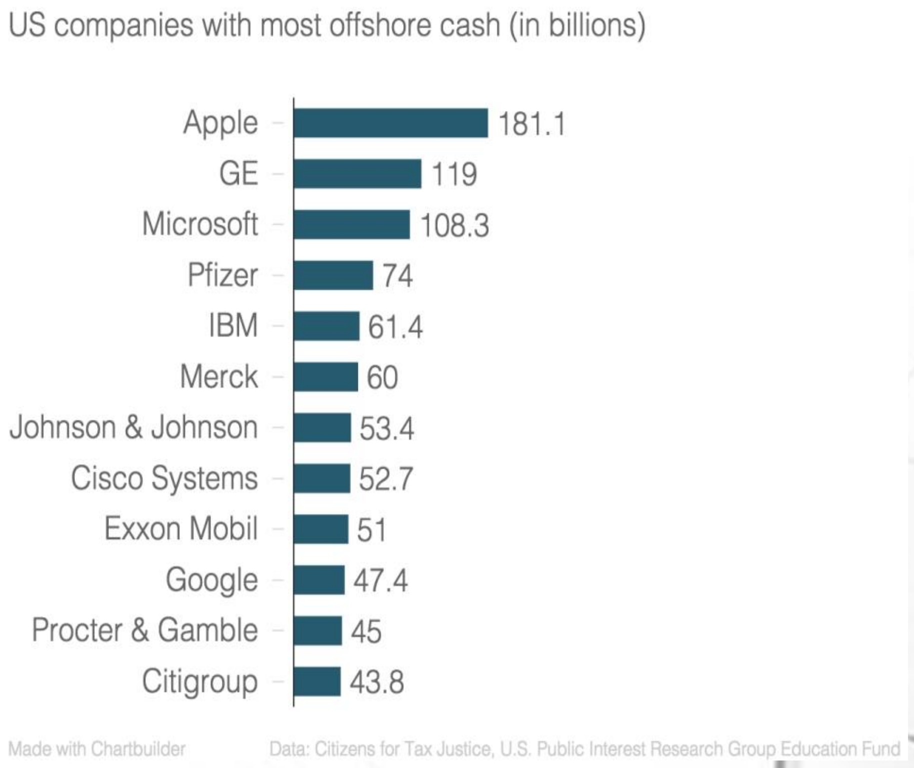
The View From the US

- *“If you are basically still an American company but you simply change your mailing address in order to avoid paying taxes then you are really not doing right by the country and its people”* – Barack Obama, July 2014 when asked about US companies doing business in Ireland.
- Companies are not just using Ireland, tax jurisdictions like the British Virgin Islands and Cayman are also popular.
- Is it estimated that €2trillion is being stockpiled and reinvested by US companies overseas in order avoid tax in the US.



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The View From the US

- The view on the use of Irish and European company structures has been a divisive issue. In 2013, a subcommittee led by Senators Carl Levin and John McCain labelled Ireland specifically a “tax haven” arguing:

  “Most reasonable people would agree that negotiating special tax arrangements that allow companies to pay little or no income tax meets a common-sense definition of a tax haven.”

- To counter companies offshoring, in 2015 President Barack Obama proposed applying a once off 14 percent mandatory tax on the stockpiled profits, and a 19 percent minimum tax on foreign earnings going forward. This has been met with opposition.

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Are These Structures Still Viable?

1. Recent Changes

- Changes in Irish tax residency rules for companies
    I. Move to close the "Double Irish" tax scheme
    II. Effective from 1st January 2015
    III. Transitional period for existing companies up to 2020

- The "Knowledge Development Box" tax incentive for companies in Ireland
    I. Tax Rate of 6.25% applying to certain Intellectual Property Assets
    II. Must be qualifying Research & Development activity carried out in Ireland
    III. Effective from 1st January 2016

- EU VAT rules for B2C electronically supplied services
    I. Relates to the supply of telecommunications, broadcasting and e-services
    II. VAT on the supply of these services to consumers will be subject to the VAT rules of the Member State where the consumer resides
    III. The supplier of such services will be obliged to register, charge and account for VAT at the rate applicable in that Member State.

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2. Recent Changes – BEPS Project

- Base Erosion and Profit Shifting (BEPS) refers to tax planning strategies that exploit gaps in tax rules to artificially shift profits to low or no-tax locations

- Research undertaken since 2013 indicates annual losses of anywhere from $100 - $240 billion is lost annually in corporate tax revenues.

- The BEPS Project developed by the OECD aim to counteract this by introducing an 15 step action plan which has been endorsed by the G20 Ministers.

- This will have major effects for Ireland, the EU, and the United States

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2. Recent Changes – BEPS Project (Cont'd)

- The project aims to look at three themes – substance, coherence, and transparency.
- One of the main objectives is to close down aggressive tax structures where companies are using offshore structures to shield tax liabilities.
- From an Irish and EU perspective this means should this be successful many multinationals may seek to find new locations for their EU based locations.
- US Congress has not been directly involved in the BEPS process, and to this point has not indicated whether it will consider legislation in response to the BEPS project .

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2. Recent Changes – BEPS Project (Cont'd)

- A major win for the BEPS Project **transparency** objective is how companies will now be required by the EU to be more open in the way financial figures are disclosed, especially tax paid.

- The proposed change will require companies whose turnover is in excess of €750m operating in the EU to disclose how much tax was paid in a financial year.

- Companies will be obliged to publish the information on their websites for at least five consecutive years.

- This is likely to be introduced to EU member states by 2018.

- This legislation must be approved by the European Parliament and European Council.

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Are These Structures Still Viable?

3. Yes, but in a different format

- Changing views on International Tax rules – evidenced by Google agreeing £130m tax payment with the HMRC

- Both the EU member states and the effected companies will need to adapt to the changing climate.

- Tax Residency of companies will be a key issue moving forward, not just in Ireland but throughout Europe and the US – for example Pfizer plan on moving residency from the US to Ireland

- New incentives such as the Knowledge Development box will need to be looked at carefully

- Companies will need to reassess their current structures to ensure compliance with local and international Company and Tax laws

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Conclusion

- US Companies using European company structures for more favourable cost benefits is an extremely divisive topic, depending from what side you are looking at it.
- The obvious benefits have been overshadowed in recent years by the perception of certain companies not paying their “fair share” in taxes.
- There are steps being taken by Governments in the US and Europe to counteract the perceived avoidance of taxes.
- But there is still plenty of opportunity and mutual benefits to be gained from continued investment.
- Effective management and tax planning is key for companies going forward.

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THANK YOU FOR LISTENING

Any Questions?

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