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BRIEFING PAPER

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Corporation tax in Northern Ireland

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Summary

For some years it has been argued that the Republic of Ireland has had greater success in attracting foreign direct investment due, in part, to its relatively low rate of corporation tax, and that Northern Ireland has suffered from this tax competition. In his 2011 Budget the then Chancellor, George Osborne, announced a Treasury review to "consider the case for Northern Ireland having a lower rate of corporation tax than the rest of the UK … to deal with the unique issues posed by the Irish Republic's business tax regime."[1] However, it was not until his Autumn Statement in December 2014 that the Chancellor announced that the Government would take this forward, "provided that the Northern Ireland Executive can show that they are able to manage the financial implications."[2]

On 7 January 2015 the then Secretary of State for Northern Ireland, Theresa Villiers, made a statement on the Stormont House Agreement, concluded by political leaders in Northern Ireland on 23 December 2014.[3] One aspect of the Agreement was the UK Government's commitment that legislation would "be introduced as soon as Parliament returns to enable the devolution of corporation tax in April 2017."[4] Ms Villiers said that this legislation would be presented to the House shortly, while its Parliamentary progress would proceed in parallel with the implementation of key measures to deliver sustainable finances for the Northern Ireland Executive.[5] The Government presented a Bill to this effect the following day, and the *Corporation Tax (Northern Ireland) Act 2015* received Royal Assent on 26 March.[6]

The Act provides for the Northern Ireland Assembly to have the power to set the main rate of corporation tax in respect of certain trading profits. The rate would apply to all of the trading profits of a company if that company was a micro, small or medium-sized enterprise, and the company's employee time and costs fell largely in Northern Ireland. The rate would also apply to the profits of large companies attributable to a Northern Ireland trading presence. Certain trades and activities would be excluded from the scope of the rate – such as lending and investing activities. Control over the corporation tax base, including reliefs and allowances, would remain with the UK Parliament.

HM Revenue & Customs has estimated that a Northern Ireland rate would affect "34,000 companies of all sizes, including 26,500 SMEs" though "the burden will vary greatly depending on their size, existing tax arrangements, whether they have any NI based trading activity in a given year, and whether their activity is wholly based in NI." HMRC did not publish an estimate of the potential economic impact of devolving corporation tax in this way on the grounds that the legislation "only devolves the power to set rates to the NI Assembly; it does not specify any Northern Irish CT rate."[7]

To date the power to set a Northern Ireland rate has not been devolved, although the Northern Ireland Executive has publicly indicated its intention for the regime to begin in April 2018, with the rate of tax set at 12.5%. In the Autumn Statement in November 2016 the Government confirmed that it was continuing "to work closely with the

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1 HC Deb 23 March 2011 c959. Details of the Treasury review are collated on Gov.uk
2 HC Deb 3 December 2014 c314
3 For further background see, *Northern Ireland: Stormont House Agreement and implementation*, Commons Briefing paper CBP7284, 19 August 2015
4 Northern Ireland Office, Stormont House Agreement, December 2014 para 8
5 HC Deb 7 January 2015 cc296-7. The Bill, its Explanatory Notes and details of its Parliamentary scrutiny are on the Parliament site.
6 Northern Ireland Office press notice, New Bill to devolve Corporation Tax in Northern Ireland, 8 January 2015
7 HMRC, Corporation Tax: devolution of rate-setting power to Northern Ireland, 8 January 2015

Northern Ireland Executive towards the introduction of a Northern Ireland rate of Corporation Tax, subject to the Northern Ireland Executive demonstrating it has placed its finances on a sustainable footing."[8] At this time the Government also announced some modifications to the application of the NI rate, to give all small and medium sized enterprises trading in Northern Ireland the potential to benefit;[9] provision to this effect is included in the *Finance Bill 2017*, which is before the House at present.[10]

This paper explains the development of the Government's policy and the wider debate over corporate tax competition, before discussing the introduction of this legislation. Recent developments as regards the implementation of the Stormont House Agreement and the collapse of the Northern Ireland Executive, are discussed in other Library papers.[11]

8 *Autumn Statement 2016*, Cm 9362, November 2016 para 3.55. see also, PQHL3634, 12 December 2016

9 HMRC, *Northern Ireland rate of Corporation Tax: changes to small and medium-sized enterprise regime – tax information & impact note*, December 2016

10 specifically clause 25 and Schedule 7 of the Bill. For details see, *Finance Bill 2017 - Explanatory Notes* (Bill 102 – EN), September 2017

11 *A Fresh Start: the Stormont Agreement and Implementation Plan and the Northern Ireland (Welfare Reform) Bill 2015-16*, CBP7389, 20 November 2015; *Northern Ireland (Stormont Agreement and Implementation Plan) Bill 2015-16*, CBP7503, 15 February 2016; and, *Northern Ireland (Ministerial Appointments and Regional Rates) Bill 2016-17*, CBP7916, 21 April 2017.

1. Consultation on devolving corporation tax, March 2011

The Coalition Government set out its priorities for taxation in the Coalition Agreement, published in May 2010. As part of this, the Government stated that it would "work to bring Northern Ireland back into the mainstream of UK politics, including producing a government paper examining potential mechanisms for changing the corporation tax rate in Northern Ireland."[12]

In March 2011 the Government published a paper setting out options to rebalance the Northern Irish economy by growing the private sector and increasing its capacity to export. The paper discussed a number of possible tax changes – principally, to allow Northern Ireland to have a lower corporation tax rate so as to boost both local private sector investment and foreign direct investment (FDI).[13]

In its introduction the paper noted that devolution of corporation tax had also been considered in the wider context of devolution for both Scotland and Wales, although it argued that, "Northern Ireland has its own unique set of circumstances, not least a land border with the Republic of Ireland with one of the world's lowest corporation tax regimes, and the implications of a lower Northern Ireland corporation tax rate need to be examined on their own merits":

> The issue of separate corporation tax rates for Scotland and Wales has been considered by the Calman and Holtham Commissions respectively.[14] The Calman Commission's report to the UK Government considered devolution of corporation tax but recommended against a separate rate of corporation tax for Scotland, on the grounds that a separate rate could distort competition within the UK, and that the required legislation would be likely to create significant administrative burdens.
>
> The Holtham Commission's report to the Welsh Assembly also considered devolution of corporation tax and recommended that the Welsh Assembly Government should seek discussion with the UK Government and other devolved governments on the feasibility of a separate rate. The report noted a number of legal and implementation issues and the possibility that the fiscal consequences of a separate rate could introduce volatility into the Welsh Assembly budget.
>
> The issues identified by the Calman and Holtham Commissions are relevant to considering the case for separate, lower corporation tax rate in Northern Ireland. However, Northern Ireland has its own unique set of circumstances, not least a land border with the Republic of Ireland with one of the world's lowest corporation tax regimes, and the implications of a lower Northern

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12 HM Government, The Coalition: our programme for government, May 2010 p28

13 HC Deb 24 March 2011 c59WS

14 [Two Library papers give more detail on these reports: The Commission on Scottish Devolution - "the Calman Commission", CBP4744, 4 June 2010 & Holtham Commission, CBP6288, 1 November 2012.]

> Ireland corporation tax rate need to be examined on their own merits.
>
> Experience from the implementation of the Calman Commission's recommendations on tax devolution suggests the complexities, including legislative implications, associated with devolving a separate rate of corporation tax to the Northern Ireland Assembly mean this would realistically take some years to implement.[15]

The paper presented evidence on the state of the economy in Northern Ireland, and in particular, its record in attracting investment compared with the Republic:

> Northern Ireland attracts proportionately more foreign direct investment (FDI) than other UK regions[16] although some of the jobs in the past have been in contact centres paying below the Northern Ireland average wage. Northern Ireland's rate of attraction of FDI has also been less than a third of that in the Republic of Ireland where FDI also tends to be of a higher quality, although on a per capita basis there is less difference.[17]
>
> A priority for Northern Ireland is to expand these levels of foreign investment in high wage sectors. However, since the start of 2011, the maximum rate of assistance allowable for general investment projects has been significantly reduced by the EU with further changes expected from 2013. Levels of venture capital funding are also lower in Northern Ireland than in all other UK regions.[18]
>
> The small scale nature of most firms currently operating in Northern Ireland means that there will need to be a significant reliance on inward investment projects to deliver the quantity and quality of employment opportunities needed over the next 25 years to rebalance the economy.[19]

Finally the paper noted that in its June 2010 Budget the Government had announced a major reform to the corporate tax system – including a series of reductions in the main rate of tax – to "create the most competitive corporate tax system in the G20."[20] In his Budget speech the Chancellor, George Osborne, confirmed that the main rate of corporation tax would be cut by 1% each year over the period 2011 to 2014, from 28% to 24%. This would be funded partly by cuts in the rates of capital allowances and the annual investment allowance from April 2012. In addition the small profits rate would be cut by 1% to 20% from April 2011.[21] In November 2010 the Government set out its wider programme for reforming the corporate tax system: specifically, changes to the 'controlled foreign company' (CFC) rules, the tax treatment of innovation and intellectual property, and the taxation of foreign branches.[22]

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[15] HM Treasury, Rebalancing the Northern Ireland economy, March 2011 paras 1.11-13. Other Library briefing material on devolution matters is collated on the Parliament site.

