Financial Flows and Treasury Management Firms*

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Abstract
This paper is an examination of treasury management firms which are a common feature of MNCs and a key conduit in the global intra-firm movement of funds. However this central role is not discussed in management literature dealing with the structure and operation of MNCs. The paper considers the significance of two recent European Court of Justice cases dealing with Treasury Management companies located at the IFSC in Dublin and explains how these cases have helped secure the legal and tax benefits of such operations. The paper goes on to examine financial characteristics of treasury management firms in the period 1998-2003. While financial flows are large, they are highly variable from period to period. These firms are highly profitable based on profits as a per cent of revenues but median employment is zero. While recent court cases have supported the existence of both low tax regimes and treasury management type operations within the EU, their continued existence is opposed by many EU and non EU countries as being at variance with legislation to counteract tax avoidance.

Financial Flows and Treasury Management Firms

This paper examines aspects of a specialist financial firm known as a Treasury Management Firm. These firms are of interest for a variety of reasons as they are central to the organisation of global financial flows within an MNC. However in addition because of recent judgements by the European court of Justice relating to two Treasury Management Firms operating at the IFSC in Ireland, the nature of such firms have become central to the legally recognised location of a firm within the EU and to issues relating to tax competition between different member States. Such issues are of great interest to non EU countries because of their implications for the use of tax havens and international tax competition.

Treasury management firms exist as a wholly owned subsidiary of many MNCs and are large in terms of assets but they often have zero employees. In effect these firms have many of the features of 'brass plate' firms – or a 'letter-box' company. This paper examines (1) how recent European Court of Justice cases have facilitated the emergence of such shell type companies, tax competition and the emergence of low tax jurisdictions within the EU. Secondly the paper examines the role of Treasury Management Companies in intra-group and inter-country financial flows. The paper then considers common financial features of treasury management firms and as most firms are audited by one of the big four the paper seeks to identify possible financial strategies associated with different auditing firms/tax advisors. Finally the paper examines some effects of treasury management firms financial activities on aggregate data.

A treasury management subsidiary is a common feature of MNCs. Treasury Management firms are the conduits for the global movement of intra-firm financial flows by MNCs. They often form part of a complex organisational structure whose immediate parent may be located in a tax haven (Stewart, 2005). Even though Treasury Management subsidiaries are a common feature of an MNC organisational structure, they do not feature in general textbooks dealing with the management and structure of MNCs, for example Bartlett and Ghoshal (3rd ed. 1999). Discussion of Treasury Management companies is more likely to be found in discussions of banking or tax management issues. Miller for example, argues that consolidating treasury management into one unit can reduce costs as well as take advantage of changing banking regulations (Miller, 1993, p. 22). Other writers have argued that it is common for MNCs to centralize internal treasury management in one or more group companies. Green (2001) describes the core activity of these companies as advancing loans to meet the capital requirements of other group members. The loans could be short term trading balances or provide long term capital. A group treasury company may also be the vehicle which is used to organise cross border cash pools to minimize external borrowing. Green argues these arrangements have become much more common since the introduction of the Euro. Green also states that treasury management subsidiaries may hedge currencies on behalf of the group, engage in internal debt factoring and settlement of intra-group transactions.

Ireland is one of the most important locations for Treasury management firms (Luxembourg and the Netherlands are also important locations). As many of these firms have zero employees they are managed on an agency basis. One estimate is that in the year 2000 there were more than 400 such firms (50% from North America) located in Ireland at the Irish Financial Services Centre (IFSC) (Clarke and McAleese, p. 41). The IFSC was established in 1987 specifically to attract financial firms with various incentives the main one being a reduced corporate tax rate of 10%. In addition it has been argued that reputation associated with membership of the EU is important, as well as 'light touch regulation' (O'Brien 2006). So that the IFSC (as is common to other low tax regimes) seeks to compete for firm location on the basis of low tax and regulation.

