

Brooklyn Journal of Corporate, Financial & Commercial Law

Volume 9 | Issue 1

Article 13

2014

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Recommended Citation

Andrew P. Kummer, *Pro-Business but Anti-Economy? Why Ireland's Staunch Protection of its Corporate Tax Regime is Preventing a Celtic Phoenix from Rising from the Ashes of the Celtic Tiger*, 9 Brook. J. Corp. Fin. & Com. L. (2014).

Available at: <https://brooklynworks.brooklaw.edu/bjcfcl/vol9/iss1/13>

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PRO-BUSINESS BUT ANTI-ECONOMY?: WHY IRELAND'S STAUNCH PROTECTION OF ITS CORPORATE TAX REGIME IS PREVENTING A CELTIC PHOENIX FROM RISING FROM THE ASHES OF THE CELTIC TIGER

Success breeds a disregard of the possibility of failure As a previous financial crisis recedes in time, it is quite natural for central bankers, government officials, bankers, businessmen, and even economists to believe that a new era has arrived. Cassandra-like warnings that nothing basic has changed, that there is a financial breaking point that will lead to a deep depression, are naturally ignored in these circumstances.¹

INTRODUCTION

This seemingly self-evident statement from Hyman Minsky's seminal work, *Stabilizing an Unstable Economy*, represents a perfect illustration of the recent history of the Irish economy. Having finally begun to extricate itself from the abyss of its most recent economic meltdown, the likelihood still exists for Ireland that current policy decisions couched in past successes may lead to history repeating itself in the form of a future economic downturn. This Note will examine Ireland's questionable decision—in the wake of one of the worst global and domestic recessions in history—to double down on a staunch commitment to a business-friendly corporate tax system, which previously led to the Celtic Tiger era of economic prosperity beginning in the mid-1990s.²

More than five years after the Irish economy first began to crumble in late-2008, Ireland is still coming to grips with a soaring sovereign debt crisis that required an €85 billion financial support lifeline in 2010.³ Despite dogged and continuous austerity measures implemented to combat the debt crisis,⁴ the current debt-to-GDP ratio in Ireland still hovers near 120

1. HYMAN MINSKY, *STABILIZING AN UNSTABLE ECONOMY* 213 (1986).

2. See Steven Pearlstein, *Can Ireland's Celtic Tiger Roar Again?*, WASH. POST, Aug. 16, 2013, available at http://articles.washingtonpost.com/2013-08-16/business/41416346_1_celtic-tiger-u-s-economy-global-credit-bubble (describing (1) the core policy decisions that led to the initial Celtic Tiger boom; (2) the factors that ultimately led to the collapse of the Irish economy in 2007; and (3) how the current Irish economic system has redoubled its efforts to attract foreign direct investment (FDI) at the expense of greater domestic development).

3. The Irish bailout package was jointly sponsored by the European Union (EU) and the International Monetary Fund (IMF) through a vehicle known as the European Financial Stability Fund (EFSF). Lisa O'Carroll, *Ireland Bailout: Full Irish Government Statement*, THE GUARDIAN (Nov. 28, 2010), <http://www.theguardian.com/business/ireland-business-blog-with-lisa-ocarroll/2010/nov/28/ireland-bailout-full-government-statement>.

4. Austerity is a fiscal policy strategy that strives to increase an economically stagnant nation's competitiveness through across-the-board cuts to public spending and deflation of public wages in an attempt to reduce sovereign indebtedness and deficits. Mark Blyth, *The Austerity Delusion: Why a Bad Idea Won Over the West*, 92 FOREIGN AFF. 41, 41 (2013). For a more in

percent.⁵ Throughout it all, an across the board hike to the pro-business corporate tax rate has not been considered as a policy alternative for stimulating government revenue and scaling back sovereign debt levels.⁶

This Note will be broken up into four primary sections in order to better understand the Irish corporate tax structure and the delicate role it occupies between providing an engine for economic recovery and depriving the government of an untapped source of revenue. First, Part I of the Note will briefly review Ireland's economic history, beginning with its independence in 1921 and continuing through the recent global financial crisis and Ireland's subsequent efforts toward recovery. Part II will analyze and explain the details of the Irish corporate tax structure. Specifically, this Part will outline how Ireland has employed the corporate tax system to attract investment by multinational corporations (MNCs) as well as how the various MNCs have employed the Irish corporation tax in order to minimize their tax obligations both in Ireland and abroad. Following discussion on the Irish corporate tax structure, Part III will proffer the arguments both for and against amending the corporate tax as a means of increasing government revenues. Finally, Part IV will (1) assess the benefits that would be gained by raising the corporate tax rate, and (2) suggest further tax-related policies that could be implemented in order to strengthen Ireland's overall economic recovery.

depth analysis of the austerity decisions of post-recession Eurozone nations as well as a critique of those decisions, see generally *id.*

5. ORG. FOR ECON. CO-OPERATION & DEV., OECD ECONOMIC SURVEYS: IRELAND 6–7 (2013) (citing the 2013 debt-to-GDP ratio as 123.1 percent); see also *Irish GDP Revision Eases Debt Target*, BBC NEWS (July 3, 2014), <http://www.bbc.com/news/business-28146603> (highlighting Ireland's recalculated GDP figures as per EU rules allowing for the inclusion of research and development costs and gains from illegal activities, which resulted in a revised estimated debt-to-GDP ratio of 116 percent in 2014).

6. Liz Alderman, *Much Fiscal Pain in Ireland, but Low Corporate Taxes Go Untouched*, N.Y. TIMES, Nov. 26, 2010, at B1 (emphasizing that austerity measures imposed by the Irish government in the wake of the EU-IMF financial bailout included a decrease in the national minimum wage and an increase in property tax rates while the low corporate tax remained untouched).

I. IRISH ECONOMIC HISTORY⁷

Since declaring its independence in 1921, Ireland has gone through four major eras that have shaped its economic narrative to date: (1) 1922–1972, post-independence, a period marked by protectionist policies and lagging industrialization; (2) 1972–1987, notable for Ireland’s admission into the European Economic Community (EEC), which subsequently provided substantial fiscal and trade benefits, but was also marked by continuing struggles in domestic economic development; (3) 1987–2007, the period that came to be known as the Celtic Tiger, in which deregulation and an emphasis on foreign investment led to an enviable economic boom; and (4) 2008–Present, the era in which multiple factors, both internal and external, coalesced to create a four-pronged economic crisis set into motion by the crash of the Irish property market bubble.⁸ The following overview will describe these eras in greater detail and provide a broad basis for how Ireland’s economy is currently structured.⁹

A. 1922–1972: INDEPENDENCE TO ADMISSION TO THE EUROPEAN ECONOMIC COMMUNITY

At the time Ireland asserted its independence from the United Kingdom, its economy was primarily insular, agrarian, and heavily dependent on the British market.¹⁰ In an effort to diminish its reliance on the United Kingdom, protectionist measures, specifically the Control Manufactures

7. While Ireland’s economic history has been diverse since first claiming independence from the United Kingdom, there is oftentimes a common theme of defeatism and overreliance that is embraced by Irish socioeconomic theorists. One such individual, Cathal Guiomard, stated:

[T]he obstacles to Irish success “go far beyond questions of economic policy and right to the heart of [Irish] culture; they include some of [Ireland’s] old and cherished ways. To achieve economic and social modernization, [Ireland] must, for instance, throw off [its] ruinous defeatism and negativity, [its] anti-intellectualism, [its] tolerance of mediocrity, [its] inclination towards dependency, and [its] never-ending demand for subsidies (from London, from Dublin, from Brussels, from anywhere!).”

Sara Dillon, *Anglo-Saxon/Celtic/Global: The Tax-Driven Tale of Ireland in the European Union*, 36 N.C. J. INT’L L. & COM. REG. 1, 48 n.241 (2010).

8. For a more detailed review of Irish economic history, see generally DONAL DONOVAN & ANTOIN E. MURPHY, *THE FALL OF THE CELTIC TIGER 19–29* (Oxford Univ. Press 2013).

9. In order to have sufficient context for the forthcoming review of Irish economic history, it is important to have a cursory understanding of the Irish political system. Ireland is a parliamentary democracy with a bicameral Parliament (*Oireachtas*) consisting of the upper house Senate (*Seanad Eireann*) and the lower house (*Dail Eireann*). It has a largely ceremonial President (Michael D. Higgins) that is elected to seven-year terms and can seek reelection once. The Prime Minister (*Taoiseach*) (Enda Kenny) acts as the Head of State and is appointed by the President following nomination by the *Dail Eireann*. Ireland also has a multi-tiered judicial system with a Supreme Court (court of last resort) composed of seven judges. See *The World Factbook, Ireland*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ei.html> (last visited Nov. 6, 2014).

10. Sean Dorgan, *How Ireland Became the Celtic Tiger*, HERITAGE FOUND. (June 23, 2006), at 2, available at <http://www.heritage.org/research/worldwidefreedom/bg1945.cfm>.

Acts, were enacted and ultimately led to the aptly named “Economic War” with the United Kingdom.¹¹ From 1932–1938, the period in which the Economic War waged on in earnest, Irish industrial and agricultural exports fell by one-third and nearly one-half, respectively.¹² Ireland’s protectionist policies led to a lack of capital investment from both foreign and domestic sources, and ultimately resulted in recession and net emigration.¹³ Most gallingly, however, was the fact that Ireland’s European neighbors were simultaneously enjoying dramatic post-war economic booms.¹⁴

Ireland finally abolished the Control Manufactures Acts in 1957.¹⁵ The following year proved to be even more significant, as Finance Secretary Dr. T.K. Whitaker’s seminal report, *Economic Development*, marked a radical change in course away from the former protectionist policies and toward a more open economy emphasizing freer trade and greater foreign investment.¹⁶ The drastic overhaul to the Irish economic system led to some significant short-term improvements,¹⁷ but the long-term results of decades of high unemployment and stagnant growth led to a prolonged lag period.¹⁸ As a result, Irish industry remained underdeveloped while Irish workers continued to seek opportunities abroad, especially since the newly minted free trade policies had rendered the few successful domestic companies uncompetitive.¹⁹ Nevertheless, the economic tides were slowly turning, and

11. DONOVAN & MURPHY, *supra* note 8, at 20. One of the most prominent examples of this period of protectionism was the Control Manufactures Acts of 1932 and 1934, which prohibited majority ownership of Irish industry by foreign entities and resulted in virtually no foreign investment in Ireland’s would-be industrialization process. The effects of the Control Manufactures Acts on capital investment was further exacerbated by the prevalent outflow of Irish capital primarily through the investment by Irish banks in more attractive foreign assets, particularly British government securities. That Ireland was guarding against foreign control over its domestic economy by restricting foreign capital investment while the gatekeepers of the economy—the Irish banks—were pouring capital from Ireland into those very same foreign economies is rich in irony.

