Review Article: Tax Haven Ireland

Brian O'Boyle and Kieran Allen, *Tax Haven Ireland* (Pluto Press, 2021) €17.55

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The level of corporate taxation has been deeply woven into the structure of Irish society over the past forty years. As Brian O'Boyle explained in a recent interview,[1] even school children in Ireland know the corporation tax rate is 12.5 per cent. This rate and related tax policies have become a shibboleth that is beyond questioning unless you're happy to risk the sky falling in on the country.

However, recent years, especially since the Great Recession, have seen a series of cracks appear in the hegemonic dominance of the 12.5 per cent rate, one of which concerns the Ireland's label as a tax haven. Where once it might have been dismissed as a label that the "loony left" might use, O'Boyle and Allen point out that today the Tax Justice Network, Oxfam and the Institute on Taxation and Economic Policy all consider Ireland a tax haven. Further, a US senate committee and two US congressional hearings all came to the same conclusion.

All these bodies came to the tax haven conclusion by examining the complex rules, practices and cases successive Irish governments have constructed, some of which the public are now more generally aware of, including the Apple tax case and the "Double Irish." As you would expect, O'Boyle and Allen provide plenty of evidence for and detail about the tax dodging schemes.

However, this book is not written in a dry, inaccessible style, nor is it just the story of inept regulation and tax legislation full of loopholes. The book is an essential analysis of how a small country (with less than 0.1 per cent of the world's population) rode the waves of globalisation, neoliberal reforms and financialisation over the past forty years, and in the process became the biggest tax haven on the planet.[2]

It is a study of the Irish elites and the society they have created—including the huge wealth/income inequalities, fragile public services and massive stores of wealth that no one in authority has any interest in overseeing the source or how it ended-up going through or in Ireland. As Kieran Allen explains one of his motivations for writing the book:

> "One evening I was sitting at home, watching the television and saw the CEO of one of Ireland's great financial institutions. The same person had previously headed the tax office. So he switched from overseeing the tax corporations pay to working for a similar corporation. Moreover, during that television appearance, he basically thought the poor and working people should not want very high wages. That made me incredibly angry, so I thought my colleague Brian O'Boyle and I would write this book."[3]

Avoidance, ethics and tax dodging

Before we move on to Ireland's story in the neoliberal age, there are a couple of key points that need to be dealt with. First is the distinction between tax avoidance and tax evasion: There are reams and reams written about this supposedly key distinction in legal texts, academic literature and opinion columns. In essence, the distinction is supposed to pivot around a legal analysis, whereby tax avoidance is legal but evasion is illegal.

In reality, a little bit of scrutiny shows that this legal distinction is a chimera, designed to distract attention away from what O'Boyle and Allen argue (rightly) is just tax dodging. A couple of points show this distinction to be false: British-based accounting academic Prem Sikka, in his work on tax avoidance and corporate social responsibility,[4] highlights that schemes developed by accountants and tax consultants often start out being considered tax avoidance, until the schemes are scrutinised in a court and found to be illegal. There is no hard and fast division between tax avoidance and evasion.

This does not appear to bother the big accountancy firms, who have armies of accountants, tax advisers and consultants all tasked with the aim of not just advising on individual cases but of developing tax-dodging schemes that they can then sell to their clients. O'Boyle and Allen report the findings of a House of Commons investigation into the actions of the Big Four accountancy firms: the firms admitted to operating according to internal guidelines whereby a tax-dodging scheme would be given approval for sale to clients if it had "as little as a 50% chance of succeeding if challenged in court." One of the firms, PwC, even admitted to a threshold as low as 25 per cent, meaning there was a 75 per cent chance those tax-planning schemes would be considered illegal.[5]

You might wonder why anyone would engage in an activity that had a 75 per cent chance of being illegal. The answer lies in the wholly woeful lack of regulation by the state. Accompanying these tax-dodging schemes is an understanding that even if you get caught, the fines you will face are considerably lower than the savings you will make on the tax dodging. Elaborating on this lack of regulation, O'Boyle and Allen deploy a Marxist understanding of the state to highlight the class-based nature of its actions. In the case of taxation, these actions involve developing laws and regulations that suit the vested interests of mainly US corporations and the "fixers"—accountants, lawyers, corporate services providers—they employ in Ireland. When the state itself is in on the tax dodging, the distinction between laws that allow tax avoidance and laws that criminalise tax evasion is moot.

