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Ireland has taken steps to end rules that allowed objectionable corporate tax structures but still finds it difficult to stop using tax measures to attract huge companies.
Photographer: Chris Ratcliffe/Bloomberg

Ireland Discovers It Isn't So Easy to Shake Tax Haven Image

By Hamza Ali

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- *It's keen to protect right to use tax policy to compete for investment*
- *Continues to face backlash over its role in corporate tax avoidance*

Ireland might be saying yes to fixing its tax haven-style practices, but it is reluctant to sign onto changes that might drive away companies like Apple Inc. and Alphabet Inc.'s Google that have benefited from the country's tax rules.

Under pressure from the European Union, the country has made efforts to discontinue some of its most objectionable corporate tax structuring options and worked with other countries on a system to tax digital revenues.

But it is still fighting the EU's finding that it gave 13 billion euros ($14.4 billion) in illegal state aid to Apple by allowing it to use preferential tax rulings that let the multinational shift profits to avoid paying taxes.

And the way in which Ireland exercises its EU vote indicates inconsistent support for tax reforms within the bloc: In July, the European Commission started legal proceedings against Ireland over its continued failure to implement an interest deduction limitation rule, required under the EU's Anti-Tax Avoidance Directive (ATAD), which the country signed up to. Ireland has also used its veto in EU matters to block the efforts to tax global tech companies.

It all reflects Ireland's attempts to do just enough to end its tax haven image in the EU without scaring away the U.S. multinationals, many of whom are among the top 10 companies that pay as much as 45% of the 10.4 billion euros it takes corporate tax annually. If it doesn't move fast enough on changes to satisfy the EU, Ireland risks multiple legal challenges and heavy fines.

Ireland is one of several EU countries including Netherlands, Malta, and Luxembourg that are attempting to shake off reputations as tax havens. The countries are collectively under pressure from the EU and internationally to change their tax rules that have allowed corporations to avoid paying tax.

"The approach that Ireland has taken in recent years is that we need to be competitive, but fairly. That means we can't have a regime that doesn't stack up to global and OECD norms," said Feargal O'Rourke, managing partner of PwC Ireland.

For Ireland, the consideration is companies that have a choice to relocate to other countries with more favorable tax regimes.

For example, drugmaker Allergan emigrated to Ireland to avoid U.S. taxes in 2015. But its parent AbbVie decided June 25 to move Allergan's profits to U.S. following tax reforms in the U.S. that made it advantageous to do so.

"Inversions have always been a problem in U.S. tax rules that require a U.S. solution and that's what the tax reforms in the U.S. seem to do, but we are unlikely to lead a raft of companies leaving. This is because these multinational will still want access to the EU and will require a European hub to do so," said O'Rourke.

Recent Moves

Despite being a relatively small economy, Ireland has had an outsize effect on the global tax debate because of its 12.5% tax rate, one of the lowest among EU countries. The tax regime is central to the government's plan to compete for global investment.

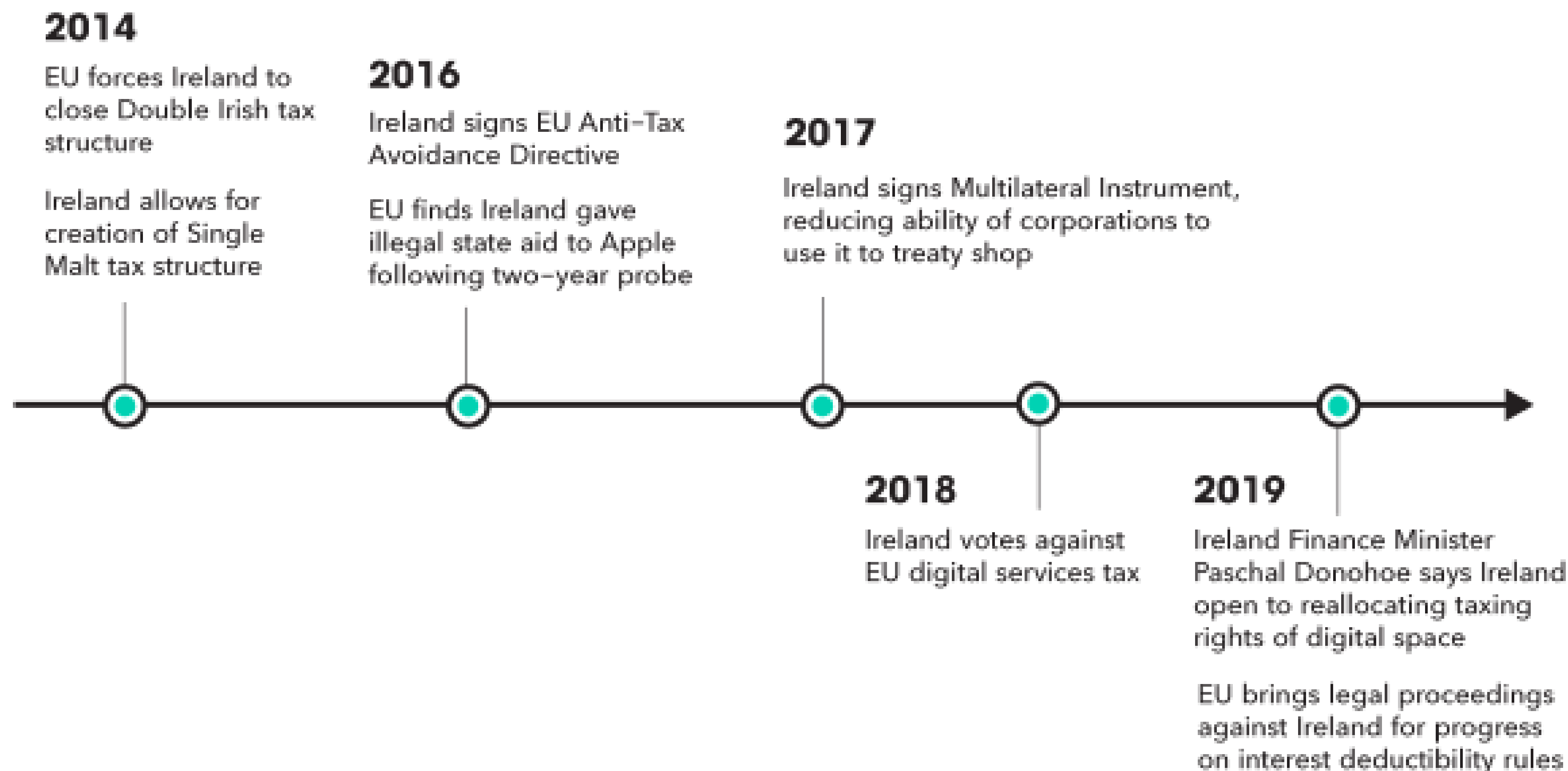
"Ireland is not a tax haven and is committed to having a corporate tax system that meets international standards," a spokesperson for Ireland's Department of Finance said in an email.