[16] Independent Review of Economic Policy in NI (IREP), DETI, September 2009 p33

[17] *op.cit.* p33

[18] *op.cit.* p64

[19] Rebalancing the Northern Ireland economy, March 2011 paras 2.9-10

[20] *op.cit.* para 4.20

[21] HC Deb 22 June 2010 cc174-5

[22] HM Treasury, Corporate tax reform: delivering a more competitive system, November 2010

Subsequently the Chancellor announced four further reductions in the main rate of corporation tax, so that it fell from 26% in 2011/12 to 20% in 2015/16, and being aligned to the small profits rate, setting a single rate of corporation tax.[23] In the March 2015 Budget the Government noted that at 20% the UK would have the joint lowest rate of corporation tax in the G20, and a rate significantly lower than the US, Japan, France and Germany.[24] Overall the cut in the main rate of tax from 28% to 20% was estimated to cost about £7.8 billion a year by 2016/17.[25]

Over this period there was much debate as to whether these tax cuts had had a decisive impact on FDI, and the economy as a whole.[26] For its part the Government took the view that its strategy had substantively changed perceptions of the UK's competitiveness:

> **Adam Afriyie:** To ask the Chancellor of the Exchequer what estimate he has made of the amount of foreign direct investment generated since 2010 as a direct result of the lower rate of corporation tax.
>
> **Mr Gauke:** Since 2010, the Government has cut the main rate of corporation tax from 28% to 21%. It will fall further next year, to 20%, giving the UK the joint lowest rate of corporation tax in the G20. The Small Profits Rate has also been cut to 20%. These cuts are a central part of the Government's long-term economic plan. They are intended to make the UK more competitive, supporting business investment and job creation. Government modelling suggests that the corporation tax cuts introduced in this parliament will:
>
> - increase business investment by between 2.5% and 4.5% (£3.6bn to £6bn in today's prices) in the long term
> - increase GDP by between 0.6% and 0.8% (£9.6bn to £12.2bn in today's prices) in the long term.
>
> Foreign direct investment decisions are influenced by a range of factors including skills, market access, and infrastructure. Consequently, it is difficult to isolate the exact impact of the corporation tax cuts from reform in other areas. But recently published data on inward investment has been very encouraging. In their 2013/2014 Inward Investment Report, UKTI said ONS data showed the value of FDI stock increased from £725.6 billion in 2010, to £936.5 billion in 2012. UKTI also reported that the UK attracted more inward investment projects last year than in any year since records began in the 1980s. UKTI recorded 1,773 projects, creating 66,390 new jobs.
>
> This is supported by analysis from Ernst and Young, who use their own independent database to assess inward investment. Ernst and Young's Annual Attractiveness Survey, published in June, showed the number of inward investment projects in the UK had risen by 15% in the past year, against the background of a European market that grew by just 4%.

[23] Budget 2011, HC 836, March 2011 para 1.74; Budget 2012, HC 1853, March 2012 para 1.186; Autumn Statement, Cm 8480, December 2012 para 1.130; Budget 2013, HC 1033 March 2013 para 1.121.

[24] *Budget 2015*, HC 1093 March 2015 p36 (Chart 1.10)

[25] HC Deb 12 March 2014 cc221-2W

[26] for example see, "Cuts to corporation tax cost £5bn a year as spending squeeze persists", *Financial Times*, 10 July 2014

> As noted above, it is difficult to isolate the impact of tax policy on these trends, and UKTI does not have estimates of how much of the new investment has been a direct result of the lower rate of corporation tax. But it is clear that the corporation tax reforms have changed perceptions of the UK competitiveness. For the past two years, the UK has ranked highest in the KPMG survey on international tax competitiveness, ahead of countries including the US, the Netherlands and Switzerland.[27]

The current Government has continued to prioritise cuts in corporation tax, so that the main rate was set at 19% from April 2017, and it is to be cut to 17% from 2020.[28]

The Treasury's 2011 paper suggested that these reforms to UK corporation tax "will benefit Northern Ireland alongside all other parts of the UK."[29] In their inquiry on corporation tax – which is discussed in detail below – the Northern Ireland Affairs Committee noted, "many witnesses welcomed the UK-wide reduction but suggested it would not be sufficient to make Northern Ireland itself more attractive to investors. A survey among the Northern Ireland branch of the Chartered Institute of Taxation found 46% of its members thought the UK wide reduction would have little or no impact in Northern Ireland."[30]

1.1 The experience of the Republic of Ireland

Many proponents of a cut in corporation tax in Northern Ireland have argued that a major factor in the strong growth in the Irish economy in the mid-1990s was the Irish Government's decision to maintain a very competitive rate on trading profits. In 2007 the Labour Government commissioned Sir David Varney to assess how corporate tax policy could support the sustainable growth of businesses and long-term investment in Northern Ireland. In his report, published in December that year, Sir David presented evidence showing that corporate taxation was ***not*** the most important factor in influencing investment location:[31]

> Survey evidence such as Ernst & Young's annual 'European Attractiveness Survey' provides an indication of the relative importance of factors in influencing investment location. This gauges the opinion of international business executives across a range of industries, regions and business models. In the most recent survey, the level of corporate taxation was ranked sixth in importance as a criteria for investment location, behind transport and logistic infrastructure, labour costs, telecoms infrastructure, potential productivity increase and the legislative and regulatory environment.[32] As Chart 2.2 shows a range of ten or so factors rank closely alongside the corporation tax rate.

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[27] HC Deb 1 September 2014 cc17-18W. The Government modelling cited here was, *Analysis of the dynamic effects of Corporation Tax reductions*, December 2013. The Conservative Government published updated estimates in July 2015 (*Summer Budget 2015*, HC264, July 2015 para 1.240).

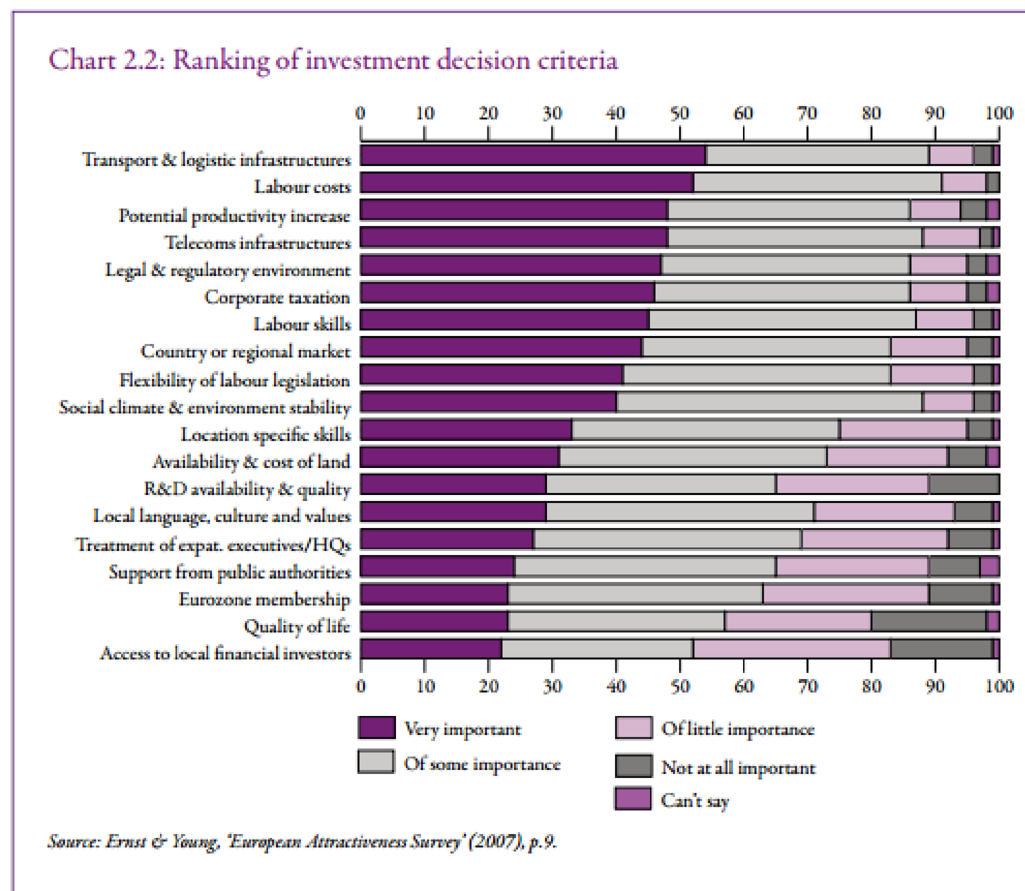
[28] For more details see, Corporate tax reform (2010-16), Commons Briefing paper CBP5945, 25 July 2016, and, Helen Miller, *What's been happening to corporation tax?*, Institute for Fiscal Studies, May 2017.

[29] Rebalancing the Northern Ireland economy, March 2011 para 4.2

[30] Corporation Tax in Northern Ireland, 24 May 2011, HC 558 of 2010-12 para 16

[31] Sir David Varney, Review of tax policy in Northern Ireland, HM Treasury December 2007 paras 2.36, 2.40

[32] Ernst & Young, *European Attractiveness Survey 2007*, June 2007



[Further to this], one other means of assessing the importance of tax as a location driver is to compare the financial cost of tax paid against other business costs. The KPMG 'Competitiveness Alternatives' survey analyses which cost factors are most important to businesses when choosing where to invest.