So if the law is no use to us in understanding and combating tax dodging, another set of ideas often mobilised are those of morals and ethics. This can be seen in the common sentiment that multinational companies and high-net-worth individuals should pay their "fair share." When we hear that most companies are not paying anywhere near the headline rate of 12.5 per cent—for example, a national audit report found that "13 corporations headquartered in Ireland paid less than 1 per cent in tax in 2015"[6]—the unfairness is clear. However, this begs the question: What would be a fair rate of tax to pay? Of course, paying the full headline rate would be a move towards greater fairness, but 12.5 per cent is still considerably below most international comparisons and even the lowest rate of income tax that PAYE workers pay.[7] It appears that morals and ethics are also not a coherent basis on which to understand and combat tax dodging

Like with the spurious distinction between tax avoidance and tax evasion, we can get caught in endless discussions trying to formulate what is fair; meanwhile, those in the tax-dodging industry carry on regardless, taking no regard of ethics or morals. To substantiate this point, O'Boyle and Allen quote two examples from an academic study into ethics and risk management in taxation.[8] The first is from a tax partner in an Irish accountancy firm:

> "If I was to talk to a client, I wouldn't use the words 'ethically you have to pay tax.' I would be putting it to him, the risk he puts himself and his business and his family and his employees under, by not being tax compliant."[9]

Just in case that quote leaves you with the impression that the tax partner is being enlightened and trying to find a way of communicating with their client in manner they would understand, another tax partner was much more open:

> "To a certain extent there is really no ethics in tax. There is no ethical dimension to taxation. I don't think that many tax people feel that if I save my client's tax, patients die in hospital or anything like that. I think they don't think in those terms at all."[10]

At this point it is useful to remember Trotsky's observation that "morality more than any other form of ideology has a class character."[11] And of course in capitalist society morality is deployed to bolster the existing priorities of capital accumulation and labour exploitation: in other words, to ensure that the capitalist class continue to win the class struggle.

This insight points us towards a class-based analysis as the most appropriate basis on which to understand and combat tax dodging. It is just such an analytical framework that O'Boyle and Allen use, starting with an understanding of neoliberalism as a class project. The authors found their analysis of *Tax Haven Ireland* was part of what "David Harvey has argued persuasively: that neoliberalism is best understood as a ruling class offensive strategy."[12] This offensive is designed to increase the power of corporate interests, enable transnational corporate operations and secure first-world capital power through debt and structural adjustment plans.

A story of the neoliberal age

This offensive, in the twin forms of globalisation and neoliberalisation, created the circumstances whereby the ruling elite in Ireland grabbed the opportunity to become first a conduit in the network of global tax havens and then a sink haven. These two terms may need some explanation: O'Boyle and Allen outline a global system composed of three primary components.[13] The first component, the great financial districts of global capitalism, are connected to the third component, sink havens—such as some Caribbean islands and crown dependencies like Jersey and Guernsey—through the second component, conduit havens, which include Ireland alongside the Netherlands, Luxembourg and Singapore. These conduit havens play a crucial role because of the balancing act they maintain of being respectable and legitimate on one hand, while allowing all sorts of tax-dodging schemes on the other.

In the first four chapters of the book, O'Boyle and Allen provide a detailed historical analysis of how this global system of tax dodging developed, and specifically of Ireland's role within it. We are taken through the history of how Ireland became a tax haven (Chapter 3), how the various schemes operate (Chapter 4), who the firms and individuals are that make all this possible (Chapter 5). One of the key structural changes in this process has been the establishment of single-market regulations within the EU, including for financial services and transactions. This broke down national boundaries and allowed the Irish elite to establish a hub for the shadow banking industry in the Irish Financial Services Centre (IFSC).

The IFSC is at the heart of *Tax Haven Ireland*, and accordingly gets a whole chapter devoted to analysing its activities. The numbers related to the IFSC are eye watering—it is estimated that €4.5 trillion in gross assets are hosted there; with €676 billion in the under-regulated offshore sector. The IFSC is the catalyst for much of the tax dodging (and other dodgy activity) that has occurred in Ireland. The Irish elite know this but are happy to turn a blind eye. Two examples that O'Boyle and Allen highlight illustrate this point. First, there is little or no oversight of much of the activity in the IFSC. For example, the shadow-banking assets held at the IFSC are estimated at €417 billion—this is fourteen times the size of Irish GDP. Second, back in 2002, Trinity economist Jim Stewart investigated forty-one firms based at the IFSC and found they had, on average, assets of $379 million and profits of $6.3 million, but also an average number of zero employees[14]—so much for the argument that tax dodging brings jobs to the country.

In Chapter 4, titled "Dirty Secrets", the authors analyse Ireland's input-output model of tax dodging. Stage one (input) involves gathering as much global profits as possible through various schemes that promise both minimal taxation and minimal scrutiny from regulators/tax authorities in Ireland as well as in the corporations' home countries. Stage two (process—"washing") then involves various tax regulations and loopholes (many of which are deliberately left in the Irish tax code) to turn the gross profits into washed, post-tax profits. This stage is crucial as it allows the corporations report back to their home countries' tax authorities that they have already paid tax on those earnings.