The ATAD rules represent binding commitments to implement three significant OECD recommendations into Irish law as well as two additional anti-avoidance measures. These include controlled foreign company rules, hybrid mismatch rules, and an interest limitation rule. The anti-avoidance measures are an exit tax and a general anti-avoidance rule, the government said in its email response.

Finance Minister Paschal Donohoe said in a May speech that Ireland must be open to the idea that some tax revenue paid by technology companies based in Ireland should go to markets where these firms do business but don't have a physical presence.

To O'Rourke, the speech signaled Ireland is serious about engaging in debates on tax reform, as it was an admission that the country should stop single-minded tax competition.

"My sense is that today Ireland has too much corporate tax receipts, their GDP increased 26% because of the onshoring of intellectual property as a result of OECD global tax reforms," said Pascal Saint-Amans,director of the Centre for Tax Policy and Administration at the Organization for Economic Cooperation and Development. He predicted Ireland would accept the need for change at least in principle.



Meanwhile, the country has implemented changes in recent years including instituting an exit tax and country-by-country reporting. It has also made efforts to close some of the structures most widely used by companies to avoid taxes on foreign income, such as the "double Irish" and the "single malt."

Some critics say, however, that Ireland tries to obstruct tax changes while merely appearing engaged.

"Ireland argued at the OECD there should be a bias towards smaller nations, and this will essentially mean a bias towards tax havens in this context," said Richard Murphy, a tax justice campaigner and professor of practice in international political economy at City University. "Ireland is also fond of saying they are looking for changes to the system that provide a minimum of disruption, which essentially means they wish to maintain the status quo."

Voting Record

One of the key criticisms Ireland faces is its voting record on tax issues at the EU.

The EU requires members' unanimous support for passage of EU-wide tax measures. Ireland and several other countries in the bloc have used vetoes that the European Commission has called obstructive. For example, Ireland was one of several countries that vetoed the proposed common consolidated corporate tax base (CCCTB), a type of minimum tax within the single market that has failed to pass despite being introduced in 2012.

"The need for unanimous approval makes it very difficult to reach any compromise at all, because the veto of just one member state alone is enough to prevent agreement," the European Commission said in a statement in January.

The EU has also criticized Ireland's slow progress in implementing ATAD rules, and could slap it with an unlimited fine if it doesn't adopt the measure.

Ireland could implement the rules in the October 2019 budget or in October 2020, O'Rourke said.

"When it comes to ATAD, there was nothing that would require huge changes to Ireland's tax system, so it embraced it wholeheartedly, but implemented in various stages," he said.

Foot dragging led to the latest infringement proceedings, he said.

"Work is ongoing on the introduction of the remaining ATAD measures," including hybrid mismatch and interest imitation rules, the Department of Finance spokesperson said.

Shadow of BEPS

Despite being slow on some ATAD measures, Ireland has been in front on other changes, said Brian Keegan, director of advocacy and voice, Chartered Accountants Ireland.

"For example, Ireland has had a general anti-avoidance rule, which is a key part of ATAD, for 30 years," he said.

Beyond ATAD, Ireland has faced challenges over its implementation of BEPS, the OECD's six-year-long project on base erosion and profit shifting, to crack down on companies shifting their profits to avoid paying taxes.

"We had some progress in BEPS changes to the hybrid mismatch rules, and Ireland was a key part of that. What we did regret was that Ireland has grandfathered in the hybrid rules that will mean they don't remove the 'double Irish' until 2021," Saint-Amans said.

"There is an unwillingness to bring about the fundamental reforms that would bring Ireland in line with the stated objectives of what is happening at the OECD," said Sorley McCaughey, Christian Aid Ireland's head of policy and advocacy.

The government is often slow to close loopholes like the double Irish, McCaughey said.

"The Single Malt tax structure, for example, took a lot of lobbying with the department of finance and a degree of embarrassment in the press for the government to take action with the Maltese government to close the loophole," he said.

—With assistance from Isabel Gottlieb.

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