Table 2.1 shows the relative importance of key location sensitivity cost factors. Labour costs play a substantially more important role than any other cost factor. This finding is particularly pronounced in the non-manufacturing sector, with tax only accounting for between three and seven per cent of total costs. Labour and financing costs are the most prominent factors from the analysis.

Table 2.1: Relative importance of factors affecting decisions on location

	Manufacturing	Non-manufacturing
Total labour cost	55%–73%	76%–87%
Transportation	1%–15%	0%–1%
Utility cost	2%–9%	2%–8%
Financing and depreciation	10%–22%	5%–18%
Taxes	7%–13%	3%–7%
Of which:		
Property taxes	2%–3%	n/a
Other	0%–1%	n/a
Income taxes	5%–10%	3%–7%

Source: KPMG, 'Competitive Alternatives' survey (2006).

Sir David also examined the evidence that the Irish Government's approach to corporate taxation was the main cause of the country's economic success:

> Taxation has formed a key part of the commentary on the Republic's growth performance. From 1956 to 1980, the major concession came in the form of an exemption from corporation tax for profits derived from exports. Thereafter, in order to come into compliance with the EU requirement of non-discrimination, the exemption was replaced by a preferential 10 per cent corporation tax rate applied to manufacturing and certain internationally traded services.
>
> In 1996, the corporation tax regime came under pressure from the European Commission on state aids aspects, leading to a phased move to unify by 2003 the corporation tax rate across the economy at 12.5 per cent on all trading income. The manufacturing rate continues to apply to 2010 for existing companies.
>
> While the low corporation tax regime can be seen as attractive to foreign investors, as well as offering profit shifting opportunities[33] … it cannot in itself explain Ireland's success. Foreign investment to Ireland has not only increased in quantity, but it has also changed in quality. Prior to the late 1980s, it tended to involve low-skill assembly and packaging work across a wide range of sectors, with few local linkages and high profit repatriation. Since then, however, it has been concentrated in technologically sophisticated sectors such as electronics and pharmaceuticals.[34]
>
> The Republic's low corporation tax regime cannot explain these developments, particularly as these taxes have actually risen over time, i.e. from zero in 1958 to 10 per cent in 1981 and 12.5 per cent in 2003. Rather, the Republic of Ireland moved early in trying to establish a 'unique selling point', particularly to US investors. This combined being the lowest tax environment for manufacturing investment among advanced economies with an educated and young English-speaking population, well marketed to take advantage of its historic ties to the USA.[35]

In their survey of the Irish economy published at this time, the OECD discussed the causes of the 'Irish miracle', suggesting there were "no simple solutions" for governments seeking to emulate this success.

Their analysis is reproduced in the text box overleaf:

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[33] O'Grada & O'Rourke, 'Economic growth: performance and explanations', in O'Hagen (ed.) 'The Economy of Ireland: Policy and Performance of a Small European Country', (1995); and O'Hearn, 'Macroeconomic policy in the Celtic tiger', in Coulter and Coleman (eds.), 'The End of Irish History?', (2003). These point to the opportunities the Irish regime has offered businesses to take advantage of legitimate tax management within the standard transfer pricing rules.

[34] Breathnach, 'Exploring the "Celtic Tiger" phenomenon: Causes and Consequences of Ireland's Economic Miracle', European Urban and Regional Studies, (1998) pp.304-309

[35] Review of tax policy in Northern Ireland, December 2007 paras 1.60-62

"What caused the Irish miracle?"

OECD, *Economic Surveys – Ireland* (vol 2006/3), March 2006 pp24-5

It is impossible in a short box to do justice to the rich and complex story of Ireland's years of economic failure followed by its spectacular success from 1993 onwards. There were many factors involved. We will never be sure how much each factor contributed individually, partly because they are hard to measure, partly because they are so interrelated, and partly because many of them are endogenous responses to the boom itself. This box limits itself to listing a range of causes and refers the reader to several excellent studies of the Irish story.

In some ways, the interesting question is not why Ireland boomed, but why it took so long to take off. Many of the most important factors behind Ireland's success were in place long before the economy took off in the 1990s. While it was a relative latecomer when it came to opening up trade, it made a decisive shift away from protectionist policies in the 1960s. Its commitment to education was also late, with free universal secondary schooling in place only from 1967.

That should have begun to pay dividends in the early 1980s, around a decade before the boom actually began. *Tax breaks for exporters and foreign investors* had been in place since the 1950s. The benefits of joining the *Common Market* began in 1973. These included access to a wider market, the opportunity to diversify away from the UK market and of course direct financial transfers. The introduction of the *single market* was also important as it raised the attractiveness of Ireland as an export platform, especially because it is English-speaking. The ground work had to be put in place before many of these factors could begin to pay off.

That began in 1987, with the *fiscal and monetary consolidation* that aimed at bringing the deficit down from its level of more than 15% of GNP. Wage moderation played a key role. The *social partnership arrangements*, which delivered *tax cuts* in return for *wage restraint*, possibly helped keep wages in check but some degree of wage restraint was inevitable given how tightly integrated are the Irish and UK labour markets. Alongside the tax cuts, *expenditure restraint* was also important.

Deregulation of key sectors also helped, especially telecommunications and the airline industry. The mid 1980s also saw a decisive shift away from a policy of fighting a rearguard action to try to save dying sectors and towards a *policy of laying down the foundations for growth in the new industries*. The focus on getting the fundamentals right played a key role in the foreign direct investment boom, especially from US multinationals.

A benign external environment contributed. Foreign direct investment was encouraged by the strength of the US economy and the global demand for high-tech products. Finally, and by no means least important, have been *demographic factors*. Until recently, exceptionally high birth rates have made Ireland one of the youngest countries in the OECD while emigration in the 1950s and 1960s means there are fewer elderly pensioners today than there otherwise would have been. The *fall in the dependency ratio* has given a considerable boost to activity.

All these factors have contributed to, and been magnified by, what is perhaps the most striking feature of Ireland's performance: its ability to create jobs. A *highly elastic labour supply* (given the stock of Irish emigrants abroad, the initial high level of unemployment and the low level of female participation) helped sustain growth.

If there are any lessons for other countries, they are that there are no simple solutions; that not much will happen until a range of sensible policies coalesce (which means that countries cannot cherry-pick the bits of a reform agenda they like and leave out the rest); and that the catch-up process is not automatic – Ireland is a good example of Robert Lucas's dictum that "a successful theory of economic miracles should … offer the *possibility* of rapid growth episodes, but should not imply their occurrence as a simple consequence of relative backwardness" (Lucas, 1993, p. 269). As John Fitz Gerald put it, "these policies, when considered individually, may be unexciting and unimportant. However, the cumulative impact can make the difference between convergence and divergence" (Fitz Gerald, 2004, p. 18).

For further reading:

Barry, F. (ed.) (1999), Understanding Ireland's Economic Growth, Macmillan Press, London.
Burnham, J.B. (2003), "Why Ireland Boomed", The Independent Review Vol. 7, No. 4, The Independent Institute, Oakland, CA.
Fitz Gerald, J. (2004), "Lessons from 20 Years of Cohesion", ESRI Working Papers, No. 159, Economic and Social Research Institute, Dublin.
Honohan, P. and B. Walsh (2002), "Catching up with the Leaders: The Irish Hare", Brookings Papers on Economic Activity, No. 1, The Brookings Institution, Washington DC.
MacSharry, R. and P. White (2000), The Making of the Celtic Tiger, Mercier Press, Dublin.
OECD (1999), "The Origins of the Recent Economic Boom", Chapter 1 of OECD Economic Surveys: Ireland, No. 14, OECD, Paris.
The Economist (2004), "The Luck of the Irish: A Survey of Ireland", The Economist, London, 14 October 2004.