A data base of all Irish registered companies was searched in order to identify Treasury management firms[1]. Ultimately 41 firms with available accounting data were identified. These firms are of considerable economic interest. The median size in terms of gross assets in 2002 was $379 million, median profits in 2002 were $6.3 million ($9.6 if those reporting losses are excluded) but the median number employed was zero. Because of their size the operation of Treasury management companies is also of considerable interest for those concerned with measuring financial flows and the size of FDI because of large intra-firm financial flows and because financial flows may be responsive to a tax minimisation strategy. Under the American Jobs Creation Act 2004, US based firms can repatriate profits and pay a rate of 5.25% rather than the standard rate of 35%. As a result many large US firms have announced plans to repatriate profits, for example IBM plans to repatriate $9 billion (Financial Times, 27 July, 2005, p. 27); Pepsico $7.5 billion (Financial Times, July 25, 2005, p. 25); and Merck £15 billion (Financial Times, July 22, 2005, p. 26). Not surprisingly given the presence of many US MNCs in Ireland, there has also been speculation that these flows might affect investment in Ireland for example by IBM (Irish Times, February 26 2005;) and Intel (Irish Times, December 4 2004). The large increase in aggregate dividend outflows and distributed branch profits from Ireland from Euro 13.2 billion in 2003 to Euro 21.738 billion in 2004 (and consequent reduction in reinvested earnings) may partly reflect these flows (Source: Balance of International Payments, Q2, 2005, Table 2a, CSO, Dublin).

The development and location of treasury management firms is a function of different tax rates and tax systems and recognition that low tax rates are compatible with EU treaties. A recent opinion issued by the European Court of Justice (ECJ) in a case involving the taxation of profits under UK anti avoidance legislation (Controlled Foreign Corporations) of two Cadbury Schweppes treasury management subsidiaries operating in the IFSC in Dublin, concluded from existing case law that:-

> "as long as there is genuine and actual pursuit of an activity by the controlled subsidiary in the Member State in which it was established, the reason for which the parent company decided to establish the subsidiary in that host State cannot call into question the rights which that company derives from the Treaty" (par. 49), and

> “the fact that Cadbury decided to establish its subsidiaries in Ireland solely so that those subsidiaries are subject to the very favourable tax regime applicable in the International Financial Services Centre does not, in itself, constitute an abuse of the right of establishment” (par. 50).

The opinion goes on to state that while it may be “regrettable that [tax] competition operates between the member states in this field without restriction. This is, however, a political matter” (par 55)[2]. Thus a key requirement for the successful use of low tax regimes would appear to be a “genuine and actual pursuit of an activity” and the question arises what constitutes ‘genuine activity’.

The Irish Government supported the Cadbury-Schweppes position that the profits of IFSC based subsidiaries were not subject to UK Government anti tax avoidance legislation (controlled foreign corporation legislation). The UK Government argued that the CFC anti-avoidance legislation does not act as a discriminatory hindrance to the freedom of establishment but rather supports fiscal neutrality, and was supported by the Danish, German, French, Portuguese, Finish, and Swedish governments (par. 68). Not surprisingly while a majority of EU states are also in favour of harmonising the corporate tax base (Commission, 2006) Ireland is opposed to such moves [3].

The next part of this paper considers this issue in greater detail.

As noted above treasury management firms form a vital part of the intra group management of funds by MNCs. For example an administrator appointed to Parmalat has claimed that an Irish subsidiary Eurofood based in the IFSC “was deeply involved in the fraud at Parmalat and, as such all the documentation is of interest in terms of getting to the bottom of the scandal” (Irish Times 13 July, 2005)[4].

This paper quantifies financial flows of treasury management firms with a view to identifying financial strategies pursued by these ‘captive companies’. All the firms included, with one exception were audited by one of the ‘big four’ (with 17 audited by PWC) and hence it is likely that asset management practices may be similar within clients of the same audit firm, as they will be partly influenced by tax advice/strategy.

In summary the paper reports that although large in terms of gross assets, comparing year end accounting dates, intra-firm financial flows via Treasury Management firms are highly variable in size and direction (from/to fellow subsidiaries or parent company), they are also highly variable in the particular financial form used (dividends, capital increase/reduction or change in intra firm assets or liabilities). While profitable, with large gross assets, they are not used as a location for cash balances which are small. Intra year financial flows (mostly intra-firm credits and debits) are likely to be even larger.