12. Meredith J. Coleman, Comment, *The Republic of Ireland’s Economic Boom: Can the Emerald Isle Sustain Its Exponential Growth*, 21 U. PA. J. INT’L ECON. L. 833, 836 (2000).

13. By the 1950s, approximately 400,000 people had emigrated from Ireland over the course of a decade. That figure constituted nearly 15 percent of the entire population of Ireland. Dorgan, *supra* note 10, at 2.

14. See DONOVAN & MURPHY, *supra* note 8, at 20.

15. *Id.*

16. Significantly, Dr. Whitaker’s report emphasized a policy shift toward “the encouragement of foreign capital with tax concessions and other incentives,” a prescient precursor to the development of the current Irish corporate tax regime and its emphasis on attracting FDI. See *id.*

17. See Dorgan, *supra* note 10, at 3 (noting that the Irish GDP grew at an average annual rate of 4.2 percent over the course of the 1960s).

18. Despite the increasing openness of the Irish economy beginning in the 1960s, “Ireland still depended heavily on agriculture, which had low output and income levels, and the migration of people from the land was greater than job creation in new businesses. As a result, there was no net increase in employment in the 1960s, and net emigration from the country continued . . .” *Id.*

19. *Id.*; see also James Croke, Comment, *Chuaigh Ár Lá - Debt of a Gaelsman: Ireland’s Sovereign Debt Crisis, National and International Responses*, 32 NW. J. INT’L L. & BUS. 365, 369 (2012) (citing three main factors as evidence of the underdevelopment of the Irish economy during the period immediately succeeding the protectionist era: (1) high unemployment (peaking

with the establishment of the Industrial Development Authority (IDA) in 1970, the signs pointed to a new and substantial dedication to a more open economic regime.²⁰

B. 1972–1987: EUROPEANIZATION OF THE IRISH ECONOMY²¹

The first stirrings of tangible changes in the Irish economy²² occurred upon Ireland's admission to the EEC in 1972.²³ Upon its admission, Ireland expertly availed itself of two primary benefits of membership in the EEC: (1) the availability of structural and cohesion funds;²⁴ and (2) unhindered access to the European marketplace.²⁵ Ireland skillfully parlayed these benefits into tangible economic improvement while simultaneously eschewing some of the social contract components that are normally strictly required conditions of EU membership.²⁶

More specifically, despite the obvious economic advantages resulting from EEC membership, Ireland was reluctant "to accept the other part of the 'deal' with Europe, namely, adoption of a low inflationary profile and

at 17 percent in 1986); (2) high levels of public debt (reaching as high as 125 percent of GNP in 1987); and (3) mass and continual emigration to the United Kingdom and United States).

20. See Dorgan, *supra* note 10, at 5 (providing the stated purpose of the IDA as seeking out and attracting MNCs engaged in modern and sustainable industry and describing its methods as employing a "pragmatic, business-like, focused marketing method. The key decision was to focus on companies that represented the future—high technology, high output, and high skills. The main targets included the computer industry, pharmaceuticals, and medical technology, followed by international services."). For further information on the IDA and its current mission and methods, see generally IDA IRELAND, <http://www.idaireland.us/> (last visited Sept. 22, 2013).

21. For a more in depth analysis of Ireland's paradoxical role in the EU, see generally Dillon, *supra* note 7.

22. For example, the EEC Common Agricultural Policy (CAP) guaranteed prices for the sale of certain agricultural products in the EEC-zone, thus providing immediate and much-needed access to the Eurozone countries for the ailing Irish agricultural sector. DONOVAN & MURPHY, *supra* note 8, at 23.

23. Dillon, *supra* note 7, at 1 n.1. Pursuant to the Treaty of Accession of Denmark, Ireland, Norway, the United Kingdom, and Northern Ireland, Ireland became a member of the European Economic Community.

24. Although the Community Support Framework (CSF) that included the structural fund provisions was not adopted until 1988, Ireland has since used these substantial funds (estimated to compose between 2% to 4% of the Irish GDP) to fund public investment projects that may have otherwise been cut or underfunded due to domestic fiscal constraints. Furthermore, Ireland has additionally benefitted from the CSF due to its classification as a "periphery" or "cohesion" country, such that "EU law permits Ireland to give more generous grant aid [75% of the total capital investment] to corporations . . . interested in moving to Ireland, [while] most other EU member countries may only offer 20%." Coleman, *supra* note 12, at 840.

25. See *id.* at 841 ("As part of the European Union, Ireland is able to automatically avail itself of a variety of markets and trading partners, both in the United States and throughout Europe.").

26. See generally Dillon, *supra* note 7, at 13–26 (discussing how Ireland often feigned eagerness in participating in the European "ideal" while really engaging in purely self-interested actions such as exploitation of the structural fund structure and highly protected tax competition. These self-interested actions were accepted by the European establishment because of Ireland's role on the periphery of Europe and its past relationship with the United Kingdom, which was seen as somewhat of a rival to the EEC at large).

stronger fiscal discipline.”²⁷ In spite of its disharmonious participation within the larger European context, Ireland’s largely individualized policies went substantially unchecked for the first several decades of its membership, and thus, Ireland was able to carve out a markedly self-interested niche in Europe.²⁸ However, Ireland’s policy decisions ultimately led to high inflation, a return of net emigration, and skyrocketing sovereign debt.²⁹ Finally, Irish public expenditure strategies compounded themselves into a full-blown economic crisis wherein annual inflation from 1981 to 1986 averaged approximately 11 percent, the debt-to-GDP ratio ballooned to 120 percent, and unemployment reached 15 percent by 1985.³⁰ Instead of progressing, Ireland had reverted to the dark economic era of the 1950s, and it was clear by 1986 that something drastic had to be done. Fortunately, Ireland’s emphasis on a more liberalized economic approach, combined with the benefits it enjoyed as an EU member nation, were the sown seeds that ultimately blossomed into the significant economic expansion of the Celtic Tiger years.³¹

C. 1987–2007: RETRENCHMENT, DEREGULATION, AND THE ROARING CELTIC TIGER

Despite the bleak economic conditions of the early 1980s, those years proved to be beneficial in that they finally spurred the Irish government to take significant reformatory action. Fianna Fáil, a center-right leaning party responsible for a rash of fiscal abuses during the preceding decades, shocked even its own supporters when, upon election to the government in 1987, it performed a political U-turn and implemented a program of severe public expenditure cuts on both labor and investment.³² Reducing public

27. DONOVAN & MURPHY, *supra* note 8, at 23.

28. The issue of Ireland’s role in the context of the EU is a common topic, such that one commentator has said:

Irish policy toward the EU was dominated by the desire to maximize receipts from EC [European Community] funds, while minimizing the amount of interference in domestic policy (in the application of funds, competition policy and other areas) and seeking derogations on difficult parts. The Irish approach was to ask what Brussels could do for the Irish economy rather than the reverse.

Dillon, *supra* note 7, at 9 n.32.

29. While EU rules generally mandated strict fiscal policy choices by its member states, Ireland went on a spree of public spending in order to improve domestic infrastructure and social welfare programs as well as to combat rising unemployment (one-third of the Irish workforce was made up of public sector jobs by 1980). *See* Dorgan, *supra* note 10, at 6.

30. *Id.* at 3.

31. *See* Pearlstein, *supra* note 2 (citing Ireland’s “heavily subsidized entry into the [EU]” along with its low corporate tax rate and use of targeted incentives as the primary factors leading to its economic expansion beginning in the late 1980s).

32. Dorgan, *supra* note 10, at 7; *see also* DONOVAN & MURPHY, *supra* note 8, at 22 (noting that even in campaigning against the previous Fine Gael/Labour coalition leading up to the 1987 election, the Fianna Fáil party pledged to substantially increase public expenditure, only to renege

expenditure in order to improve financial stability, also known as retrenchment,³³ played a critical role in revitalizing the Irish economy.³⁴ However, myriad internal and external factors also came together fortuitously in the early 1990s and ultimately contributed to the forthcoming economic boom years.³⁵ Post-retrenchment, internal factors, such as Ireland's highly educated workforce, the influence of the IDA, and the business-friendly tax structure, blended seamlessly with external factors, such as the availability of EU funding and marketplace and the advancement of global information technology.³⁶ When combined, these factors provided a perfect climate for Ireland's explosive economic growth.³⁷

While Ireland was one of the poorest nations in the Eurozone upon admission into the EEC, by 2001 Irish workers' wages exceeded the EU average, and by 2007 they were second only to Luxembourg.³⁸ By the beginning of the 21st century, Irish economic growth had reversed the centuries long tradition of net emigration while also creating a fiscal surplus of 4.5 percent of GDP in 2000 and lowering the overall debt-to-GDP ratio to a meager 38 percent by 2001.³⁹ Almost overnight, Ireland had become an economic powerhouse relative to its size and a symbol of the global economy.⁴⁰ However, by 2001 the Irish economy also began to show signs of slowing down.⁴¹ As foreign direct investments (FDI) began to dry up,⁴² Irish fiscal policy decisions increasingly turned to the domestic housing

on its campaign promise and pledge to adhere to a scheme of drastic fiscal cutbacks once elected to office).

33. *Retrenchment*, COLLINS DICTIONARY, <http://www.collinsdictionary.com/dictionary/english/retrenchment> (last visited Oct. 19, 2013).

34. DONOVAN & MURPHY, *supra* note 8, at 22.

35. *See generally* Coleman, *supra* note 12, at 837–45 (defining external factors as those without the immediate control of the Irish government, whereas internal factors were within the ambit of its control).