On publishing the Varney report, the then Chief Secretary to the Treasury, Andy Burnham, noted that Sir David "concludes that a policy of a preferential corporation tax rate for Northern Ireland, as compared to the rest of the UK, does not offer the best way forward for building a strong investment strategy for Northern Ireland."[36]

In January 2011 the accountancy group PriceWaterhouseCooopers published their own assessment of the case for regenerating Northern Ireland through a cut in corporation tax; notably the authors raised doubts as to the relevance of the Irish experience:

> In terms of the impact of low corporation tax as a direct driver of FDI in the Republic of Ireland, we concluded that:
>
> - The Republic of Ireland has low corporation tax for three decades before the Irish economy began to grow rapidly, while during the 1980s – the period of the boom in US FDI – there were no changes in the Irish tax system.
> - As the rate of Irish corporation tax actually increased in the 1980s, it is not therefore straightforward to invoke low corporation tax as an explanation of the timing of the boom.
> - It is likely that a growing skills base, a business-friendly administration, membership of the EU, operation costs and a period of aggressive and sustained US investment in European markets all combined with low corporation tax as an explanation of the timing of the boom.
> - We note that, while RoI retains corporation tax at 12.5 per cent, this is now complemented by other incentives and advantages including R&D tax credits and IP incentives that

[36] HC Deb 17 December 2007 cc74-6WS

> have encouraged clustering and investment from specific sectors.[37]

The Treasury's 2011 paper listed a number of potential benefits from cutting corporation tax:

> Academic literature on corporation tax suggests that the most significant benefits of a reduction in the corporation tax rate in Northern Ireland would come through additional investment in both new foreign-owned firms and in existing firms. Increased investment, other things being equal, typically leads to increased growth and employment. Some foreign-owned firms may also shift profits from the rest of the world into Northern Ireland to benefit from the low tax regime, and a lower corporation tax rate in Northern Ireland may enable some profit to be retained in the UK from companies that would otherwise shift it abroad, though a proportion of increased investment in Northern Ireland would be at the expense of investment in other parts of the UK.
>
> The impact of changes in corporation tax rate will depend upon other components of the corporation tax system, such as capital allowances and any tax credits available for Research and Development (R&D). When investing it is likely that firms will take both their overall tax rate into account (the average effective tax rate) as well as the tax rate on the particular investment project they are considering (the marginal effective tax rate). The statutory or "headline" rate also has a role to play in terms of the signals it sends to overseas investors.[38]

However, the paper also argued it was "necessary to be cautious" in assuming a lower rate of corporation tax would replicate the Republic's experience in Northern Ireland:

> From the mid-1990s until the recent recession the Republic of Ireland enjoyed a period of very strong economic growth, supported by large inflows of FDI. Different explanations can be, and have been, offered for the Republic's performance.
>
> Prominent among these is the Republic's corporation tax regime which has recently been described by the Republic's then Minister for Finance as the, "cornerstone of Irish industrial policy" (Ministerial Statement by Brian Lenihan, Department of Finance, Dublin, 1 October 2010). Although the Republic enjoys a very low rate of corporation tax on trading profits, at 12.5 per cent, its tax rate on non-trading profits is, at 25 per cent, higher than the rate will be in the UK.
>
> The Republic's corporation tax system differs from the UK's in respects other than headline corporation tax rates, which may result in companies paying less tax than the headline rate implies. In addition to an entirely different system of reliefs and allowances, significant differences between the corporation tax systems in the UK and the Republic relate to rules governing Controlled Foreign Companies, transfer pricing, thin capitalisation and the taxation of dividends. Because of differences in effective corporate tax rates, and due to the large range of factors that determine investment levels, it is necessary to be cautious in assuming that a lower corporation tax rate would have the same effect in Northern Ireland as it had in the Republic.[39]

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[37] PWC, *Corporation tax: game changer or game over?*, January 2011 pp6-7
[38] Rebalancing the Northern Ireland economy, March 2011 para 4.12-4
[39] *op.cit.* paras 4.9-11

1.2 The implications of EU rules on State Aid

One constraint on the devolution of corporation tax is the need to ensure that it is done in a way so that it is not caught by EU rules on State Aid – as the Treasury's paper explained:

> Devolving any tax rate varying power must satisfy the European Court of Justice (ECJ) decision on the "Azores Case", which set out the criteria which would need to be met for regional differences in direct taxation not to involve State Aid, and to be compliant with EU law.[40]
>
> These conditions are:
>
> - The decision to introduce the regional difference in direct taxation must have been taken by the region which has a political and administrative status separate from that of the central government (*institutional autonomy*)
> - The decision must have been adopted without the central government being able directly to intervene as regards its content (*procedural autonomy*)
> - The full fiscal consequences of a reduction of the national tax rate for undertakings in the region must not be offset by aid or subsidies from other regions or central government (*fiscal autonomy*).[41]

The Treasury took the view that Northern Ireland would meet the first two of these tests, but to meet the fiscal autonomy condition, the Northern Ireland Executive "would need to bear the full fiscal consequences of changes in tax revenues resulting from a new Northern Ireland corporation tax rate":

> It is expected that Northern Ireland would meet the Azores criteria of institutional, procedural and fiscal autonomy:
>
> The NIE already has institutional autonomy as the Northern Ireland Assembly is elected by a separate process to that of the UK Government and has autonomy over a wide range of spending and policy issues.
>
> The Northern Ireland Assembly would also have procedural autonomy, as the NIE and Assembly would have the power to decide whether to raise or lower the rate of corporation tax. HRMC (the UK wide tax administration) could continue to collect receipts.
>
> In order to meet the fiscal autonomy condition, the NIE would need to bear the full fiscal consequences of changes in tax revenues resulting from a new Northern Ireland corporation tax rate. This means that Northern Ireland's block grant would be adjusted to reflect the fiscal costs of a reduction in the rate of corporation tax.[42]

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40 Commission v Portugal C88/03

41 *Rebalancing the Northern Ireland economy*, 24 March 2011 para 4.29. For a summary of EU State Aids legislation see, HM Government, Review of the Balance of Competences between the United Kingdom and the European Union: Competition and Consumer Policy Report, July 2014 pp25-28

42 *op.cit.* para 4.30. The Holtham Commission's report, discussed below, also provides a more detailed discussion of the 'Azores' case for interested readers (see pp77-8 and Annex 5 to the report).

In this context critics of corporate tax devolution have pointed out that receipts from corporation tax are one of the most volatile categories of tax revenues. As the Institute for Fiscal Studies has observed, "over time, they vary substantially more than total receipts or national income."[43] Replacing an element of the block grant with these revenues carries a considerable risk to the devolved administration.[44]

1.3 Quantifying the potential impact of a lower rate of tax

The paper also provided some estimates of the costs of setting a Northern Ireland rate at 12.5%, aligned with the rate on trading profits charged in the Republic. There are a number of uncertainties inherent in this type of calculation.

First, it requires an estimate of the share of UK corporation tax receipts accruing in Northern Ireland, as HMRC does not collect corporation tax receipts by location of activity. In this case the department estimated that 1.5% of UK 'onshore' receipts (ie, ignoring corporate tax receipts from the North Sea) could be attributed to Northern Ireland, and used this as their baseline. Given the weakness of the economy, the paper also presented estimates based on a 1.25% share, shown below:

Table 4.B: 1.25 per cent assumption - direct costs NIE of reduced corporation tax rate

£ million (National Accounts basis)	Year 1 [13]	Year 2	Year 3	Year 4	Year 5
Direct effect:					
a) Main rate	-90	-150	-155	-150	-150
b) Small profits rate (SPR)	0	-35	-50	-55	-60
c) Marginal SPR[14]	0	-10	-15	-15	-15
Total Direct Effects[15]	-90	-200	-220	-220	-225
per cent of NI block grant	0.9	1.9	2.1	2.1	2.2

Since 2013 HM Revenue & Customs has been producing more detailed estimates for the shares of UK taxes arising in England, Wales, Scotland & Northern Ireland. These figures show that Northern Ireland's share of CT revenues has declined over the last few years, and is now about 1.3% of UK onshore corporation tax receipts.[45]

The Treasury's 2011 paper also presented some estimates of how these costs would be increased by certain behavioural changes, as companies and individuals sought to exploit a lower NI rate – either by 'shifting' profits to NI subsidiaries, or choosing to incorporate:

> As well as the direct costs associated with a reduction in corporation tax, there will be a number of behavioural effects. These are more difficult to assess than the direct fiscal costs. The behavioural effects discussed below arise because of the

[43] Institute for Fiscal Studies Green Budget, February 2013 p283
[44] For example, Alan Trench, Funding devo more: Fiscal options for strengthening the union, Institute for Public Policy Research, January 2013 p31
[45] HMRC, National Statistics : A disaggregation of HMRC tax receipts between England, Wales, Scotland & Northern Ireland, October 2016 p25

difference in corporation tax rates between Northern Ireland and the rest of the world, between Northern Ireland and the rest of the UK and because of the difference between tax paid by employed and self employed individuals and companies. The first two effects are known as profit shifting and the latter as tax motivated incorporation.

Profit shifting arises where companies artificially manipulate transactions so that their taxable profits arise in low tax jurisdictions, while the activities generating those profits remain in a high tax jurisdiction. The assumptions that are used to estimate profit shifting from the rest of the world into Northern Ireland are based on OBR approved methodology.[46]

This effect results in additional corporation tax being paid in Northern Ireland and serves to reduce the direct cost of the rate reduction. A similar methodology, consistent with the Varney Review, is used to estimate the effect of profit shifting from the rest of the UK to Northern Ireland. This cost is additional to the direct cost of the reduction in the corporation tax rate, because the overall level of corporation tax paid within the UK is reduced.

A lower rate of corporation tax would apply to the Northern Ireland profits of all companies, including small and medium sized ones. This would increase the tax differential between incorporated and unincorporated businesses, which would lead to more unincorporated businesses, with activity in Northern Ireland, incorporating to reduce their tax bill. Tax motivated incorporation (TMI) assumptions are as agreed with the OBR at the June Budget 2010.

TMI would increase as the corporation tax rate falls and the differential between income tax and corporation tax rates increases. An increase in TMI results in higher corporation tax receipts although this will be more than offset by falls in income tax and NICs receipts and therefore result in a cost additional to the direct cost.