1. Centre of main interest

Treasury management companies are often located in low tax regimes such (as the IFSC in Dublin), and as noted above despite their large size, many have low or zero employment. But in order to benefit from low tax rates, their location in a low tax regime must be legally recognised. The issue then is what activities or characteristics are required to determine the location of true residence of a company?. While the European Court of Justice opinion involving Cadbury Schweppes ruled that location because of low tax rates was not sufficient grounds to become subject to anti-avoidance provisions (CFC rules). A recent European Court of Justice court ruling[5] flowing from the enforced liquidation of Eurofood, a Treasury Management Company in Ireland (and Parmalat subsidiary), confirmed that the place of incorporation was the centre of main interest, provided some "business in the territory of the member state where its registered office is situated" (European court of Justice, Eurofood IFSC, par. 36, 2nd May 2006). The implications are that the place of incorporation of a firm determines tax laws, corporate law, and regulation. The key issue that arises is that the level of business was not specified. This case thus extends the freedom to establish in a country within the EU established in the Centros case (Case C212/97 (1999)) even though no business may be conducted there and in the Inspire Art case (case C-167/01 (2003)) where the reasons for deciding to incorporate in a member state were irrelevant (except in the case of fraud). These and other cases have led to some discussion as to whether through competition a 'European Delaware' could emerge, that is a favourable corporate tax regime under which to incorporate (Gelter, 2005, pp. 266-267; Drury, 2005, pp. 33-35). This could, as in the case of Delaware, attract as a legal location (but not necessarily headquarters location) a significant proportion of stock market quoted firms within the EU although some consider such a development to be implausible (Gelter p. 283). Issues relating to corporate inversions in the US (US based companies changing their tax residence from the US to a tax haven such as Bermuda) is also of relevance and has led to criticism of relying solely on the place of incorporation to determine tax residence. There are examples in recent US legislation of relying on the identity of shareholders and place of business in tests of residence rather than place of incorporation (Kirsch, 2005, 581) as in the American Jobs Creation Act of 2004 (Kirsch, 2005, 505-507).

As in the case of corporate inversions in the US, regulatory competition in conjunction with tax competition is influential in determining location of subsidiaries although not necessarily the legal residence of parent corporations within EU countries [6].

The Eurofood case ruling follows a decision of the Irish supreme court. The Irish Supreme court ruled that the centre of main interest of Eurofood was Ireland even though Eurofood had no fixed assets, and no employees (although reported pre-tax earnings amounted to $48 million over the period 1997-2002). While net assets are shown as $198 million ($380 million gross) many of these assets were held outside Ireland, for example a deposit of $80 million was held in an account of the Bank of America UK. All activities were undertaken on an agency basis by the Bank of America. The registered

office was located at a firm of solicitors. One director was an employee of the Bank of America. Another director was a solicitor employed by the firm of solicitors acting for the Irish subsidiary. The other two directors were employees of Parmalat. Eurofood accounts show that no director was paid by Eurofood, indicating that their services as directors were part of other paid remuneration. Evidence reviewed by the Irish Supreme Court shows that between November 1997 and January 2004 there were 14 meetings of the Board of Eurofood. All sides agree that not all meetings were held in Ireland, that Board members did not attend all meetings and that where they did, on a number of occasions attendance was 'by phone'. For the last two meetings the two Italian directors could not be physically present as they were in custody (the Supreme court judgement does not indicate why in this case they could not have been present by use of a mobile phone!). Eurofood had in effect many of the features of a 'letterbox' company. Although the ECJ did rule that the country of registration could not be the centre of main interest in the case of a 'letterbox' company not carrying out any business in the territory of the Member State in which its registered office is situated"[7] it did not consider that the minimal presence of Eurofood in Ireland warranted the classification of 'letterbox' company[8].

If the centre of main interest was determined on other grounds for example, on the basis of the location of decision making (sometimes referred to as 'real seat theory'), then issues such as the tax regime to be applied, rules relating to liquidation, etc. would also change. Hence the current location and existence of treasury management firms is inextricably linked to their legal status.

2. The Study Group

The selection of firms in this study group is described in (Stewart 2005). A data base of all firms registered in Ireland was searched[9] in order to identify Treasury Management firms. Some firms identified as Treasury Management subsidiaries do not lodge sets of accounts not because they are exempt from filing accounts on size criteria, but because they availed of section 17 exemptions[10]. In addition in some cases a firm could have more than one subsidiary engaged in treasury management operations, for example Starwood Hotels has two treasury management firms located at the IFSC and both are included in the current study.

The firms in this study engaged in the activities described at the beginning of this paper, but most revenue was generated by earning interest from other group companies. The data in this paper also shows that while they are large and profitable they often have very low or zero employment, the operations in Ireland are undertaken for the most part on an agency basis. As such delegated decision making is likely to be routine rather than strategic.