36. *Id.* (noting specifically Ireland's access to (1) EU "structural funds," i.e., grants from the European Community Support Framework (CSF) beginning in 1989, which provided significant funding for economic stabilization through infrastructural and development projects; and (2) the Single European Market (SEM), which opened up previously untapped trade markets across Europe and increased Ireland's appeal to American companies looking for greater access to the SEM).

37. *See* Croke, *supra* note 19, at 370.

38. *Id.* at 370–71.

39. Patrick Honohan & Brendan Walsh, *Catching Up With The Leaders: The Irish Hare*, 33 BROOKINGS PAPERS ON ECONOMIC ACTIVITY, no. 1, 2002, at 1, 8, 11.

40. At its peak in 2000, Ireland was often considered the most "open" economy in the world, a title exemplified by the fact that Ireland's trade-to-GDP ratio (i.e., its exports plus imports as a percentage of overall GDP) was a startling 173 per cent. *Id.* at 39.

41. *See* Pearlstein, *supra* note 2.

42. Croke, *supra* note 19, at 375 (providing as evidence of the slowdown the fact that although the original Celtic Tiger attracted FDI through the low corporate tax rate and competitive labor costs, Irish wages began to "rapidly outpace GDP growth" beginning in 2001, and by 2007, FDI in Ireland accounted for only 5 percent of such investment in the Eurozone, as compared to 15 percent of all such investment in 2001).

market in order to sustain the boom, a move that ultimately proved disastrous.⁴³

**D. 2007–PRESENT: POPPING THE PROPERTY MARKET BUBBLE,
THE RESULTANT SOVEREIGN DEBT CRISIS, AND THE
WHIMPERING CELTIC TIGER**

1. Foundations of economic collapse

Although numerous external factors helped contribute to the crash of the Irish economy, in reality “Ireland’s economic condition was actually a house of cards vulnerable to any gust of wind.”⁴⁴ Despite the Irish economy’s great success story at the turn of the 21st century, Ireland “began to lose its way” after the tech bubble burst in 2001 and the vulnerabilities of the Irish economic model were first exposed.⁴⁵ In the end, a weakening in demand for Irish exports due to the global economic slowdown was the first contributing factor in Ireland’s economic downturn.⁴⁶

As the pattern of export-led growth gradually diminished and disappeared,⁴⁷ Irish policy makers ignored the signs hinting at a broader weakening of the economy, and instead focused on maintaining the previous high growth rates at all costs.⁴⁸ Rather than using the opportunity to reboot and strengthen the foundations of the economy through a more sustainable growth model,⁴⁹ Ireland instead became heavily reliant on

43. See Pearlstein, *supra* note 2 (“At its peak, this real estate frenzy probably accounted for 25 percent of the economy’s output and employment and generated a third of the government’s tax revenue.”).

44. Croke, *supra* note 19, at 372.

45. Pearlstein, *supra* note 2.

46. DONOVAN & MURPHY, *supra* note 8, at 61 (noting that the collapse of the Dot.com bubble in 2000 and the outbreak of the war in Iraq in 2001 were key exogenous factors that ultimately led to the weakening of the world economy and thereby contributed to the markedly slower rate of demand for Irish exports).

47. Croke, *supra* note 19, at 375 (demonstrating that “between 2001 and 2007, [FDI] in Ireland declined dramatically from just under 15% of Eurozone FDI in 2001 to just over 5% in 2007.”).

48. One commentator cited the “failure [of the Irish government] to responsibly manage budgetary surpluses during the period of rapid economic expansion,” and more specifically, the explosive increase in social welfare spending coupled with drastic tax cuts around the turn of the 21st century, as examples of the errors made by Irish policymakers around this time. Instead of acknowledging the signs of an economic slowdown and determining stable, long-term solutions, the Irish government was blinded in its attempt to maintain the status quo of booming economic growth, and thus, chose an ill-advised course of economic policymaking. *See id.* at 373–74.

49. Some economists argue that while the emphasis on domestic demand, specifically in the construction sector, was misguided and used to prop up high growth rates in a progressively decaying economy, the overall “inward” focus would have been better served by developing the domestic industries that had lagged significantly behind due to the dominance of foreign MNCs in the Irish economic domain. In focusing on promoting the growth and viability of homegrown industries and companies, the Irish government may have been able to foster an economic development plan that promoted growth, albeit at a slower pace, while capitalizing on the

domestic demand, specifically in the construction and housing markets.⁵⁰ This overreliance on domestic demand was further exacerbated by the Irish banking system's emphasis on "innovative" lending practices implemented to capitalize on the property boom.⁵¹ The new lending practices required Irish banks to seek out capital from foreign lenders in order to bridge the gap between domestic deposits and lending obligations, which only served to further distort the sustainability of the market bubble.⁵² Furthermore, the Irish government simultaneously embarked on a wildly reckless course of fiscal policymaking in which public spending increased dramatically while income taxes were repeatedly cut.⁵³ "In the 2007 budget alone, the government increased social welfare spending by €973 million (\$1.35 billion) and cut taxes by €501 million (\$695 million)."⁵⁴

2. Property market bubble bursts⁵⁵

The decisions and excesses of the first years of the 21st century led to a hyper-inflated credit bubble. The situation was only exacerbated by the decision of the European Central Bank (ECB) to maintain artificially depressed interest rates in order to spur growth in the stagnant continental economies even while Ireland was beginning to boom.⁵⁶ Irish banks began to become exceedingly more leveraged as they sought out new sources of capital in order to finance the never-ending demand to sustain domestic growth through the demand for property.⁵⁷ At its peak, the Irish housing

infrastructural, developmental, and entrepreneurial fruits sown by the FDI made by all the Ireland-based MNCs. *See, e.g.,* Pearlstein, *supra* note 2.

50. *See* Croke, *supra* note 19, at 375 (discussing how by 2007 approximately 20% of the Irish GDP and 12% of the Irish workforce were drawn from construction).

51. *See generally* DONOVAN & MURPHY, *supra* note 8, at 70–75. The progression of the Irish property market bubble may be analyzed in the context of Hyman Minsky's three-step progression in asset bubble financing: (1) hedge financing; (2) speculative financing; and (3) Ponzi financing. Whereas hedge financing (i.e., prudent lending to well-vetted borrowers) characterized the early stages of the Celtic Tiger boom, mortgage financing became increasingly speculative as the driver of the economic growth in Ireland shifted from exports to the property market. Ultimately, a "Ponzi financing" system took root, typified by a lack of significant internal auditing as well as loans being made with loan to value (LTV) ratios consistently reaching 100%, meaning that borrowers did not need to provide any funds to procure a loan, and in many cases, were offered such loans on the basis of the paper value of other properties held by the borrower. For a more in depth review of Minsky's asset market bubble analysis, see *id.* at 45–49.

52. *Id.* at 77 (stating that "[t]he gap between the banks' lending and their retail deposits rose from €26 billion in 2002 to €129 billion by 2008 and was met by wholesale funding, largely from abroad.").

53. Pearlstein, *supra* note 2.

54. Croke, *supra* note 19, at 373–74 (noting that 2007 was not unique in producing such figures, as public expenditure exceeded GDP in terms of the respective rates of growth for every year from 2001 to 2008).

55. For an excellent and in depth analysis of the theory of asset market bubbles, particularly in the context of the Irish housing market bubble, see DONOVAN & MURPHY, *supra* note 8, at 45–80.

56. Pearlstein, *supra* note 2.

57. DONOVAN & MURPHY, *supra* note 8, at 77–79.

sector was constructing 50 percent of the number of houses built during the same period in the United Kingdom, despite the fact that the United Kingdom boasted a population approximately fifteen times larger than Ireland's.⁵⁸ Finally, the macroeconomic factors coalesced with the exceedingly distorted property market to create a crash of epic proportions.⁵⁹

3. Banking crisis and government guarantee

As the property market finally collapsed, the overexposure of the Irish banks to the domestic property market and its foreign-backed funding became abundantly clear.⁶⁰ Having fallen into insolvency, the largest Irish banks experienced some of the most spectacular collapses,⁶¹ and despite various emergency tactics employed, the run on Irish banks at the end of September 2008 finally required the government to step in to guarantee the deposits of the banks or risk the entire nation collapsing into bankruptcy.⁶² “The assets covered by this guarantee amounted to approximately €365 billion (\$506 billion), several times the country's GDP,”⁶³ but when government revenue decreased precipitously,⁶⁴ the banking guarantee ultimately “brought the government itself to the brink [of insolvency].”⁶⁵

4. EU-IMF bailout and attendant austerity measures

In late November 2010, as the banking and fiscal crises continued to worsen, Ireland finally agreed to an €85 billion multilateral support package from its European partners.⁶⁶ Unlike some of its fellow Eurozone countries

58. Michael Lewis, *When Irish Eyes Are Crying*, VANITY FAIR, Mar. 2011, available at <http://www.vanityfair.com/business/features/2011/03/michael-lewis-ireland-201103>.

59. Croke, *supra* note 19, at 377 (referencing a decline in Irish property prices by 7.3% in 2007 and an additional 9.1% in 2008—dwarfed by the 16.8% decline for property prices in Dublin commuter counties—which had a significant impact on Irish banks, some of which had over 60% of their balance sheets dedicated to domestic property loans).

60. DONOVAN & MURPHY, *supra* note 8, at 80.

61. “Shares of Anglo Irish Bank, at one time the nation's third largest lender, were trading at €18 (\$25) per share in May 2008. Eighteen months later, they were trading at 1% of that value.” Croke, *supra* note 19, at 377.

62. The guarantee ultimately covered the deposits at the six largest Irish banks as well as “all money borrowed by Irish banks from other financial institutions.” *Banking Guarantee Bolsters Irish Market*, RTÉ NEWS (Sept. 30, 2008), www.rte.ie/news/2008/0930/108605-economy/.

63. Croke, *supra* note 19, at 379–80.

64. The resultant fiscal crisis was caused by an over-reliance on property taxes (e.g., stamp duties, VAT, direct real property taxes, etc.) and a sudden boom in social expenditure demands as unemployment and other social welfare programs were taxed to their limit. See DONOVAN & MURPHY, *supra* note 8, at 8.