It is likely these effects would need to be factored in to the block grant adjustment.[47]

Table 4.D: 1.25 per cent assumptions - behavioural response

£ million	Year 1	Year 2	Year 3	Year 4	Year 5
Behavioural Response:					
a) Profit shifting from the rest of the world to NI	15	30	30	30	30
b) Profit shifting from GB to NI	-35	-60	-65	-60	-55
c) Tax Motivated Incorporation	-10	-25	-35	-45	-50
Total behavioural effect	-30	-55	-70	-75	-75

In February 2015, during the Committee stage of the Bill to devolve corporation tax to Northern Ireland, these estimates were quoted by Nigel Mills, raising concerns over the risk of profit shifting. In response Treasury Minister David Gauke, said: "Those early costings were based on a provisional view of the regime design, under a different UK main

[46] At Budget 2011 the Office for Budget Responsibility (OBR) approved an assumption of around 40 per cent for the portion of profits in the tax base that are mobile for the UK economy. An elasticity of 2 has been applied to these profits so that for every 1 percentage point decrease in the corporation tax rate the result is a 2 per cent increase in the size of the mobile profit base.

[47] *Rebalancing the Northern Ireland economy*, 24 March 2011 para 4.38-40

rate and using initial methodologies that have been refined. For example, the exclusion of financial activities was not included in the earlier costings. To some extent those numbers are no longer up to date."[48] At a later point in debate the Minister confirmed that the estimates of the scale of tax motivated incorporation had also been revised significantly downwards: "For 2019-20, the first year of the steady state, TMI is estimated to be only £5 million, presuming a 12.5% rate in Northern Ireland and a 20% rate for the rest of the UK."[49]

The Treasury paper also looked at the potential long-term impact of a cut in corporation tax: boosting profits, in turn boosting consumption, and thus increasing receipts from taxes based on consumption. The Treasury suggested that these 'dynamic effects' might "recover 15-21 per cent of the foregone corporation tax receipts." However, there was a great deal of uncertainty over these estimates, and, as the paper went on to note, relying on revenues from corporation tax had some risks:

> These costings represent the Government's estimate of the cost to Northern Ireland of the corporation tax cut. However, as with any estimate, there is a degree of uncertainty. Should the tax cut result in more investment than estimated here, then the extra corporation tax associated with this increase would be passed on to the NIE. Conversely, if the tax cut failed to attract as much investment, the NIE would need to make up the difference. Similarly, the risk associated with profit shifting from the rest of the UK would lie with the NIE.
>
> Since company profits tend to fluctuate over the economic cycle, corporation tax revenues also fluctuate by a significant margin. For instance UK corporation tax revenues fell from £38 billion in 2006-07 to only £31 billion in 2009-10. Such fluctuation would be expected to continue if responsibility for the tax was transferred to the Northern Ireland Assembly. The risks that accompany such fluctuations are heightened in a region such as Northern Ireland with its relatively small corporate base.
>
> Furthermore, by potentially increasing the proportion of receipts in Northern Ireland from large companies, a reduction in the corporation tax rate is likely to increase the volatility of Northern Ireland corporation tax receipts. Where a significant share of corporation tax receipts derive from a small number of companies, this would increase the fiscal impact on the NIE if these companies were to experience a significant downturn in profitability or, given the UK's relief rules, had significant losses to set against profits.[50]

[48] Public Bill Committee (*Corporation Tax (Northern Ireland) Bill*), Second sitting, 5 February 2015
[49] PBC, Third sitting, 5 February 2015 c78
[50] *Rebalancing the Northern Ireland economy*, March 2011 para 4.46-8

2. Northern Ireland Affairs Committee report, May 2011

In May 2011 the Northern Ireland Affairs Committee published a report on this issue, concluding that "on balance, we believe there is a convincing case for reducing the corporation tax rate in Northern Ireland, not least so it can better compete with the Republic of Ireland."[51] One striking aspect of the evidence the Committee received was that they were "commonly told in Northern Ireland that corporation tax was a 'game changer' in reviving the economy":

> During our meetings in Dublin we were told repeatedly of the impact that the low rate had had on attracting FDI, and we were commonly told in Northern Ireland that corporation tax was a 'game changer' in reviving the economy in the Republic of Ireland. In addition, the tenacity with which the Republic of Ireland has held onto 12.5% during its current economic difficulties, and in spite of pressure from EU member states during the recent bail-out negotiations, has been marked.
>
> The Government there clearly believes it had been instrumental in keeping the Republic of Ireland afloat during the present crisis. Victor Hewitt (Director, Northern Ireland Economic Research Institute and Member, Northern Ireland Economic Reform Group) said: "I think we should note that were it not for the FDI in the Republic at this moment in time, the country would be in very severe difficulties, because it is the FDI through its exports that is keeping the Irish economy afloat."
>
> Eamonn Donaghy (Head of Tax, KPMG Belfast; Member, Northern Ireland Economic Reform Group; and Chair, Tax Committee, Institute of Chartered Accountants) referred to the companies that had invested in the Republic of Ireland since the economic crisis started, and told us: "The fact that the Irish Government has not changed the corporation tax rate in the last 18 months I think is a very clear indicator of how they would regard this as an important tool to attract FDI. They have raised income tax, they have raised VAT, they have raised all the other taxes, but they have steadfastly retained corporation tax at 12.5%."[52]

The Committee acknowledged that, as a consequence of the Azores judgement, "Northern Ireland would not be compensated from HM Treasury for any tax loss":

> The Azores judgment, and the subsequent cases, indicate that the decision for Northern Ireland to have a rate of corporation tax, separate from the rest of the UK, could not be taken at Westminster. The power to vary the corporation tax rate would need to be devolved to the Northern Ireland Executive. Northern Ireland would bear the full financial responsibility for any reduction in tax revenue, and consequently Northern Ireland would not be compensated from HM Treasury for any tax loss.[53]

The Committee also noted a number of uncertainties about how the NIE's block grant might be cut:

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[51] Corporation Tax in Northern Ireland, 24 May 2011, HC 558 of 2010-12 p3

[52] *op.cit.* para 34

[53] *op.cit.* para 57

> Any method of calculating the reduction in the block grant must strike a balance between many factors, most notably simplicity and accuracy. It must also conform with EU law. The calculation of the reduction in revenue in future years would be complicated by factors such as UK growth and inflation assumptions, the extra business which Northern Ireland would attract, and be adjusted according to the variations in what we know to be a volatile source of income.
>
> Furthermore, this may be complicated by any decision of the UK Government to increase or reduce the block grant, or change the Barnett Formula altogether. Any transitional arrangement would make assessing the amount of money going to the Northern Ireland administration, and therefore its own public expenditure planning for the next three to five years difficult.[54]

On the scope of a devolved tax, the Committee noted the distinction drawn in the Republic between trading and non-trading income, with regard to its headline 12.5% rate – an approach that could reduce the risk of a lower rate being exploited for tax avoidance:

> While the Republic of Ireland has had a headline rate of 12.5% since 2003, it has had a rate of 25% on non-trading income. The Treasury's consultation paper suggests that around 25 per cent of corporation tax receipts are from non-trading income and excluding non-trading profits could potentially reduce tax take up to £85 million. It could also add significantly to compliance costs, both for business and for the tax collection authorities.
>
> If Northern Ireland were to have a low rate on non-trading profits there is a risk that it would encourage 'brass plating'—where businesses move their address to a low tax jurisdiction without moving any meaningful economic activity.
>
> Eamonn Donaghy (Head of Tax, KPMG Belfast) said: "I think we could distinguish between trading profits and non-trading profits and, to be very clear, this [campaign for a 12.5% rate] is aimed at trying to attract companies that are going to create employment and trading activity, as opposed to being some form of tax haven in which non-trading profits can be sheltered. It is very much a focus on trying to create economic activity and therefore jobs in Northern Ireland."[55]

In January 2012 the Government published its response to the Committee's report, confirming that it had not taken a final decision. It gave some details of the responses it had had to the consultation paper:

> The Government has received over 700 responses to its consultation. Responses showed strong support for the rebalancing agenda. Around three quarters of responses were in favour of corporation tax devolution, of which around two thirds were from Northern Ireland businesses or business owners. Additionally, the main Northern Ireland political parties have expressed their support for corporation tax devolution. However, support has not been universal and a number of respondents pointed to the complex issues inherent in devolving these powers, many of which were identified in the consultation document as requiring extra work and consideration.[56]

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54 *op.cit.* para 71
55 *op.cit.* para 83
56 First special report, 30 January 2012 HC 1767 of 2010-12 p3

A more detailed summary of these responses noted the strength of the response from businesses in Northern Ireland:

> The consultation received a large number of responses from Northern Ireland businesses and business representative groups. With very few exceptions these were in favour of reducing corporation tax within Northern Ireland. Businesses argued strongly for the growth benefits of a tax cut in Northern Ireland, many saying that lower rates of tax would improve the viability of their business or allow them to undertake additional activity. Businesses from a variety of sectors and of a variety of sizes felt a reduction in corporation tax rates could allow them to increase investment in their businesses or take on more employees.[57]

As proponents of devolution had often suggested lower tax rates would boost foreign direct investment (FDI), the paper had asked for views on the extent to which headline corporation tax rates impact FDI decisions, and the Irish experience:

> [At a consultation meeting held in London], it was generally agreed that headline corporation tax rates have a useful signalling impact and could attract more international attention to Northern Ireland as a potential location for investment. Attendees argued that final investment decisions will depend on effective tax rates, as well as the wide range of factors that influence investment decisions including labour costs, proximity to markets, infrastructure, energy costs and political stability. Attendees additionally stressed that the level of administrative burden for businesses would be dependent on the complexity of the tax system put in place, especially the level of anti-avoidance rules, to ensure access to any lower Northern Ireland rate was limited to genuine economic activity.
>
> Responses were divided on the importance of the corporation tax headline rate in explaining the high levels and quality of FDI in the Republic of Ireland. Some respondents believed this has been a fundamental determinant of Republic's attractiveness to foreign investors and its subsequent economic growth. Others noted that the Republic's more generous business tax regime, particularly the treatment of foreign profits and intellectual property, creates in some circumstances a significantly lower effective rate than the headline rate alone implies.
>
> A number of respondents also pointed to the wide variety of explanations for the Republic's growth, including EU investment in Irish infrastructure, strong supply side skills policies, an effective inward investment strategy, the availability of non-tax related grants and incentives, Euro membership, as well as a different global economic and FDI environment during the period of strong Irish growth.[58]

As noted the consultation paper had given some financial estimates of the impact that cutting corporate tax rates could have on investment. In response there was a variety of views as to whether these were creditable, while some had argued that devolution represented something of a gamble:

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57 Rebalancing the Northern Ireland economy: a summary of consultation responses, December 2011 para 2.8

58 *op.cit.* para 2.17-9

> The consultation document estimated that reducing corporation tax rates to 12.5% in Northern Ireland would lead to an increase in domestic investment of around £110m by year 10 and an increase in gross FDI of around £310m by year 10.
>
> Alternative estimates of the impact were given by the Economic Advisory Group (EAG), for example they estimated that the Northern Ireland economy would be 13.8% larger by 2030 following a reduction in the corporation tax rate.[59] These estimates were quoted by some respondents in favour of corporation tax devolution; others had concerns about the assumptions and methodology underpinning them. The EAG estimates are not directly comparable to the numbers published in the consultation document as they published estimations of different measures of the impact.
>
> Respondents who compared estimates felt they were unable to draw firm conclusions due to the lack of clarity on expected benefits, for example noting that "there are considerably different opinions as to the potential impact on economic growth and employment of reducing the rate of corporation tax in Northern Ireland. These different opinions on the potential benefits of a reduced rate have to also be weighed against the different estimations of the potential costs to the Northern Ireland Executive." A number of responses expressed concerns about the uncertainty of the benefits, viewing corporation tax devolution as a 'gamble'.[60]

Finally the paper had asked for views on the administrative burden that a Northern Ireland rate would represent. Among those responses which addressed this question, "there was widespread recognition that rules would be required to ensure a Northern Ireland corporation tax rate was available only to genuine economic activity in Northern Ireland.":

> However, there was a split of views expressed as to whether this could be achieved with existing rules or whether new rules were necessary and also the extent of the burden these rules would impose.
>
> Some respondents felt that extra admin burdens would be minimal since rules, including those for transfer pricing, already exist for situations where business activity goes outside of the UK and that many companies already have systems in place to manage this. In particular some argued that the business admin burden figures shown were overstated and that a separate regime could be managed with minimal additions to current rules.
>
> However others felt not only that current rules would be insufficient and that additional rules would be required, but also that the cost to business of administering these rules would be significant. For example, some highlighted concerns around identifying when a Northern Ireland presence existed and how profits might be allocated, others suggested that new rules tackling anti-avoidance and tax motivated incorporation would be required. It was argued that the additional administrative burden may affect the international competitiveness of the UK and potentially even UK growth …

[59] Economic Advisory Group, The Impact of reducing corporation tax on the Northern Ireland economy, May 2011. The group is a panel of academic experts, established by the NIE in 2010 to give independent advice on the NI economy.

[60] Rebalancing the Northern Ireland economy …, December 2011 para 2.21-3

> [That said] a large number of businesses that responded to the consultation operate solely in Northern Ireland and so would be largely unaffected by new tax rules setting out how to separate Northern Ireland activity from activity elsewhere in the UK or world.[61]

In their report the Northern Ireland Affairs Select Committee had noted the complexities to adjusting the NIE's block grant, should corporation tax be devolved, and on this point the Government acknowledged there was more work to do:

> The Government has established a joint ministerial working group, comprising ministers of the UK Government and the Northern Ireland Executive, to consider issues raised by the consultation … [The process for calculating reductions to the block grant] will form part of the consideration being taken forward in the agreed workplan. It is essential that the process of determining any reduction in the block grant is transparent, equitable to both the UK Government and Northern Ireland Executive and based on the best data available … Further work is needed on the administration of a devolved system of corporation tax in Northern Ireland and on the behavioural effects which might arise because of any difference in corporation tax rates between Northern Ireland and the rest of the UK including profit shifting and tax motivated incorporation.[62]

The joint ministerial working group – mentioned in this response – completed its work in December 2012.[63] Ministerial discussions continued over the next few months. In April 2013 the Committee Chair, Laurence Robertson, bemoaned the delay in the Government taking a final decision,[64] though in answer to a PQ at this time Treasury Minister David Gauke, observed, "the issues involved are complex and a decision cannot be rushed." The Minister went on to confirm that a decision would be made "in the autumn of 2014."[65]

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61 Rebalancing the Northern Ireland economy …, December 2011paras 2.40-3
62 First special report, 30 January 2012 HC 1767 of 2010-12 p2, p5. The report and the Government's response were debated in Westminster Hall in March that year: HC Deb 1 March 2012 cc151-98WH
63 HC Deb 10 December 2012 c165W
64 Northern Ireland Affairs Committee press notice, 2 April 2013
65 HC Deb 17 April 2014 c405W. see also HMG/NIE, Building a Prosperous and United Community, June 2013

3. Further discussion of the case for devolving corporation tax

Following the Select Committee's report several commentators raised concerns over the potential risks to devolving this tax power.[66] In a press notice the Chartered Institute of Taxation argued that this "there is no guarantee that the books would balance in the Executive's favour."[67] An editorial in the *Financial Times* suggested that devolution might be "understandable" for Northern Ireland, but for the UK "it raises more problems than it solves":

> If Northern Ireland and Scotland, why not Wales or even England? In reaching a decision on Ulster, the UK government must think more broadly.
>
> On an international level, tax competition is desirable. It discourages states from adopting punitively high rates damaging to economic growth. In theory there is nothing wrong with competition at a sub-national level. But for this to work, regional authorities must face the fiscal consequences of their decisions. Since UK corporate tax receipts go straight to the exchequer, this is not the case.
>
> True, there is a mechanism available in the case of Northern Ireland and Scotland, involving offsetting adjustments to the block grant they get from Westminster were corporation tax to be cut. But this is a crude tool and one that would not apply to England.[68]

Alan Trench, Professor of Politics at University of Ulster and a major commentator on devolution matters who had given evidence to the Committee, noted the inherent uncertainties to devolution:

> No proposition can be 'convincing' when you have no idea how it will work, how much it will cost, or what its benefits might be. The reality is that to comply with EU law, a substantial and irrevocable cut in the block grant will have to be made, based on present tax receipts.
>
> If – as is generally assumed – Northern Ireland were then to cut the rate of corporation tax, that would affect its revenues, and require immediate reductions in spending. In the longer term, there might well be a gain, both in overall economic activity and total tax receipts (maybe even corporation tax; even in its present recession, this has been the main source of revenue for the Republic). While those gains may be expected, they can't be predicted, and might turn out to be smaller than the assumptions of [those making the case for devolving this tax].[69]

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[66] see, "Call to let Belfast set business tax rate" *Financial Times*, 25 May 2011, and, "Corporate levy as tool for rebalancing the economy" & "N Ireland wrangles over rates reform", *Financial Times*, 22 August 2011

[67] CIOT press release, *NI corporation tax devolution 'not a one-way bet'*, 24 May 2011

[68] "Editorial: Devolution too far", *Financial Times*, 24 August 2011. For an exchange of views on this see, "Letters: Tax 'competition' benefits no one"" & "Letters: Self-help plan for Northern Ireland", *Financial Times*, 29 August & 13 September 2011

[69] "Devolving corporation tax in Northern Ireland: the Commons Northern Ireland Affairs Committee reports", Devolution Matters blog, 25 May 2011

The Committee's report was welcomed by Alex Salmond, then Scotland's First Minister, as buttressing the SNP's case for devolving this power to the Scottish Parliament.[70] In his blog post Professor Trench went on to argue that one could not consider this question without considering the implications for the rest of the UK:

> If corporation tax were to be devolved to Northern Ireland, there can be no good argument of principle for not devolving it to Scotland as well … If the UK Government were to decline to do so, it would be a reflection of sheer cussedness rather than a desire to maintain the integrity of the UK economy (for example). Such a decision would have profound implications for the regionalisation of the UK economy, and for such long-established principles as relating public spending to need. These are big decisions with wide implications.[71]