Table (1) shows some features of the 41 firms examined. All except one was audited by one of the big four (17 by PWC). In 31 cases the parent was located in a tax haven. In 20 cases the identified registered office was either a bank or the office of a solicitor. The

companies act 1990 section 202 (i) requires a company to ‘keep proper books of account. whether in the form of documents or otherwise’. In 12 cases both the ‘books of account’ and registered office were at a bank and in a further three cases the ‘books of account’ were kept at a bank[11]. In the case of treasury Management companies ‘books of account’ may thus be indistinguishable from electronic and other records resulting from banking transactions. As shown later many of them have zero fixed assets. This raises the question of whether a company whose operations consist solely of accounts maintained by a bank plus supporting legal work, passes the test of ‘genuine and actual pursuit of an activity’ as stated in the Cadbury Schweppes case (par 49) as a requirement to benefit from rights derived from community law.

Table (1)
Some Features of Treasury management firms

Size of sample firms in study	41
Auditor is one of the big four	40
Auditor is PWC	17
Solicitors office is Registered office	8
Books are kept at bank	15
Books and registered office is a bank	12
Parent in tax Haven	31
Year established > 1995	24
Incorporated as a limited company in Ireland	32
No Employees	24

Table (2) shows some financial operating characteristics of the firms examined. Most firms in the study (23) reported in US dollars with, the next most common reporting currency being Euros. For comparative purposes figures reported in this paper were converted into US dollars using exchange rates prevailing on 31st December each year. This can give rise to distortions as over the time period examined there were considerable movements in the Euro/dollar exchange rate. These distortions arise because under SSAP 20 (under which foreign exchange transactions were prepared by companies included), transactions during an accounting period are recorded at the spot exchange rate, but balance sheet items are translated at the date of preparation of the Balance Sheet.

Table (2) shows aggregate profits, gross revenues, and employees. Revenues consist largely of interest received on intra-group borrowings plus income from foreign exchange dealings. Table (2) shows that aggregate profits as a per cent of revenues vary from 39 to 92%. Table (2) also shows median profit figures as a % of revenues which are 80% or over for every year. Table (2) shows that for each year except 1998 the median number of employees was zero (column 8). Thus the firms in the sample are highly profitable, but with low or zero employees.

Table (2)
Employees, Profits and revenues of Treasury Management Firms
$ million[1]

Year	Revenues	Pre-tax Profits	Pre-tax Profits[2]	Pre-tax Profits/ Revenues[2]	Pre-tax Profits/ Revenues[3] (Median %)	Total Employed	Employees per firm[3] (median)	Tax Rate[2] (median %)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1998 (22)	1174.230	511.939	513.582	43.4	0.89	65	1	10
1999 (31)	1469.399	657.546	657.829	44.8	0.89	86	0	9
2000 (36)	1523.398	-4891.453	634.130	41.6	0.85	121	0	8
2001 (38)	1224.060	-2778.408	446.277	36.4	0.52	161	0	13
2002 (38)	1068.750	387.806	501.245	46.9	0.74	156	0	17
2003 (25)	631.190	430.167	543.257	86.0	0.81	88	0	17

Notes

(1). Shown for only those firms for which all variables in Table (2) were available.

(2). Aggregate profits were distorted for the years 2000 and 2002 due to the inclusion of large losses by Cable and Wireless of $5.5 billion for 2000 and just under $3.2 billion for 2001. Column (4) shows aggregate profits excluding firms who report losses. Calculated for only those firms who report profits greater than zero

3. Some Balance Sheet Values and Financial Ratios.

Table (3) shows assets of identified Treasury Management Companies. Table (3) shows that for the years 1999-02 intra group debtors constitute a minimum of 52% of aggregate gross assets and a maximum of 76%. Cash varies between 1.5 and 10% of gross assets. Aggregate bank borrowing was quite variable from year to year but generally smaller than cash balances. Most firms had no bank borrowing - the median value was zero. For most firms fixed assets were low or zero.