65. Pearlstein, *supra* note 2.

66. The European Financial Stability Fund (EFSF) (€22.5 billion) and the European Financial Stability Mechanism (EFSM) (€22.5 billion)—both constructs of the ECB—as well as the IMF (€22.5 billion) and contributions from bilateral agreements with the United Kingdom, Sweden, and Denmark contributed €67.5 billion to the support package. In order to cover the difference up

that required a bailout due to excessive public spending (e.g., Greece),⁶⁷ Ireland reached the precipice of economic disaster because of the aforementioned government guarantee of the six primary Irish banks.⁶⁸ The interest rate on the bailout loan was determined to be 5.8 percent per annum baseline and thereafter variable depending both upon the timing of the withdrawals from the bailout fund, as well as upon the prevailing market conditions.⁶⁹

Despite the extension of the emergency bailout program from its Eurozone partners, Ireland also undertook expansive austerity measures in a simultaneous effort to get its own financial house in order.⁷⁰ At the time of the bailout, Irish policy makers set forth a plan to cut public expenditure by €10 billion and increase tax receipts by €5 billion over a four-year period.⁷¹ Required by the European lenders as a condition to the bailout program, these austerity measures were largely undertaken in order to corral Ireland's spiraling budget deficit.⁷² After years of budget surpluses during the Celtic Tiger era, the deficit in Ireland had risen above 30 percent of GDP at the time of the multilateral bailout.⁷³

5. Beginnings of recovery

While the Irish economy has begun to exhibit signs of recovery,⁷⁴ it is widely accepted that the current climate in Ireland is a Dickensian "Tale of

to €85 billion, Ireland contributed an additional €17.5 billion drawn primarily from the National Pension Reserve Fund (NPRF). O'Carroll, *supra* note 3.

67. To be clear, the fiscal policy decisions of the Fianna Fáil-led government during the first several years of the 21st century—namely, increasing public expenditure while receiving less in the way of EU structural and cohesion funds while also consistently cutting income tax rates—certainly contributed to the overall malaise that struck the Irish economy during the global economic downturn. Nevertheless, it was the banking guarantee and not these prior fiscal policy decisions that ultimately proved to be the straw that broke the camel's (or, in this case, the Celtic Tiger's) back. See Croke, *supra* note 19, at 373–74.

68. See Floyd Norris, *In Ireland, Dire Echoes of a Bailout Gone Awry*, N.Y. TIMES, July 4, 2013, at B1.

69. *Eurozone Agrees €85 Billion Deal for Ireland*, RTÉ NEWS (Nov. 29, 2010), www.rte.ie/news/2010/1128/294894-economy/.

70. See Croke, *supra* note 19, at 381–82.

71. Specifically, the proposal outlined by then *Taoiseach* Brian Cowen included (1) cutting the national minimum wage from €8.65 per hour to €7.65 per hour; (2) increasing the value-added tax from 21 to 22 per cent; (3) reducing public-sector jobs by 25,000 positions; (4) diminishing starting salaries for public-sector jobs by 10 percent; and (5) cutting approximately €3 billion in social welfare expenditures. Neil Shah, *Ireland Outlines Austerity Measures*, WALL ST. J., Nov. 25, 2010, *available at* <http://online.wsj.com/news/articles/SB10001424052748703572404575634452116491286>.

72. *Id.*

73. See *id.* (noting that EU member states are required to carry a budget deficit of no greater than 3 percent of GDP, and that Ireland's budget deficit at the time of the bailout exceeded ten times the allowed limitation).

74. ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 5, at 6–7 (noting that the debt-to-GDP ratio, which had skyrocketed since 2008, has gradually begun to stabilize at approximately

Two Economies.”⁷⁵ While FDI has always been a significant component of the Irish economy in the recent past, investment levels since 2011 have hit all-time highs as declining currency, wage, and real estate values have combined with the traditional systemic benefits of doing business in Ireland (e.g., low corporate tax rate, English-speaking workforce, and harmonious labor relations) to make Ireland even more attractive for FDI.⁷⁶ However, the jobs created by the MNCs account for only 15 percent of the total workforce,⁷⁷ and while unemployment remains staggeringly high,⁷⁸ the rest of the labor force is dependent on an inefficient domestic economy that relies heavily on public spending.⁷⁹ Given that Ireland has implemented drastic austerity measures to reign in the sovereign debt issues, it is unlikely that the government can maintain this level of investment while simultaneously addressing the issues raised by the wanton fiscal policy decisions that contributed to the current crisis in the first place.⁸⁰

Despite the circumstances leading to tempered expectations for the recovery,⁸¹ tangible results are finally being seen.⁸² Most significantly, Ireland exited the multilateral bailout program in December 2013, almost three years after its initial implementation.⁸³ In addition, Ireland chose to exit the bailout program without requesting a “safety net” credit line from the ECB, a decision based on strong market evidence that confidence in Irish debt securities had returned to high enough levels that any such

125 percent—specifically 123.1 percent as of 2012—and should start a downward trend in the short term).

75. See generally Pearlstein, *supra* note 2 (contrasting the MNC-led, export-driven global economy akin to the original Celtic Tiger with the “relatively inefficient, unproductive and uncompetitive” domestic economy).

76. See *id.*

77. See *id.*

78. Ireland’s unemployment rate in 2012 was 14.7 percent, nearly double the 7.9 percent average unemployment rate for the other 34 nations comprising the Organization for Economic Co-operation and Development (OECD). See ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 5, at 6, 17.

79. Pearlstein, *supra* note 2.

80. See Shah, *supra* note 71 (providing that while social benefits in Ireland remain fairly high, continued funding for such programs, when taken together with the drastic austerity measures first proposed in 2010, could ultimately create an even larger fiscal crisis).

81. For a more detailed analysis of the economic challenges facing Ireland upon its exit from the EU-IMF bailout in December 2013, see *Ireland's Bail-Out Exit: Dead Cat Bounce*, THE ECONOMIST, Dec. 15, 2013, available at <http://www.economist.com/blogs/freeexchange/2013/12/irish-bailout-exit>.

82. See *id.* (noting that Ireland’s estimated deficit was reduced to a mere 7.3 percent of GDP at the end of 2013, down from the highs of over 30 percent in 2010); see also Eoin Burke Kennedy, *Unemployment Rate Hits Five-Year Low of 11.5%*, IRISH TIMES, July 30, 2014, available at <http://www.irishtimes.com/business/economy/unemployment-rate-hits-five-year-low-of-11-5-1.1882542> (reporting that unemployment was down to 11.5 percent in July 2014).

83. See Henry McDonald, *Ireland Becomes the First Country to Exit Eurozone Bailout Programme*, THE GUARDIAN, Dec. 13, 2013, at 44, available at <http://www.theguardian.com/business/2013/dec/13/ireland-first-country-exit-eurozone-bailout>.

“safety net” would not be needed going forward.⁸⁴ Although Irish policy makers have been quick to point out that the exit from the bailout program does not imply a fully recovered economy,⁸⁵ the progress made since accepting the bailout relief has been encouraging.

II. IRELAND’S CORPORATE TAX STRUCTURE

A. THE 12.5 PERCENT CORPORATE TAX RATE

“The corporate tax is one of the pillars of Ireland’s economy, because it drives exports and jobs, and creates tax revenues for the government.”⁸⁶ This statement by Paul Duffy, a vice president of Pfizer in Ireland, is indicative of the complicated role that the corporate tax structure plays in the current economic climate of both Ireland and the EU at large.⁸⁷ It cannot be questioned that at its peak, Ireland was awash with FDI due substantially to the attractiveness of the Irish corporate tax regime.⁸⁸ In concert with the substantial efforts of the IDA in attracting high-tech MNCs to the Emerald Isle⁸⁹ as well as Ireland’s unfettered access to the European marketplace,⁹⁰ the corporation tax has been the foremost engine in encouraging such substantial FDI.⁹¹ Through these concurrent efforts, Ireland has attracted numerous MNCs to set up bases in Ireland, including: Dell, Microsoft, Apple, Google, Pfizer, Johnson & Johnson, Intel, Facebook, and LinkedIn.⁹² The benefits enjoyed by these MNCs will be discussed in further detail in the following section, but given that a company such as

84. Peter Spiegel, *Ireland to Exit Three-Year Bailout Without EU Credit Line*, FIN. TIMES, Nov. 14, 2013, available at <http://www.ft.com/intl/cms/s/0/9a5ed874-4d23-11e3-9f40-00144feabdc0.html#axzz2176amGMH>; see also McDonald, *supra* note 83 (“Having implemented the spending cuts, asset sales and reforms required under the bailout, Ireland has been embraced again by the debt markets that shut out the country at the turn of the decade. It has raised enough debt independently to fund itself into 2015 and has more than €20bn (£17bn) in the bank.”).

85. *Id.* (citing Finance Minister Michael Noonan’s warning about the myriad challenges remaining and stating that “[the bailout exit] is not the end of the road. This is a very significant milestone in the road.”).

86. Alderman, *supra* note 6.

87. For a more in depth analysis of the economic motivations of Ireland’s corporate tax scheme as well as the regional repercussions of those policy decisions within the EU, see generally Dillon, *supra* note 7.

88. *Id.* at 10 n.36 (demonstrating that in 2008 alone, United States MNCs invested almost \$150 billion in Ireland, which amounted to more than the FDI made by United States MNCs in Brazil, Russia, India and China combined).

89. Coleman, *supra* note 12, at 843–45.

90. Dillon, *supra* note 7, at 22–23 (“Ireland did not become genuinely wealthy . . . it merely pulled in United States investment through a crude and quite obvious mechanism: extremely low tax. It was the *tax/European market intersection* that allowed Ireland to lasso such a huge amount of investment relative to its size.”) (emphasis added).

91. See Alderman, *supra* note 6 (indicating that MNCs directly employ more than 250,000 people in Ireland and contribute more than half of the corporate tax receipts (in excess of \$5 billion) collected by the government annually).