It is also worth underlining that the focus of the SNP's case for devolving corporation tax to Scotland has been on facilitating tax competition, primarily *with other parts of the UK*. In March 2011 the Scottish Parliament's Committee published its report on what became the *Scotland Act 2012*. The Committee approved of the UK Government's decision not to include the devolution of corporation tax in the Bill. However the SNP members of the Committee submitted a minority report, arguing that "without this power … Scotland is missing out on the opportunity to give itself with a competitive edge over the rest of the UK."[72] Similarly in the Scottish Government's White Paper, *Scotland's Future: your guide to an independent Scotland*, published in November 2013, the Scottish Government said, "corporation tax rates remain an important tool for securing competitive advantage and for offsetting competitive advantages enjoyed by other parts of the UK, notably London."[73]

The Calman Commission, which had reviewed Scotland's devolution settlement in 2010, and whose recommendations underpinned the *Scotland Act 2012*, had opposed devolving this power for just this reason.[74] In their report on the *Scotland Bill*, published at this time, the Scottish Affairs Committee agreed with the Commission and those witnesses who had emphasised the risk that devolution would result in the 'cannibalisation' of the UK tax base, while observing that, "this is not necessarily a concern for those who wish to consider the financial position of Scotland in isolation."[75] Professor Jim Gallagher, who had been Secretary to the Commission, addressed this point when he appeared before the Committee:

> People often cite the Republic of Ireland for its very low corporation tax rate as being an advantageous thing, and for them it certainly has been pretty advantageous, despite their

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70 Scottish Government press notice, Corporation tax, 24 May 2011
71 Devolution Matters blog, 25 May 2011
72 1st Report (Session 3), 3 March 2011 (see Annexe A to the report)
73 Scotland's Future: your guide to an independent Scotland, November 2013 p120
74 Serving Scotland Better: Scotland and the United Kingdom in the 21st Century, June 2009 para 3.110-3. For details of the changes made by the Act see, The Scotland Act 2012: devolution of tax powers to the Scottish Parliament, Commons Briefing paper CBP5984, 23 January 2015.
75 Fourth report, 21 March 2011 HC 775 2010-11 para 106

> present circumstances. What they fail to mention is that they have quite a big corporation tax income because many multinationals book their profits in Ireland. The devolution of corporation tax within the UK would be a way of ensuring that we cannibalised our own tax revenue.
>
> If it is devolved to Scotland and Scotland takes, for the sake of argument, 10p off the corporation tax, there is a strong incentive for companies not to change their actual economic behaviour but to change their corporate structures so that they book their profits in Edinburgh and pay less tax. The net effect of that is that the UK as a whole gets less tax and we have simply cannibalised our own tax income.[76]

Professor Trench also addressed the threat of 'brass plating', in a long, detailed report he wrote in 2013 on options for funding devolved government in the UK:

> It would be practicably possible to devolve corporation tax within a UK-wide framework, with different rates levied in particular parts of the UK. The difficult issue is to determine how much profit is generated in or attributable to the various parts of the UK. This cannot be done simply on the basis of where a company happens to have its registered office, as that only rewards 'brass-plating' (the practice of moving a company's registered office without moving real economic activity, or encouraging growth in a business).
>
> Even if one finds a way of more closely tying registration of a company to a particular part of the UK, larger companies are likely to seek to use transfer pricing of company or group services and supplies to minimise profit in those parts levying a higher tax, and increase profit in those levying lower tax, to reduce the overall amount of tax they pay. That would again depress overall tax revenues without spurring real economic growth.
>
> The best way to devolve corporation tax would be to apportion the profits generated by a company, in accordance with the proportion of the company's payroll arising from that part of the UK.[77] Different rates could then be levied on – and paid to – the respective governments, in accordance with those shares of profit. This approach would (of course) complicate tax calculations both by HMRC and companies or their tax advisers. However, it would enable many of the advantages of a single corporation tax to be retained, including a single definition of taxable profit, and a single return to be submitted to HMRC, while enabling different governments to set different rates of tax. However, there would be significant administrative downsides, as taxpayers would need to identify the proportion of their payroll employed in each part of the UK where corporation tax was devolved.
>
> Submitting corporation tax returns is already very burdensome for many smaller companies, and there would be serious obstacles to setting different exemptions or reliefs (for undertakings in various sectors or for specific activities, for example) which would be part of a 'full' devolution of the tax. This could be avoided by allowing companies to opt out into the 'devolved' regime, with the default being the UK rate of tax; businesses could choose to limit compliance costs, at the expense of foregoing the tax advantage

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[76] HC 775-II 2010-11 Q23 Ev7-8. See also, "Editorial: Devolution too far", *Financial Times*, 24 August 2011

[77] This approach was recommended by the Holtham Commission: para 7.9.

> of the lower rate. That would, however, also limit the benefit of corporation tax devolution for smaller companies.[78]

As Professor Trench noted in this extract, the risk of 'brass plating' was also discussed by the Independent Commission on Funding and Finance for Wales – the Holtham Commission – in their 2010 report:

> 7.8 Our starting point is that the need for economic development is not identical with the need for expenditure on public services. The latter need is best measured by the kind of factors we discussed in Chapter 3 but a development need is indicated better by relative levels of Gross Value Added (GVA) per head. One theoretical approach could be to make changes to the rate of corporation tax that were proportional to the difference between GVA per head in a given region and the UK average.
>
> For example, one could ignore the first ten percentage points of deviation in GVA per head and say regions with a GVA per head between 80 and 90 per cent of the UK average could discount corporation tax by up to 15 per cent of the tax rate in force across the rest of the UK. Regions with a GVA per head of between 70 and 80 per cent of the UK average could discount by 25 per cent, those between 60 and 70 per cent by 35 per cent. The discount could be multiplied by a factor so the above discounts would become 30, 50 and 70 per cent respectively if the factor were 2; the key would be proportionality with the GVA shortfall in the region concerned.
>
> 7.9 Companies wishing to claim the discount would have to demonstrate economic activity in the region concerned. This should not be a "brass plate" exercise; the location of head office would not be relevant. Corporation tax liability would depend on the location of economic activity. Evidently that could be defined in various ways but many countries, including the USA, have well-tried formulae for allocating corporation tax bases across regions.[79] The simplest approach would be to allocate liability by proportion of payroll with the stipulation that payroll administration has to follow the physical location of the employees. Once activity is assigned to different regions it becomes possible for the tax rate to vary by region. It would be for the company to establish the location of its activities.[80]

A report for the Northern Ireland Assembly by its Research and Information Service published in 2011 noted that the debate over devolving corporation tax had tended to be quite narrow – focusing on the anticipated economic benefits, "with any discussion of the ethics of pursuing mobile international capital" being "quite muted."[81] The tax campaigner Richard Murphy, for one, has argued that the Irish approach to cutting corporate taxes had been morally wrong *and* economically damaging.[82] Certainly it was striking that during negotiations in 2011 between Eurozone members over the scale of the

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[78] Funding devo more: Fiscal options for strengthening the union, Institute for Public Policy Research, January 2013 pp30-31
[79] See Donald, E.L. and Douglas, J.A. (1996) "Massachusetts single-sales factor apportionment", *The Tax Adviser*, Vol.27, Issue 9, p575 for a summary
[80] Holtham Commission, Fairness and accountability: a new funding settlement for Wales, 2010 pp76-7
[81] Devolution of Corporation Tax Paper 57/11, June 2011 p4
[82] "Tories are foolish to line up Northern Ireland as a tax haven", Guardian, Tuesday 18 May 2010. Mr Murphy made the case at greater length in a report he produced for the TUC: Pot of gold, or fools gold?, October 2010

Republic's bailout, there were reports that other countries took the opportunity to raise long-standing complaints over its approach to encouraging tax competition.[83]

During the Scottish referendum campaign in 2014, the main party leaders campaigning for a 'No' vote made a commitment that the Scottish Parliament should have "extensive new powers", if it remained within the Union. Following the vote, Lord Smith was appointed to lead a commission to reach cross-party agreement on what these should be. The Commission published its report on 27 November: while the parties had agreed that the Scottish Parliament should have to power to set the rates and thresholds of income tax, they also agreed that "all aspects of corporation tax will remain reserved."[84] In turn the Commission's proposals for further devolution of financial powers were implemented by the *Scotland Act 2016* – though it is important to underline that it made no changes to the status of corporation tax.[85]

During the 2014-15 Session the Treasury Committee conducted a short inquiry into the proposals for further fiscal and economic devolution in Scotland. The possible impact of devolving corporation tax to Northern Ireland was raised in two evidence sessions in late 2014, prior to the publication of the Smith Commission's report. When Paul Johnson & David Phillips (Director & Senior Research Economist at the Institute for Fiscal Studies) gave evidence, Alok Sharma asked whether devolution to Northern Ireland would make it "impossible to refuse" for Scotland?"