Table (3)
Assets of Treasury Management Firms
$ million[1]

Year	Gross Assets[2]	Gross Assets Median values	Intra group assets[3]	Intra group Median values	Cash	Cash Median values	Bank Borrowing	Bank Borrowing Median values
1998 (21)	24407.307	531.943	16597.706 52%	428.123	972.560 3.1%	5.044	1.277	0
1999 (31)	37186.692	452.268	17,750,542 51%	326.237	656.638 1.8%	0. 877	2.305	0
2000 (36)	38088.788	385.656	21362.298 56%	202.944	964.485 2.5%	0.614	3.981	0
2001 (38)	24228.301	376.212	17453.952 72%	173.482	375.820 1.5%	0. 114	8.699	0
2002 (38)	24490.215	344.506	17118.943 70%	167.160	463.656 1.9%	0. 357	16.614	0
2003 (24)	16187.772	340.264	12270.141 76%	185.817	1597.669 9.9%	0.692	35.222	0

Notes
1. Calculated for those firms for which all the variables shown in Table (3) were present
2. Defined as fixed plus current assets
3. Intra group debtors

Table (3) also shows median values for the same variables. For differing years the median value of gross assets varies from $340 million to $531 million. Most assets for the median firm are made up of intra group debtors with low cash balances.

Table (4) shows the same ratios as for Table (1) (intra-group debt/gross assets' intra-group assets/gross assets and cash/gross assets) treating each firm as an individual observation.

Table (4)
Average Ratios Treating each Firm as a Separate Observation

Year	Intra-Group debt/Gross Assets		Intra-Group assets/Gross Assets		Cash/Gross assets	
	Mean	Median	Mean	Median	Mean	Median
1998 (20)	0.31	0.21	0.70	0.79	0.06	0.002
1999 (31)	0.33	0.001	0.74	0.92	0.03	0.003
2000 (36)	0.29	0.03	0.69	0.93	0.03	0.002
2001 (38)	0.30	0.002	0.75	0.96	0.02	0.004
2002 (38)	0.28	0.05	0.72	0.96	0.07	0.002
2003 (23)	0.26	0.08	0.71	0.89	0.13	0.006

In summary Table (4) shows that financial assets in particular intra-group debt is the single largest asset. For the period 1998-03 the median ratio of intra-group debt to gross assets varied between 79 and 96%.

4. Intra-Group Flows of Funds

This section examines financial flows between the Treasury management subsidiary and the group. Table (5) shows considerable variability in financial flows. For example for the period 1988 2000 dividends flows are large and appear correlated with new capital subscribed. These dividend flows were dominated by flows from Tyco international who paid dividends of $881 million in 1998, $6.6 billion in 1999, and $1.058 billion in 2000[11]. In all cases these dividend payments were financed by an increase in "capital contribution reserve" (see appendix for 1999). Capital subscribed can also be redeemed and this resulted in outflows greater than dividend payments for two years. Table (5) also shows that the net change in intra group balances was negative in three of the five year 1999-03. For the years 2000 and 2002 the outflows was greater than dividend payments.

Table (5)
Total Intra-group flows $ million

Year	N (1)	Dividend Payments (2)	New Capital subscribed (3)	Change in Intra Group assets[1] (4)	Change in Intra-Group Liabilities[2] (5)	Change in net intra-group balances[3] (6)
1998	21	1188.375	2567.903			
1999	29	6749.985	10475.403	-696.732	2043,887	-1214.216
2000	35	1486.472	1373.148	2190.777	4763.376	-2572.599
2001	38	269.292	-1120.156	-2159.665	-3526.593	1366.937
2002	38	919.660	-1137.162	174.275	1376.297	-1202.022
2003	25	95.832	1458.811	476.254	10.363	465.891

(1). A fall in intra group assets or liabilities is shown with a negative sign.
(2). A fall in intra group assets or liabilities is shown with a negative sign.
(3). This is defined as the change from one period to the next in intra-group assets minus liabilities. A negative sign means a net outflow to the parent/fellow group members. The number of firms for which data is available for columns (4), (5) and (6) is slightly smaller than for columns (1) and (2), as these numbers could only be calculated if the numbers were also available for the immediately preceding accounting period.

Dividend payments in any given year were found not to be correlated with pretax profits for the same year (Pearson product moment correlation of 0.21). In contrast there was a strong correlation between capital inflows and dividend payments within the same financial year (Pearson correlation = 0.865). A simple linear regression of the form Div = f(capital flows) was statistically significant with an adjusted R^2 of .747, but no statistically significant relationship was found if the relationship Div = f(pre tax profits) was estimated.

This is explained by the large capital inflows and subsequent outflows by the Tyco subsidiary (Brangate). Omitting these flows from the Tyco subsidiary (Brangate) resulted in no lower correlation between capital subscribed and dividends.