92. See Coleman, *supra* note 12, at 852–57; see also Alderman, *supra* note 6.

Apple was able to save \$2.4 billion by conservative estimates in 2011 through its exploitation of the Irish corporate tax structure, it is easy to see what makes the regime so popular among MNCs.⁹³

Ireland's corporate tax structure is codified in the Taxes Consolidation Act of 1997, thereafter amended on a regular basis.⁹⁴ Specifically, the current corporate taxation scheme, including the baseline 12.5 percent corporation tax, was adopted by amendment in 1999.⁹⁵ Prior to the adoption of the current tax rate, Ireland employed a special 10 percent tax rate for corporate income derived from manufacturing activities.⁹⁶ However, that system was abolished in favor of the current 12.5 percent across the board rate due in large part to external pressure from EU member states that decided to withdraw their original "State Aid approval for the . . . sectoral tax incentives," particularly with respect to the manufacturing activities tax rate.⁹⁷

Any analysis of the Irish corporation tax begins with this 12.5 percent overall rate.⁹⁸ It represents one of the lowest corporate tax rate regimes in all of Europe⁹⁹ and is indicative of the attractiveness of the Irish tax regime for foreign corporations.¹⁰⁰ It is important to note that despite accounts of special deals for certain companies on an individualized basis,¹⁰¹ it is generally asserted that no such preferential treatment exists under the Irish

93. Charles Duhigg, *How Apple Sidesteps Billions in Taxes*, N.Y. TIMES, Apr. 28, 2012, at A1.

94. Taxes Consolidation Act 1997 (Act No. 39/1997) (Ir.), available at <http://www.irishstatutebook.ie/1997/en/act/pub/0039/index.html>.

95. See Finance Act 1999 (Act No. 2/1999) (Ir.), available at <http://www.irishstatutebook.ie/1999/en/act/pub/0002/sec0071.html#sec71> (amending § 21 of the Taxes Consolidation Act, which originally set the corporate tax rate at 36 percent of corporate profits, to apply an annually descending rate of corporate tax rates beginning on April 1, 1997, such that the rates were set at 32 percent for 1998, 28 percent for 1999, 24 percent for 2000, 20 percent for 2001, 16 percent for 2002, and the current 12.5 percent rate for 2003 and every subsequent year).

96. See generally Coleman, *supra* note 12, at 845–50.

97. *Ireland's Corporation Tax Strategy*, DEPT. OF FIN., (2013), <http://www.finance.gov.ie/sites/default/files/CT-Strategy-Presentation-for-Website-FINAL.pdf>.

98. See e.g., Conor O'Brien, *Is Ireland's Corporation Tax Regime Fit for Purpose?*, IRISH TIMES, June 11, 2013, available at <http://www.irishtimes.com/business/economy/is-ireland-s-corporation-tax-regime-fit-for-purpose-1.1423602>.

99. Vincent Boland, *Dublin Ditches Double Irish to Save Low Tax Regime*, FIN. TIMES, Oct. 14, 2014, available at <http://www.ft.com/intl/cms/s/2/1f740b46-539b-11e4-929b-00144feab7de.html#axzz3GQwtAFY3>; see also Jim Puzanghera & Paresh Dave, *Ireland to Close Corporate Tax Loophole Used by Google and Others*, L.A. TIMES, Oct. 14, 2014, available at <http://www.latimes.com/business/la-fi-ireland-tax-haven-20141015-story.html> ("Ireland's 12.5% rate on corporate income is second only to Switzerland's 8.5% rate among the world's most advanced economies, according to the [OECD].").

100. In comparison, standard corporation tax rates in France and Germany—the two largest economies in the EU—are roughly 34 percent. Coleman, *supra* note 12, at 845.

101. This claim is supported by a 2011 report conducted by PricewaterhouseCoopers, which found that the "effective rate of tax on corporate profits in Ireland was 11.9 [percent]," a number almost identical to the statutory rate of 12.5 percent. Jim Stewart, *Corporation Tax: How Important is the 12.5% Corporate Tax Rate in Ireland*, 4 (Inst. for Int'l Integration Studies, Discussion Paper No. 375, 2011).

corporate tax structure.¹⁰² However, in addition to the 12.5 percent tax rate, Ireland does provide various tax subsidies for research and development and other activities.¹⁰³

Furthermore, unlike the United States' regime, which defines corporate tax residence based exclusively on where the company is incorporated,¹⁰⁴ a company is considered a resident of Ireland for the purposes of tax liability only if the company is managed and controlled in Ireland.¹⁰⁵ In other words, a corporate subsidiary of a large American corporation may be incorporated in Ireland, but managed and controlled in another tax jurisdiction, such that it would not be considered a tax resident of Ireland.¹⁰⁶ Despite being overly simplistic, such an entity would not be obligated to pay taxes to the United States on foreign-earned revenues derived from operations outside of the United States, nor would it be obligated to pay taxes in Ireland on any profits not derived from direct operations within Ireland.¹⁰⁷ Thus, a non-resident corporate entity may still be subject to Ireland's corporate tax, but only to the extent that it carries out activities in Ireland that directly or indirectly contribute income to the corporation.¹⁰⁸ This is the crux of the system that leads to the commonly debated tax avoidance schemes employed by the world's largest MNCs in Ireland.¹⁰⁹ However, it is important to note that Irish policy makers have recently succumbed to

102. O'Brien, *supra* note 98.

103. Pearlstein, *supra* note 2.

104. See 26 U.S.C. §§ 7701(a)(3), (a)(4) (2012) (defining a corporation as "domestic" if said corporation is "created or organized in the United States or under the law of the United States or of any State"); see also Tyler M. Dumler, *Charging Less to Make More: The Causes and Effects of the Corporate Inversion Trend in the U.S. and the Implications of Lowering the Corporate Tax Rate*, 13 U.C. DAVIS BUS. L.J. 89, 90 (2012) (describing the "worldwide system of taxation" employed by the United States whereby corporations "resident" in the United States are subject to taxation by the United States on all income derived by such corporations on the basis of this residence, regardless of the source of said income).

105. See O'Brien, *supra* note 98.

106. It is significant to note that Michael Noonan, the Irish Finance Minister, recently announced plans to revamp the tax code. Although the government remains steadfastly against any increase to the baseline corporation tax, one of the main policy changes will be the closing of the loophole that allows companies incorporated in Ireland to effectively be "stateless" by being operated outside of Ireland. This residency rule is the crux of many of the tax avoidance schemes employed by some of the world's most significant MNCs, and as such, the form and effectiveness of this policy change will be important to follow over the coming months and years. See *Ireland to Change Company Tax Laws, but 12.5% Corporation Tax Rate to Stay*, RTE NEWS (Oct. 15, 2013), <http://www.rte.ie/news/business/2013/1015/480547-government-committed-to-12-5-corporation-tax-rate/>.

107. Stephen C. Loomis, *The Double Irish Sandwich: Reforming Overseas Tax Havens*, 43 ST. MARY'S L.J. 825, 837 (2012).

108. O'Brien, *supra* note 98.

109. *Id.* For further discussion of the details of this process, see *infra* Section III(B) describing the mechanics of elaborate tax schemes such as the Irish Double Sandwich, which exploits this loophole in the Irish corporate tax code in order to minimize the tax liability of large MNCs.

international pressure by announcing that this corporate residence loophole will be closed beginning in 2015.¹¹⁰

Nevertheless, the Irish corporate tax structure in the context of the EU is still a point of significant contention, with European leaders decrying that the current system amounts to a “beggar thy neighbor” policy that fosters a harmfully competitive environment.¹¹¹ EU tax harmonization has long been a continental policy goal, and although outright standardization of EU tax rates is unlikely to ever occur due to the national tax sovereignty issues attendant to any such proposal, other policy alternatives have been proposed.¹¹² For instance, the European Commission previously proposed a Common Consolidated Corporate Tax Base (CCCTB) to more equitably distribute corporate tax revenues.¹¹³ According to its proponents, the CCCTB would tax corporate profits across the EU, which “would be allocated to the participating Member States, based on an apportionment formula, and then subjected to tax in [each] Member State at the corporate tax rate applicable in that State.”¹¹⁴

Since the most recent global financial crisis, analysis of sovereign tax policy in the context of an increasingly globalized and cross-jurisdictional economic system has become a highly contentious issue.¹¹⁵ Bi- and multi-lateral tax treaties address some of these issues, but loopholes between the various programs still provide corporations with ample opportunity to exploit the systems and minimize their tax liability.¹¹⁶ Specifically, accusations of profit shifting and transfer pricing manipulation dominate

110. See Boland, *supra* note 99 (specifying details of the withdrawal of the corporate residence loophole, including: (1) “all companies [newly] incorporated in Ireland will be deemed resident [t]here for tax purposes” beginning on January 1, 2015, and thus, will be subject to tax regardless of where they are managed and controlled; (2) all companies currently incorporated in Ireland and employing this tax avoidance structure must phase out the practice by 2020; and (3) the headline 12.5 percent corporate tax rate will remain unchanged); see also Stephen Castle & Mark Scott, *Under Fire, Ireland Is Set to Phase Out a Tax Break*, N.Y. TIMES, Oct. 15, 2014, at B1 (pointing out that despite the abolishment of the corporate residence loophole, Irish policy makers are simultaneously proposing a “knowledge development box” program that would tax revenues and royalties derived from intellectual property at a rate even lower than the headline 12.5 percent corporate tax rate).

111. Stewart, *supra* note 101, at 1.

112. See generally ORG. FOR ECON. CO-OPERATION & DEV., ACTION PLAN ON BASE EROSION AND PROFIT SHIFTING (OECD Publishing 2013), available at <http://dx.doi.org/10.1787/9789264202719-en>.

113. ERNST & YOUNG, COMMON CONSOLIDATED CORPORATE TAX BASE: A STUDY ON THE IMPACT OF THE COMMON CONSOLIDATED CORPORATE TAX BASE PROPOSALS ON EUROPEAN BUSINESS TAXPAYERS 7 (2011), available at <http://taxinstitute.ie/Portals/0/EY%20CCCTB.pdf>.

114. *Id.* at 2 (claiming that the purpose of the CCCTB would be to reduce compliance costs on cross-border taxable transactions and improve competitiveness for European businesses).

115. See, e.g., Nelson D. Schwartz & Charles Duhigg, *Billions in Taxes Avoided by Apple, U.S. Inquiry Finds*, N.Y. TIMES, May 21, 2013, at A1 (discussing the Congressional hearings held to uncover the scope of the tax avoidance schemes employed by Apple, as well as numerous other MNCs).