Stage three (output) involves finding ways of transferring those newly and minimally taxed earnings to a safe end haven where they can be stored securely but with no oversight from prying eyes. One of the most well known tax-dodging schemes the Irish elites instituted was the "Double Irish." This scheme utilised the regulations concerning where a given company is controlled from, with the Irish authorities making a distinction between where a company is registered and where it is controlled. Irish authorities would deem a company ineligible to pay tax in Ireland if it was controlled abroad, for example in a sink haven such as Bermuda, then US tax authorities (for example) would see that the company is registered in Ireland and therefore deem it ineligible for US taxation. The net effect is that profits flushed through a Double Irish become stateless for tax purposes.

O'Boyle and Allen highlight that in recent years the Irish elite have had to be nimble and adjust to changing attitudes, not least from US authorities, the EU and changes in global capitalism. In 2013, a US senate committee went public on the use of the Double Irish, which in turn led to the EU investigation into the Apple case. Initially, Irish politicians tried to deflect attention by saying the problem lay not with Irish tax laws but with those of other countries. However, in 2015, minister for finance Michael Noonan announced the loophole would be closed (although it was left open for existing schemes for another six years).[15]

Partly to replace the Double Irish, the government introduced new legislation aimed at capturing the growing global corporate reliance on intellectual property (IP) rights and fees. One implication of the change concerns where the global profits end up. Under the Double Irish, profits were funnelled through Ireland to sink havens, mainly Bermuda; under the new IP tax regime these profits are now officially housed in the IFSC.

The Irish elite appear to have found a new trick to maintain Ireland as a tax haven, but there are problems ahead for IP fees and profit-shifting.

What's the future for Tax Haven Ireland?

The past decade has seen some attempts by international bodies to curb some of the excesses of tax dodging; at least this is the narrative put about by the OECD and the EU. Proposals such as the Base Erosion and Profit Sharing (BEPS) deal are in reality not aimed at ending global tax dodging. As O'Boyle and Allen state: "Worth an estimated €150 billion annually, the deal will tinker at the edges of the global evasion network rather than dismantling it."[16] Most of what is driving the BEPS deal (and other similar initiatives) is a desire on the part of larger economies to get a bigger slice of the profits being washed through the tax haven networks; it's competition between different capitalist states for taxable earnings, not a desire to end child poverty or aid developing economies, that is driving these deals.

However, O'Boyle and Allen observe that the BEPS deal has put Ireland in a difficult situation. This stems from the contradiction between the Irish elite presenting Ireland as a respectable place to do business (unlike the image of small island sink havens) and the actual practice of being an open tax haven with little to no oversight or regulation and with various schemes available for corporations to pay minimal taxes.

So while the Irish minister for finance Pascal Donohue says Ireland is committed to the BEPS deal. However, Ireland was not one of the 130 countries that had signed up to the deal by July 2021.[17] The BEPS deal indicates that there is increasing pressure being placed on the respectability-tax haven contradiction.

As mentioned above this pressure is coming from bigger economies who are tired of profits being made in their jurisdictions and then shipped out via conduit tax havens such as Ireland. Another potential source of pressure could be applied from below. O'Boyle and Allen rightly conclude that Ireland's tax haven will find it hard to survive "an increasingly angry population forced to live with the fallout in housing, healthcare and education" as tax revenues fall.[18]

The Austrian Marxist economist Rudolf Goldscheid, when considering the history of public finance, observed that "tax struggles were the oldest form of class struggle."[19] While Goldscheid was looking back to pre-capitalist societies, his observation also applies to class struggles under capitalism—taxation is another arena in which the fundamental contradictions of capitalism can come to the surface. For example, central to the American Revolution were ideas about self-governance and taxation, including the political slogan "No taxation without representation."

In the 1980s we saw Irish workers fight over the levels of PAYE taxation they suffered, generating what was described at the time as the largest post-war protest in Europe and strikes involving tens of thousands.[20] In the early 1990s, Britain saw a wave of protests against the introduction of the Poll Tax, which resulted in Margaret Thatcher being removed as prime minister. More recently, one aspect of the anti-water-charges campaign was a struggle over what general taxation should be spent on.

When we start to think in these terms, Ireland's tax haven status is not a dry, academic subject that seems far removed not only from our day to day lives but also our control. There are battles ahead over the housing crisis, education for all and a national health service, to name but three issues. Each of these requires a significant increase in public funding levels. In the process of campaigning on these issues, we can make the simple point that the money is there—it's a political choice to let the corporations and high-net-worth individuals wash their money of all but minimal taxes.

The best (and probably only) way to end Ireland's tax haven status will be through the action of ordinary people to build a world free of domination by the priorities of capital.