A comparison of those firms with a parent/ultimate parent in a tax haven compared with those firms whose parent/ultimate parent was not located in a tax haven shows the former group to be more profitable in terms of the absolute size of profits of the median firm, but with the same median absolute level of gross assets. Median profits as a % of revenues were also higher for those firms owned via a tax haven

5. Some Aggregate Comparisons

The IFSC accounts for the largest single component of the stock of foreign owned assets in Ireland. IFSC based companies also are the largest components of sections of the balance of international payments, for example income earned from abroad (Balance of International Payments, 30 June 2005, Table 3).

Table (6) shows the stock of assets at the IFSC over the period 1998-2002. Separate figures are not given for dividend payments and so Table (6) shows aggregate dividends payments by all foreign investment in Ireland.

Table (6)
Some Comparisons with aggregate figures (Euro billion)

	Aggregate assets	% accounted for by firms in the study	Aggregate dividends	% accounted for by firms in the study
1998	228.735	12.5	8.310	16.7
1999	355.567	10.5	9.196	73.7
2000	472.278	7.5	11.736	12.7
2001	616.338	3.9	15.037	1.8
2002	676.623	3.6	15.156	6.0
2003	801.000	2.0	13.238	0.7
2004	930.654		21.738	

(1). Source International Investment Position 1998-2001, December 2002 and December 2004, Table (3), Dublin: CSO.
(2). This data includes IFSC and non IFSC companies. Source: Various issues of the Balance of International Payments Quarterly, Dublin: CSO.

(3). This data includes IFSC and non IFSC companies. Relates to interaffiliate financial transactions borrowing and lending of funds and trade credit. A minus sign in the column headed Other Capital Abroad means net investments abroad. No sign means net divestment.
(4). This data includes IFSC and non IFSC companies. No sign means that investment into Ireland exceed outflows and a negative sign means disinvestments exceeded investment.

Table (6) shows that companies in the study accounted for a small per cent of total assets, but a larger per cent of total dividend payments for some years. Assuming that dividend payments by a subsidiary of Tyco (Brangate) were paid outside Ireland and hence represent an outflow, firms in the study appeared to account for 73% of aggregate dividends paid outside Ireland for 1999. It is likely that aggregate data does not treat these dividend payments by Brangate in the same way as other dividend payments. As

such a large dividend outflow would reduce GDP for 1999 by approximately 8%. The overall balance of payments would not be affected as the dividend was financed by an inflow which would be reflected in the capital account.

6. Conclusion

Although a common feature of MNCs, a discussion of treasury management subsidiaries is omitted from management literature dealing with organisational structure of MNC's. The paper argues that two recent European Court of Justice cases dealing with Treasury Management companies located at the IFSC in Dublin are significant in terms of providing a legal basis for the operation of companies with little operational substance in low tax rate regimes. The paper goes on to examine financial characteristics of treasury management firms in the study for the period 1998-2003. Financial flows are large, and are highly variable from period to period. While these firms are profitable they mostly have zero employees. While recent court cases have supported the existence of both low tax regimes and treasury management type operations within the EU. Their continued existence is opposed by many EU and non EU countries as being at variance with legislation to counteract tax avoidance. More generally low tax centres such as the IFSC in Dublin are incompatible with moves towards a harmonised corporate tax base within the EU.

Footnotes

(1). The data base used consists of all Irish registered legal entities with search software developed by Inter Company Comparisons (ICC http://www.iccinformation.ie/). The data bases is updated on a daily basis.

(2). This decision was welcomed in Ireland by amongst others KPMG and PWC in Ireland who stated that it would lead to more UK firms establishing group financing operations in Ireland (Irish Times 2/5/06. KPMG UK argue that "companies will be able to enjoy far more freedom in establishing commercial operations in low tax jurisdictions" (Tax 02 2.5/06 available at http://www.kpmg.co.uk). A more neutral view was expressed by the head of the Institute of Taxation in Ireland (Irish Times 15/5/06) who considers that the opinion would result in uncertainty as to whether subsidiaries could avail of a lower tax rate and potentially considerable administrative cost in defending a claim to exemption from CFC rules. The opinion also recognised that counteraction of tax avoidance in the public interest can justify restrictions of 'fundamental freedoms' (par. 86), however European case law has confined such a justification within strict limits (par 87) and the opinion of the Advocate General warns against anti-tax avoidance legislation being used a pretext for protectionism (par. 88). The opinion also states the right of freedom of establishment must be balanced against the right of member States to tax

economic activities within their own territory. The assessment of whether a relationship between a CFC and parent company is designed purely for tax avoidance must be assessed on a case by case basis (par. 110) and involves an examination of "whether the subsidiary has the premises, staff and equipment necessary to carry out the services provided to the parent company" and an examination of the competence of the subsidiary's staff in relation to the services provided and the level of decision making. However the Eurofood case established that the 'presence' requirements were minimal.