116. See ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 113, at 7–12 (acknowledging gaps in domestic tax rules despite international efforts to tighten cross-border tax regimes).

any analysis of the corporate tax structure in Ireland and its position in the context of global tax policy, such that pressure is mounting to reform the system on an international scale in order to best combat these current shortcomings.¹¹⁷ Until such time however,¹¹⁸ Ireland will continue to attract significant foreign investment from the MNCs seeking to exploit these arbitrage opportunities.

B. BENEFITS OF THE IRISH CORPORATE TAX REGIME FOR MULTINATIONAL CORPORATIONS

One of the most innovative recent corporate tax avoidance schemes was centered in Ireland and utilized by a number of MNCs, such as Apple, Google, Facebook and others.¹¹⁹ Known as the Double Irish Sandwich, this scheme was a combination of two separate mechanisms known as the Double Irish Walkthrough and the Dutch Sandwich, and was especially effective for technology companies deriving a majority of their revenues from intangible intellectual property rights.¹²⁰ For example, a U.S. corporation would incorporate a subsidiary in Ireland and establish its operations for purposes of tax residence in Bermuda. This would avail the subsidiary of Bermuda's zero percent corporate income tax while simultaneously allowing for the company to exploit Ireland's policy of not taxing foreign profits of an Irish corporation with residence (i.e., operations) in another jurisdiction.¹²¹ The U.S. corporation would then transfer some intangible intellectual property rights to this subsidiary in an arm's-length transaction, and although the initial transference may be taxable, all subsequent income derived from that intellectual property would be foreign income not subject to the U.S. corporate income tax.¹²²

The next step in the process was the establishment of a second Irish subsidiary to which the Bermudian subsidiary licensed the intellectual

117. See, e.g., *id.* at 14–25 (enumerating a 15-point Action Plan on Base Erosion and Profit Shifting, including proposals to develop and implement model treaty provisions to combat tax avoidance schemes as well as creating rules to limit corporations' ability to transfer intangible property rights to more favorable jurisdictions).

118. As previously mentioned, Irish government representatives have recently called for an amendment to the corporate residency rules currently being exploited to great success with the "Double Irish" avoidance scheme. See *Ireland to Change Company Tax Laws, but 12.5% Corporation Tax Rate to Stay*, *supra* note 106.

119. Facebook's utilization of the "Double Irish" resulted in an Irish corporation tax bill of approximately €1.9 million, despite the fact that Facebook Ireland Limited, Facebook's primary subsidiary in the structure of this scheme, generated approximately €1.79 billion in revenues in 2012. Jamie Smyth, 'Double Irish' Limits Facebook's Tax Bill to €1.9m in Ireland, *FIN. TIMES*, Dec. 5, 2013, available at <http://www.ft.com/intl/cms/s/0/ca64f938-5dc0-11e3-95bd-00144feabdc0.html#axzz2nxc4VpLo>.

120. Loomis, *supra* note 107, at 836–39.

121. *Id.* at 837–38 (stating it is significant to employ this structure to avail the corporation of the numerous and advantageous tax treaties available to Ireland, which simply incorporating in Bermuda would not provide).

122. *Id.*

property rights it had acquired from the parent corporation in the United States in exchange for “substantial royalties.”¹²³ However, the Irish tax code allows for generous tax deductions in connection to royalties paid out in exchange for intellectual property that is deemed “crucial” to the Irish company’s business.¹²⁴ As such, although the second Irish subsidiary would have to report the income derived through the use of the license obtained from the Bermuda-resident subsidiary (taxable at the standard 12.5 percent Irish corporate income tax rate), it would be able to deduct from that liability the substantial royalties deductions, thereby rendering a fairly nominal tax obligation.¹²⁵ Furthermore, in certain circumstances where the second Irish subsidiary was utilizing licensed intellectual property that was held in a separate office abroad (e.g., the Bermudian subsidiary in the example), it was not uncommon that the revenues derived from such foreign-held intellectual property would be deemed “non-Irish” profits, and thus, would not be subject to any Irish taxation.¹²⁶

While this system of tax forum shopping, known as the Double Irish Walkthrough, was oftentimes sufficient for many corporations, an additional step known as the Dutch Sandwich (hence the overall term Double Irish Sandwich) was employed as a third step to further reduce tax obligations.¹²⁷ The Dutch Sandwich portion was employed by creating a third subsidiary in the Netherlands to which the Bermuda-resident Irish subsidiary licensed its intellectual property rights instead of licensing them directly to the second Irish subsidiary, as was the case in the Double Irish Walkthrough.¹²⁸ The Dutch subsidiary thereafter funneled the income derived from the intellectual property license to the second Irish subsidiary.¹²⁹ This method had a dual effect: (1) it reduced the tax burden stemming from the royalty payments made to the Bermudian subsidiary to virtually nothing because of a peculiar provision of Dutch tax law and European tax treaties,¹³⁰ and (2) it allowed the second Irish subsidiary to continue to avail itself of the low overall 12.5 percent Irish tax rate on its general corporate taxable income.¹³¹ And while the Irish Double’s days

123. *Id.* at 838–39.

124. *See* O’Brien, *supra* note 98.

125. Loomis, *supra* note 107, at 839.

126. O’Brien, *supra* note 98.

127. *See* Loomis, *supra* note 107, at 839.

128. *Id.*

129. *Id.*

130. Payments to the primary Irish subsidiary are subject to limited tax liability because the “conduit” company in the Netherlands transfers the royalty payments from Irish subsidiary number 2 to Irish subsidiary number 1 without being subject to withholding requirements for corporate portfolio payments as exempted by the bilateral Irish and Dutch corporate tax treaties. Int’l Monetary Fund, *Taxing Times*, FISCAL MONITOR, Oct. 2013, at 47, 48 available at <http://www.imf.org/external/pubs/ft/fm/2013/02/pdf/fm1302.pdf>.

131. Loomis, *supra* note 107, at 839.

appear to be numbered,¹³² the fierce protection of the baseline 12.5 percent corporate tax rate along with new policy alternatives such as the proposed “knowledge development box” tax credit indicate that Ireland will remain a prominent destination for MNCs looking to minimize their overall tax liability through similar schemes.¹³³

Apple presents a prominent and highly successful “real world” example of the Double Irish Sandwich in action.¹³⁴ Beginning in the late-1980s, Apple created two Irish subsidiaries, Apple Operations International and Apple Sales International, to which it transferred various intellectual property rights in order to avail itself of the lower Irish corporate tax rate on the revenues derived from those properties.¹³⁵ Apple then employed a unique twist to the Double Irish Sandwich, in which it assigned partial ownership of its Irish subsidiaries to a holding company in the Virgin Islands.¹³⁶ This allowed for the profits derived on the intellectual property rights held by the Irish subsidiaries to be transferred to the Virgin Islands-based “parent,” thus subjecting those profits to virtually no tax burden pursuant to the Virgin Islands tax laws.¹³⁷ Finally, Apple employed the Dutch Sandwich component of the Double Irish Sandwich by funneling additional profits derived from intellectual property held by a Dutch subsidiary through the Netherlands and back to Ireland, thereby allowing those profits to travel “virtually tax-free” thanks to Ireland’s participation in European tax treaties.¹³⁸ Through this and other tax avoidance schemes, Apple was able to minimize its corporate tax burden on foreign profits to a paltry 3.2 percent in 2011.¹³⁹

Although the tax avoidance scheme employed by Apple and countless other MNCs was seemingly flawless in its capacity to reduce a U.S.-based corporation’s tax burden, it is important to note that any income held by

132. See, e.g., Castle & Scott, *supra* note 110 (describing Ireland’s closing of the corporate tax residence loophole).

133. *Id.* (quoting Crawford Spence, an accounting professor at Warwick Business School in Coventry, England: “I am skeptical as to how big a deal this [the closing of the corporate residency loophole] really is . . . [i]n general, corporations don’t see much legitimacy in corporate tax, and Western countries don’t appear that interested in making them pay it, either.”); see also Puzanghera & Dave, *supra* note 99 (quoting USC law professor and tax policy expert Edward Kleinbard: “Ireland has offered up this sacrificial lamb [the Irish Double loophole] in the hopes of preserving what’s most important to them in the long term, which is their low corporate tax rate.”).

134. For various explanations of Apple’s corporate tax avoidance strategies, see generally Jonathan Weil, *Explaining Apple’s Irish Tax Dodge*, BLOOMBERG (May 23, 2013), <http://www.bloomberg.com/news/2013-05-23/explaining-apple-s-irish-tax-dodge.html>; Elizabeth MacDonald, *Apple’s Irish Tax Strategy Explained*, FOX BUSINESS (May 21, 2013), <http://www.foxbusiness.com/government/2013/05/21/apples-irish-tax-strategy-explained/>.

135. Duhigg, *supra* note 93.

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

these foreign subsidiaries could not be repatriated to the U.S. parent company without incurring substantial tax obligations on those sums.¹⁴⁰ While there are numerous creative means by which MNCs such as Apple and others dodged this requirement,¹⁴¹ several MNCs have also lobbied Congress to implement a “repatriation tax holiday.”¹⁴² These corporations argue that by granting a temporary tax holiday for the repatriation of foreign-held income,¹⁴³ the subsequent influx of cash held by the U.S. parent corporations would allow for substantial domestic investment, and would thereby boost the United States’ economy.¹⁴⁴ Still, others argue that the entire American corporate tax structure should be reassessed due to the steady erosion of the corporate tax base as a result of U.S. MNCs seeking to bolster profits by minimizing their tax exposure through methods such as those discussed above.¹⁴⁵

III. PROS AND CONS OF AMENDING THE CORPORATE TAX STRUCTURE IN IRELAND

Although the decision makers in Ireland have made it abundantly clear that the government does not intend to increase the baseline 12.5 percent corporate tax rate,¹⁴⁶ there continues to be a widespread debate as to whether such a tax hike would be advisable for the purpose of combatting

140. See Loomis, *supra* note 107, at 839.

141. Methods such as the Killer B, Deadly D, and Outbound F are all tactics used by MNCs to exploit loopholes in the Internal Revenue Code (IRC) in order to avoid the tax burden on repatriated income. For instance, the Deadly D is a method employed to exploit 26 U.S.C. § 368(a)(2)(D) of the IRC. In effect, the Deadly D was employed by the parent company to acquire a separate corporate entity, which the foreign (Irish) subsidiary then purchased with income accumulated overseas. This had the dual advantage of allowing money to be transferred back to the parent company while also providing for the acquisition of a new property essentially tax free. *Id.* at 841.

