

Ireland ends one era of abuse - and opens another one

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[Ireland is to close](#) the '[double Irish](#)' tax arrangement that has facilitated so much international tax abuse. The reality is that this will mean it will prevent Irish companies being non-resident in Ireland which will in turn prevent those non-resident companies sheltering income in tax havens.

This is good news: such a move may prevent some of the tax abuse that has become commonplace amongst US corporations and is most familiar in the case of Google.

But, the loophole will not close for four years - which means massive losses will still accrue to other countries in the meantime - and during the intervening period you can be sure that there will be many attempts made to find a new abuse to replace the one that is being abolished.

The Irish government has already, in fact, suggested it will offer such an opportunity itself by highlighting the fact that it wants to offer a new 'knowledge development box' arrangement. I think we can safely assume that this will be closely based on the UK's patent box. There is, however, just one problem with the UK patent box, which is that the EU thinks it is harmful tax competition under the EU Code of Conduct for Business Taxation. [The IFS explained why in 2013](#):

The Code of Conduct group [has raised] concerns that the Patent Box may not be sufficiently related to the real activities that the policy aims to promote. They have challenged the specific design of the UK regime based on their assessment that it breaches two provisions.

First, the Patent Box may grant tax advantages without requiring any real economic activity in the UK. This may arise if, for example, a firm owns the intellectual property in the UK but conducts research and commercialisation in other countries.

Second, the rules for determining eligible profits are deemed to depart from internationally accepted principles. In contrast to other countries, the UK Patent Box does not require profits to be associated with individual patents. This potentially allows

for a broad scope of income to be included in the provision.

In both cases the Code of Conduct group have raised concerns that the UK rules are not sufficiently transparent and may lead to multiple interpretations, some of which allow abuse of the regime.

Now, the Irish may follow other EU precedents that are deemed to be Code of Conduct compliant, but it is al too easy to see the appeal of the UK precedent to them: going down the UK route might mean that the flows currently moving through Ireland - all of which are ultimately linked to royalties on the exploitation of intellectual property -might stay right where they are in Ireland, even though they may have little or nothing to do with the development of new ideas there.

This, like the UK patent box, will be a situation to watch, but the chance that we are simply seeing Ireland shift from one abuse to another looks very high indeed. The Celtic Tiger may not have changed its tax abuse stripes at all.

Postscript:

Also [read this excellent explanation of the abusive nature of the UK Patent Box by tax barrister David Quentin](#)