(3). See the reply of the Minister for Finance, to a parliamentary question 14 October, 2004, Dail Debates vol. 590, 14 October, 2004. One reason may be the heavy reliance on corporate tax revenues and in particular revenues from IFSC based companies. For the year 2003 Ireland had the second highest proportion of corporate tax revenue as a % total tax within the EU at 12.9%. Luxembourg had the highest at 19.1% Source OECD Revenue Statistics a965-2004, OECD 2005, Table (13). For the year 2004 the same ratio for 12.5% and the IFSC accounted for 11.6% of total corporate tax payments (Source: Frank Daly sppech to KPMG conference, Dublin, 4 November 2005.

(4). This may explain why the attempt by Bank of America to appoint a liquidator to the Irish subsidiary has proved contentions and has involved appeals to the supreme court in Ireland, court cases in Italy and an appeal to the European Court of justice. Parmalat is suing the Bank of America and others for fraud for Euro several billion. In contrast Bank of America which is seeking to appoint a liquidator is owed just Euro 2.76 million. The assets of Eurofood largely consist of amounts owed by fellow subsidiaries of Parmalat and likely investments in Parmalat subsidiaries and are unlikely to be recoverable.

(5). The opinion relates to Eurofood a subsidiary of Parmalat (Case C 341/04) delivered on 27th September 2005 an the final ruling on 2 May 2006 Nº 36/2006 : Judgment of the Court of Justice in Case C-341/04 Eurofood IFSC

(6). One exception is Delpha Bank which moved its place of incorporation from Wiesbaden, Germany to the IFSC Dublin in 2001/2, in Dublin in response to lower tax rates, as well as what is described as a more 'efficient' corporate governance regime. Source Financial Times, June 6 , 2002, p. 33. Depfa Bank shares are amongst the top 30 traded on the Frankfurt Stock Exchange (Source:- http://www.depfa.com). There are also examples from the US of companies moving their place of incorporation to a tax haven among them are Tyco and Accenture which moved their headquarters from the US to Bermuda (General Accounting Office, 2002).

(7). This minimal presence would also seem to be at variance with the OECD model convention on income and taxes which refers to the location of 'effective management (art 4(3)) in cases of dispute as to where a firm is located.

(8). See European Court of Justice case C 341/04, 2nd May 2006, Par 35.

(9). This procedure was also used in Stewart (2005). 43 firms were identified in the 2005 paper. The current paper includes one additional company and omitted three from the original list. Smurfit Capital Funding was omitted on the basis that the business of the company was centred on raising long term finance rather than managing group cash flows. Babcock and Brown and Airbus Financial Services were omitted because the main business of these firms over a number of years consisted of leasing activities. In addition to including Starwood Finance (Ireland), an additional treasury management subsidiary entitled entitled Starwood Finance (Europe) was also included. Both firms were independent members of the Starwood Group for the period for which they were included.

(10). Section 17 of the Companies (Amendment) Act, 1986 allows a company that is a subsidiary of another corporate entity where consolidated accounts are published an exemption from filing separate accounts.

(11) In some cases it is difficult to identify whether a separate institution such as a bank is acting as the company register or that the 'books of account' are located at an institution such as a firm of solicitors or a bank.. For example, Hellerup International is included in the study although described as a "vessel broker" it has no employees and states in the accounts that the secretary is Eric B Brown and the registered office is give as Custom House Plaza, IFSC, Dublin. While books of account are stated to be kept at 18/21 St Stephens Court, Dublin, 2. However the residential address of Mr. Brown is Houston Texas, and the registered office is at a subsidiary of the company's bankers, Anglo-Irish Bank, in the IFSC, and the books of account are kept at another Anglo Irish Bank subsidiary.

(12). As is common with other MNCs Treasury Management Companies and such large intragroup fund movements are not discussed or referred to in the consolidated accounts of the parent, Tyco International for any of the years 1999-2002.

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