142. See Duhigg, *supra* note 93.

143. Some studies estimate that more than \$2 trillion is currently held by U.S.-based MNCs overseas in order to avoid incurring tax liability upon repatriating that revenue. See Int’l Monetary Fund, *supra* note 130, at 47.

144. See, e.g., Robert Puentes, Joseph Kane & Patrick Sabol, *Establish a National Infrastructure Bank Capitalized by a Repatriation Tax Holiday*, BROOKINGS INST. (Oct. 2013), www.brookings.edu/~media/research/files/papers/2013/08/15%20repatriation%20tax/federalism%20series%20repatriation.pdf.

145. See Dumler, *supra* note 104, at 93–94 (discussing the need for the regeneration of the United States’ corporate tax base through the reduction of the current corporate tax rate in order to increase tax revenues and rehabilitate the legitimacy of the overall tax system since individuals and domestic businesses are currently left to fill the “revenue gap” created by the substantial decrease in taxable corporate incomes due to the expatriation and tax avoidance schemes of U.S.-based MNCs).

146. Eamon Gilmore, Ireland’s deputy prime minister and a member of the left-leaning Labour Party, has insisted that the corporate tax rate will absolutely not be raised, even to combat the ongoing fiscal crisis. See Pearlstein, *supra* note 2.

the fiscal and sovereign debt crises in Ireland.¹⁴⁷ Despite its previously “favored” status within the EU, many of Ireland’s European partners have become the most strident in their calls for reform.¹⁴⁸ Opponents of raising the corporate tax rate cite the potentially harmful consequences associated with doing so, including disenfranchising the MNCs that have decided to do business in Ireland based upon Ireland’s current corporate tax regime.¹⁴⁹ Such individuals claim that any benefit derived from the increase in public revenue would immediately be matched and then exceeded by the harm of losing MNC employers to friendlier tax jurisdictions.¹⁵⁰ However, critics of the current corporate tax rate claim that failure to implement an increase would be an abrogation of the government’s duty to seek out all possible means of combating the ongoing sovereign debt crisis.¹⁵¹ Furthermore, they argue that if such a policy change were to occur, the effect on MNCs based in Ireland would be significantly less than the doomsday prophecies of those against the tax increase.¹⁵²

A. ARGUMENTS IN FAVOR OF MAINTAINING THE CURRENT CORPORATE TAX STRUCTURE

As previously discussed, the Irish corporate tax structure has long been an important strategic engine in attracting and maintaining FDI. However, with the implosion of the housing and construction markets and the popping of the property market bubble, regulators and politicians are loathe to impose an additional tax on the one sector of the market that is not floundering as a result of the slowdown: foreign-owned manufacturing.¹⁵³ Any decision to raise the corporate tax rate in Ireland is effectively a cost-benefit analysis. Opponents of raising the tax believe that while doing so would generate the benefit of a minimal increase in tax revenue,¹⁵⁴ the benefit would be far outweighed by the cost of losing FDI from driving the MNCs to friendlier tax jurisdictions.

147. For differing opinions on the policy options for Ireland with respect to the corporate tax rate, compare Ciarán Hancock, *Corporate Tax Rate of 20% Would Not Cause Exodus, Says Swiss Pharma Chief*, IRISH TIMES, June 8, 2013, at 17, with Alderman, *supra* note 6.

148. *See generally* Dillon, *supra* note 7.

149. *See* Alderman, *supra* note 6.

150. *Id.*

151. *See id.* (citing European partner governments as a main opponent of the Irish corporation tax, particularly in light of the bailout package provided to Ireland and funded by the same European partners).

152. *See* Hancock, *supra* note 147 (quoting Ricardo Braglia, CEO of a Swiss pharmaceutical company that maintains a base in Ireland, as arguing that although a large increase to the corporate tax rate in Ireland may have a significant negative impact on the economy, a more nominal increase (up to 20 percent) “would probably not result in an exodus of overseas multinational investors” because of the significant domestic investment that such companies have already made in Ireland).

153. Alderman, *supra* note 6.

154. *See infra* notes 173–76 and accompanying text for a simplified example of the additional tax revenue that would be generated by a nominal increase to the corporate tax law.

When determining the importance of the current corporate tax structure in attracting FDI from MNCs, it is almost uniformly posited that the tax rate has vital importance to such investment goals.¹⁵⁵ Furthermore, although the tax rate is objectively low and subsequently attractive for foreign corporations looking to invest abroad, “the influx of such taxes provides huge amounts of money for Ireland relative to its comparatively small size.”¹⁵⁶ Advocates of maintaining the current corporate tax structure, a group that includes a majority of the policy makers in the *Oireachtas*,¹⁵⁷ embrace a fairly uniform “don’t bite the hand that feeds you” policy. Put simply, when less than one percent of the corporate entities having tax liability in Ireland make up nearly 70 percent of the corporate tax revenues collected by the government, the opponents to the tax hike argue that it is unwise to raise the corporate tax rate and risk raising the ire of such integral corporate entities.¹⁵⁸ Many feel that the Irish economy would never have developed into the roaring Celtic Tiger of the pre-financial crisis years without the advantages presented by the low corporation tax rate, and thus, the quickest way to return to those boom years is to replicate the path taken to reach that point.¹⁵⁹

This consensus, most prominently shared by the policy makers within Ireland itself, is supported by both numerical and anecdotal data alike. Despite the low real rate of corporate tax in Ireland, the gross receipts derived from its corporate tax policy make up a much larger portion of the overall tax receipts of the nation when compared to Ireland’s European counterparts.¹⁶⁰ In fact, during some of the greatest boom years of the Celtic Tiger era, Irish corporate tax revenues accounted for as much as 13 percent of all tax receipts collected, whereas that same figure ranged between three percent and seven percent in higher corporate tax jurisdictions such as the United States, United Kingdom, France, and Germany during the same period.¹⁶¹ These figures merely highlight that although the corporate tax rate is comparatively low, the revenues derived are highly important to Ireland’s

155. John Walsh, *Ireland's Corporate Tax Battle*, BUS. & FIN., Sept. 12, 2008, available at <http://businessandfinance.com/index.jsp?p=162&n=284&a=1152>.

156. Dillon, *supra* note 7, at 11 n.40.

157. *Taoiseach* Enda Kennedy told Ireland’s national television and radio broadcaster RTÉ that “the Government had ‘no intention’ of changing the 12.5 percent corporate tax rate.” Derek Scally, *SPD Places Irish Corporate Tax Rate at Centre of Coalition Talks*, IRISH TIMES, Oct. 15, 2013, available at <http://www.irishtimes.com/news/politics/spd-places-irish-corporate-tax-rate-at-centre-of-coalition-talks-1.1560375>.

158. Stewart, *supra* note 101, at 2 (citing 2008 statistics).

159. Dillon, *supra* note 7, at 33.

160. Stewart, *supra* note 101, at 3 (comparing the percentage of total tax payments derived from corporate tax payments for countries and/or entities including Ireland, the United Kingdom, France, Germany, the Netherlands, the EU, and the OECD, such that Ireland’s percentages for 2007 and 2008 respectively amounted to 10.9 and 9.7 per cent, greater than any other country in 2007 and less than only the United Kingdom and OECD in 2008).

161. Dorgan, *supra* note 10, at 11 (internal citation omitted).

economic recovery since they compose a comparatively larger portion of the overall tax revenue.¹⁶²

Given such numerical data, many claim that the corporate tax scheme is providing more than its fair share of revenue to the public accounts.¹⁶³ To that end, some commentators argue that if Ireland were to undertake measures to generate additional revenue in order to improve its fiscal health, then reliance should actually be shifted away from the corporate tax in order to emphasize more consistent means of revenue production.¹⁶⁴ In other words, proponents of the current system argue that any additional revenue generated from a hike to the corporate tax would be too variable and inconsistent to be a reliable source of fiscal stimulus.¹⁶⁵

B. ARGUMENTS IN FAVOR OF CHANGING THE CURRENT CORPORATE TAX STRUCTURE

On the other end of the spectrum, calls for amending the Irish corporate tax structure have become increasingly vociferous since 2008. At the most basic level, opponents of the current system argue that “[c]orporate tax is not and cannot be the cornerstone of industrial policy,”¹⁶⁶ and that Ireland must adopt “a more varied, sustainable, and internationally viable strategy than simple reliance on [United States] multinational investment based on tax inducements.”¹⁶⁷ However, recent calls for such amendments also focus on the untapped source of revenue that the Irish corporate tax base offers as possible salvation for the beleaguered public finances.¹⁶⁸

While proponents of the current tax scheme point to its vital role in attracting FDI, studies have found that businesses prioritize (1) the support a government can provide for small- and medium-sized enterprises, and (2) the additional support it can provide for high-tech enterprises as critical factors in considering the attractiveness of a foreign market in which to invest over the level of corporate tax rate that said jurisdiction may

162. Stewart, *supra* note 101, at 3.

163. *See id.*

164. *See* Croke, *supra* note 19, at 386 (noting that Ireland’s current fiscal woes are due in part to an over reliance on “cyclical revenue sources” (e.g., corporate tax, stamp duties) that too closely adhere to the booms and busts of the business cycle, and that it would be advisable for Irish policy makers to focus on more consistent revenue sources (e.g., an “annually levied property tax”) as a means to both improve the current sovereign debt crisis and ensure a more sustainable system of revenue generation in the future).

165. *See id.*

166. Stewart, *supra* note 101, at 9 (citing “telecommunications, infrastructure, logistics and a skilled labour force” as the truly essential components to any effective industrial development policy).

167. Dillon, *supra* note 7, at 18.

168. *See*, Alderman, *supra* note 6 (citing Philip R. Lane, a professor of international economics at Trinity College Dublin, who argues that politicians are reluctant to raise the corporate tax rate, the primary engine of the post-recession economy, despite the fact that “if the tax rate were nudged a little higher it would help [Ireland] collect significant revenue”).

impose.¹⁶⁹ While this points to a minimal role that corporate tax plays in attracting FDI, many of Ireland's European partner governments are more concerned with crying foul over the inequity that Ireland's corporate tax creates.¹⁷⁰ While Europe spent many years indulging Ireland in its pursuit of seemingly unfair tax competition as it simultaneously benefited from the prodigious EU structural and cohesion funds, European leadership is now becoming far more critical of the Irish corporate tax regime.¹⁷¹

Many commentators argue that a nominal increase to the corporate tax rate would not significantly deter MNCs from choosing to do business in Ireland.¹⁷² If Ireland were merely to raise its corporation tax rate from 12.5 percent to 15 percent, the increase in tax receipts derived from the corporation tax for the year 2011 would have exceeded €700 million.¹⁷³ For a nation with a debt-to-GDP ratio of 123.1 percent in 2011,¹⁷⁴ an immediate annual infusion of nearly three-quarters of a billion euros without any additional fiscal policy adjustment would result in a reduction of the debt-to-GDP ratio by approximately 0.35 percent.¹⁷⁵ While such a reduction may

169. Stewart, *supra* note 101, at 8 (citing a 2010 study conducted by Ernst & Young, which reported that when asked the "best way for states to stimulate future European attractiveness" with respect to attracting FDI, 29% of respondents replied "to support small and medium sized enterprises," while 27% responded "[to] support high-tech industries and innovation," while only 22% said "[to] reduce taxation and increase flexibility").

170. Alderman, *supra* note 6.

171. See Dillon, *supra* note 7, at 37–39. Laszlo Kovacs, the Hungarian tax commissioner of the EU in 2007, stated in June of that year:

[W]hen I'm speaking for the harmonisation of the tax base I'm not representing Hungarian interest but the [European] Community interest. Mr. McCreevy [the Irish internal market commissioner for the EU] is representing the national interest of Ireland . . . Mr. McCreevy is no longer the minister of finance of Ireland. He used to be but now he is [a] member of [the] European Commission who should represent the community interests.

Id.

172. See, e.g., Alderman, *supra* note 6 (quoting professor of international economics Philip R. Lane as hypothesizing that a negligible "nudge" to the corporate tax rate would not have a significant consequence).

173. OFF. OF COMPTROLLER & AUDITOR GEN., AUDITED FINANCIAL STATEMENTS OF THE EXCHEQUER FOR THE FINANCIAL YEAR 1ST JANUARY 2012 TO 31ST DECEMBER 2012 (2013), available at <http://www.finance.gov.ie/sites/default/files/finacct2012.pdf> (last visited Oct. 19, 2013). Corporation tax revenue generated in 2011 at the 12.5 percent rate was €3,520,193,000, such that a 15 percent corporation tax rate would yield €4,224,231,600 in tax revenue generated. It is significant to note that the current corporation tax revenues fall substantially short of the pre-crisis levels (e.g., €5,065,894,000 in 2008), such that any increased revenues realized through the nominal increase of the effective corporate tax rate would be likely to continue to grow as the economic recovery continues and corporate incomes rise.

174. ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 5, at 7.

175. According to the OECD basic statistics of Ireland for 2012, GDP equaled €163.6 billion in 2012 and gross financial debt (i.e., debt-to-GDP ratio) equaled 123.1 percent, or €201.4 billion (€163.6 x 123.1 percent). If the above-referenced nominal corporate tax increase from 12.5 percent to 15 percent were to be implemented tomorrow, that would result in an immediate reduction in public debt by just over €700 million. While oversimplifying the matter, this illustration certainly shows that while the effect of a tax increase would be minimal, it would also

seem small in comparison to the overall scope of the sovereign debt crisis, it remains significant in that (1) the corporate tax increase would provide an immediate and fairly substantial infusion of public revenue, and (2) the increased revenues would be attained from a source other than the ordinary Irish citizen who has already endured reductions to public welfare programs and increases to income and property taxes.¹⁷⁶

CONCLUSION

Ultimately, amending the current corporate tax structure through a nominal increase to the 12.5 percent corporate tax rate would be advisable for two primary reasons: (1) increased corporate tax revenue would immediately improve Ireland's troubled fiscal situation,¹⁷⁷ and (2) pursuit of a more balanced and sustainable economic development strategy would put Ireland on a path toward a more viable economic redevelopment.¹⁷⁸ The issues with centering a nation's economic strategy on corporate tax arbitrage and the attraction of FDI are myriad.¹⁷⁹ As such, it would behoove Irish policy makers to seize the current opportunity to restructure the Irish economy at its most fundamental levels in an effort to remedy some of its longest standing systemic issues.¹⁸⁰

While the low corporate tax rate played an indisputable role in creating the Celtic Tiger of the late 20th and early 21st centuries, studies with the benefit of hindsight have found that the unilateral focus on economic development through tax-induced foreign investment both artificially inflated the economic statistics of those boom years¹⁸¹ and created an unsustainable system of growth highly susceptible to negative external events.¹⁸² Furthermore, the current corporate tax structure has given Ireland

be immediate and have the potential to grow even greater as corporate tax receipts rebound with the continuing economic recovery. *Id.* at 6.

176. Pearlstein, *supra* note 2.

177. See generally DONOVAN & MURPHY, *supra* note 8, at 102–16.

178. Dillon, *supra* note 7, at 18.

179. For a prophetic look at some of these possibilities, see generally Coleman, *supra* note 12, at 873–74.

180. Pearlstein, *supra* note 2.

181. See Honohan & Walsh, *supra* note 39, at 40 (discussing how MNCs take advantage of transfer pricing rules—i.e., international taxation rules governing the transfer and sale of goods and services, primarily intellectual property rights—such that a parent corporation may transfer an intellectual property right to a foreign (Irish) subsidiary in a supposedly “arm’s length” transaction, thereby allowing for all profits derived by that intellectual property to be accrued in the assumedly lower tax burden jurisdiction, such as Ireland, and ultimately creating a disproportionate inflation of the Irish corporation’s “profits” in that “the huge profits recorded by the Irish affiliates have very little to do with the manufacturing activities [actually] being conducted in Ireland”).

182. See Coleman, *supra* note 12, at 873–74 (noting, very presciently, that due to the highly “globalized” nature of the Irish economy, particularly with respect to its reliance on United States-based FDI, Ireland would be particularly susceptible to any downturn or recession in the United States economy).

the reputation of a tax haven, which may detrimentally affect its ability to attract future FDI.¹⁸³

If implemented correctly, amending the corporate tax structure could also have the parallel benefit of improving the indigenous industry of Ireland that has, to date, lagged woefully behind its MNC-led counterparts.¹⁸⁴ While the history of high FDI has resulted in a generation of highly skilled Irish employees and managers, there has not been a surge of entrepreneurial development that one would anticipate from such a highly qualified workforce.¹⁸⁵ Although many former employees of MNC giants have spun off numerous entrepreneurial ventures, the government does not incentivize small business development by domestic entities.¹⁸⁶ As a result, the current pattern is such that successful Irish enterprises are quickly snapped up by large, foreign corporations before they can reach their full potential.¹⁸⁷ If Irish policy makers took the opportunity to amend the corporate tax code to include certain benefits (e.g., research and development tax credits for domestically controlled business) and tax breaks for Irish-owned and developed companies, the result could be such that the long-suffering domestic industry would have an opportunity to develop into the “more varied, sustainable, and internationally viable”¹⁸⁸ source of growth needed to rehabilitate the Celtic Tiger.¹⁸⁹

Ultimately, although economic indicators show that Ireland is now finally beginning to turn a corner on its road to recovery,¹⁹⁰ it is clear that significant systemic changes still need to be explored and implemented in

183. See Schwartz & Duhigg, *supra* note 115 (discussing the Congressional investigation of Apple's use of the Irish corporate tax loopholes and the subsequent public relations backlash against the current taxation scheme).

184. See Pearlstein, *supra* note 2.

185. See Stewart, *supra* note 101, at 9.

186. An OECD survey of the Irish economy attributes the limitation on entrepreneurial endeavors in large part to limited financing available for startup companies to progress from “[research and development] to commercialization” and enumerates both public and private financing alternative solutions to help alleviate this issue. ORG. FOR ECON. CO-OPERATION & DEV., *supra* note 5, at 28–29.

187. For further exploration of the social and political factors influencing this normal pattern of Irish industrial development, see Pearlstein, *supra* note 2, discussing the traditional societal emphasis on landing a “permanent and pensionable” career, such that Irish workers are discouraged from starting their own businesses. Furthermore, for the limited percentage of the population that does choose to pursue the startup route, those individuals most often sell out at the earliest signs of success, thus securing their future without subjecting themselves to the myriad complexities of taking a company public. The pattern is further exacerbated by institutional factors such as the Irish tax code, “which imposes relatively high taxes on incomes of the self-employed (55 percent) and capital gains (33 percent) but infamously low taxes (12.5 percent) on the profits . . . of corporations.” *Id.*

188. Dillon, *supra* note 7, at 18.

189. It is significant to note that the global export economy—funded primarily by the large MNCs that make up the subject matter of this Note—has already begun a significant recovery, as new FDI has ascended to record levels over the past few years. Pearlstein, *supra* note 2.

190. See, e.g., Spiegel, *supra* note 84.

order to prevent future economic actors from committing the same mistakes.¹⁹¹ A nominal increase to the corporate tax rate would provide an intriguing opportunity to both reshape Ireland's future fiscal policy while also providing a substantial boost to the government coffers. The opportunity is there, and global economists may be discussing in ten years' time how, out of the ashes of the Celtic Tiger, the Celtic Phoenix rose up to restore the international economic prominence of the Emerald Isle.

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191. For a discussion and non-exclusive list of proposed policy options, see generally Croke, *supra* note 19, at 382–89.

* B.A., Bucknell University, 2008; J.D. Candidate, Brooklyn Law School, 2015. Dedicated to my phenomenal wife, Kimberly, without whose encouragement I never would be where I am today. Special thanks to my parents and sisters as well, all of whom have been unconditionally supportive no matter where my pursuits have taken me. Finally, thank you to the entire *Journal* staff, and particularly Liana and Peter, for all their time and effort in producing this Note as you see it.