> **David Phillips:** Ultimately that is a political question … Northern Ireland says it has special circumstances with the border with the Republic of Ireland and the need to compete with the lower tax rate there. I know that the Scottish Government says that it wants corporation tax anyway and I am sure that if Northern Ireland gets it, it will definitely want it.[86]

Mr Johnson noted that devolution of corporation tax "would clearly add a layer of complexity" and that there were "ways it might happen that would make it very unattractive for the Northern Irish to make use of it." Mr Sharma asked Mr Johnson to elaborate:

> **Paul Johnson:** There are ways you could do it that would make it unattractive, depending on how much additional revenue they could keep.
>
> **David Phillips:** For instance, when Northern Ireland cuts its rate, you would need to reduce the amount of money that Northern Ireland gets. There are ways you can do that. One is it just bears the cost in Northern Ireland of the reduction of the tax rate. I am aware the Treasury has also been considering whether Northern Ireland should also bear the profit shifting that is taking place from the rest of the UK, so it bears some of the cost on the rest of the United Kingdom.[87]

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83 "Ireland defends low corporate tax", *Financial Times*, 15 April 2011
84 The Smith Commission, 27 November 2014 p23
85 For more details see, *Devolution of financial powers to the Scottish Parliament: recent developments*, Commons Briefing paper CBP7077, 1 March 2016.
86 Treasury Committee, Oral evidence: Proposals for further Fiscal and Economic Devolution to Scotland, HC 760, 28 October 2014 pp22-23
87 *op.cit.* p23

Mr Sharma went on to ask about the likely size of the behavioural response, and how long it might take in practice to devolve the tax:

> **Q80 Alok Sharma:** Let us say that either Northern Ireland or Scotland get the opportunity to basically set their own corporation tax rate and they make them materially lower than that in the rest of the UK … Have you done any analysis on what the impact of this could be?
>
> **Paul Johnson:** Putting a number on that is almost impossible because we simply do not have the experience on which to base it. We do not know that that clearly is a result of the southern Irish tax system. Some multinationals, some corporates, have headquartered there. How that would relate to what would happen in Northern Ireland or Scotland, for example, it is just not possible to say, but it is clear that that could happen.
>
> **Q81 Alok Sharma:** If there was to be a change in terms of devolving corporation tax, how long do you think that process would take in terms of the transfer and setting up the systems and all the rest of it? Is this feasible within a few years? …
>
> **David Phillips:** The process for devolving taxes under the Scotland Act and the Wales Bill envisaged several years. I would imagine that the challenges for corporation tax would be at least as hard as for income tax, and I would say that they would want to give real consideration to the way to do it. Rather than going for the default option of transfer pricing, spend the time to think about how we can do this in a way that still gives incentives for the devolved countries to improve their economy but does not give huge opportunities for tax competition and avoidance across countries. I think it would take some time and it should take some time so it is done right.[88]

The Committee also took evidence from Dr Angus Armstrong (Director of Macroeconomic Research, National Institute of Economic and Social Research), and Professor Alan Trench. Stewart Hosie asked Professor Trench if corporation tax were devolved to Northern Ireland, "the arguments presumably against devolving it to Scotland would disappear like snow off a dyke?":

> **Professor Trench:** I would not say they would disappear but they would be a great deal weaker. Certainly if it were devolved outright to Northern Ireland that might in fact not be the case even if there was some form of devolution. I think one important thing and one difficulty with corporation tax devolution is that to do it in a way that does not create an incentive to brass plating and to shifting corporate transactions, you have to do the sort of approach that is used in Canada and the United States. You provide for different rates of corporation tax to be levied on the profits of companies in different parts of the state according to the proportion of their activity that is there, based usually on payroll. Of course, that then affects the scale of what can be done with it and just how useful a lever it might be.[89]

David Ruffley asked Dr Armstrong "isn't there a strong argument that if Northern Ireland gets devolution of corporation tax Scotland will want it

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88 *op.cit.* p24

89 Treasury Committee, Oral evidence: Proposals For Further Fiscal and Economic Devolution to Scotland, HC 760, 4 November 2014 p17

too and why is Northern Ireland wanting it if there is this problem of [corporate tax revenues being especially volatile]?":

> **Dr Armstrong:** There is a problem of volatility but there is a problem of whether by being a lower tax region you can attract more resources into your area and, of course, because just over the border in Southern Ireland they have exactly the sort of border effect. So I can understand why Northern Ireland want it but you are quite right it has all the implications for the rest of the UK, and not surprisingly I would imagine that Scotland would be looking at this very carefully.
>
> In the context of Scotland I do wonder whether there are not other ways of encouraging better corporate behaviour, such as the employers' side of National Insurance, which is basically a payroll tax that actually has a higher yield, is more stable, and might be a better way of thinking about this. But I accept that if Northern Ireland gets it, the negative consequences of Scotland make it more powerful. I am not sure whether that alone means that Scotland therefore should be allowed it because making the system even more complex and having more differential rates would make it worse—
>
> **Mr Ruffley:** And potentially greater inefficiencies.
>
> **Dr Armstrong:** Correct. So I think that this will be unwise. First of all, whether Northern Ireland does it and whether Scotland were to follow suit then I think that would become problematic to an even greater extent.[90]

Mr Ruffely went on to ask "in principle, would there not be a tax competition that the United Kingdom would be letting itself in for if it made corporation tax a devolved tax?":

> **Dr Armstrong:** The short answer to that is, yes, and the tax competition is the inefficiency. That is where businesses allocate their plants in accordance with the lowest tax regime rather than where it is economically most efficient. Of course, if you did devolve the corporation tax then you would also be reducing the block grant. It depends in part on how you would reduce the block grant, so there is a way of at least attempting to mitigate some of this but this becomes awfully messy and you add one efficiency on top of another.[91]

Over this period many commentators raised wider concerns as to the actions of multinationals seeking to exploit the interaction of competing tax jurisdictions, with allegations that companies may face a "largely voluntary" decision as to whether they pay tax in a given country.[92] The issue is not clear cut.[93] Interested readers are referred to the Institute for Fiscal Studies' 2013 *Green Budget* which, in a detailed discussion of this issue, made the key point that, "we don't know how much corporate tax is lost to the UK as a result of tax avoidance":

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90 *op.cit.* pp18-19

91 *op.cit.* p19

92 House of Lords Economic Affairs Committee, Tackling corporate tax avoidance in a global economy: is a new approach needed?, 31 July 2013, HL Paper 48 of 2013-14 para 5. The Public Accounts Committee has done quite a lot of work on this issue (for example, HM Revenue and Customs: Annual Report and Accounts, 3 December 2012, HC 716 2011-12).

93 For example, "Politicians should stop posturing on corporate tax", *Financial Times*, 31 January 2013

This is partly because there is no accepted definition of exactly what constitutes 'avoidance' and partly because we lack full information about the activities of firms.

Importantly, even if we knew that information and could calculate the tax lost to avoidance, it would not be right to assume that, were all avoidance opportunities to be completely removed, the UK would be able to collect that full amount.

We would expect higher taxes to feed through, at least to some degree, to lower investment and changes in prices such that genuine UK profits may be lower. To the extent that the corporate tax affects prices or wages, or the location of firms' activities (and therefore jobs), there may also be lower receipts from income taxes or VAT. [94]

[94] "Chapter 10: Corporate tax revenues & avoidance", *The IFS Green Budget*, February 2013 p287. For more recent comment see, Miller & Pope, *What does the row over Google's tax bill tell us about the corporate tax system?*, IFS, 29 January 2016

4. Autumn Statement & the Stormont Agreement, December 2014

On 3 December 2014 the Chancellor presented the Autumn Statement to the House, in which he announced that the Government recognised "the strongly held arguments for devolving corporation tax-setting powers to Northern Ireland":

> The Treasury believes it can be implemented provided that the Northern Ireland Executive can show that they are able to manage the financial implications. The current talks will see whether that is the case. If it is, the Government will introduce legislation in this Parliament.[95]

Further details were given in the *Autumn Statement*:

> 1.103 The government recognises the strongly held arguments for devolving Corporation Tax rate-setting powers to Northern Ireland, including its land border with the very low corporation tax environment in the Republic of Ireland, and the shared goal of the UK government and the Northern Ireland Executive of rebalancing the Northern Ireland economy and securing the peaceful economic progress made in Northern Ireland since the Good Friday Agreement. In practical terms, further work by HMRC and HM Treasury has concluded that this proposal could be implemented provided that the Northern Ireland Executive is able to manage the financial implications.
>
> 1.104 The Prime Minister has made clear that the government is well-disposed to this change, if the right conditions are met, in view of the cross-party support in Northern Ireland.
>
> 1.105 The parties in the Northern Ireland Executive are currently taking part in talks aimed at resolving a number of issues. These include agreeing budgets for 2015-16 and putting the Northern Ireland Executive's finances on a sustainable footing for the future. As any future decision to reduce the Corporation Tax rate in Northern Ireland will mean a reduction in the Northern Ireland Executive's budget, the government will introduce legislation in this Parliament subject to satisfactory progress on these issues in the cross-party talks.[96]

Mark Devenport, the BBC's political editor in Northern Ireland, suggested that, "with time so tight, introducing a bill does not necessarily mean it will pass into law":

> By linking any move on corporation tax to achieving progress in the inter-party talks, George Osborne has given his cabinet colleague Theresa Villiers something Richard Haass never had when he was talks chair. In a word, that's leverage. Instead of appealing to the politicians' consciences, Ms Villiers has a rather large carrot to dangle in front of their noses. Or if they fail to do a deal, the carrot may magically transform into a stick as some parties blame others for passing up on the potential chance of creating 50,000 jobs ...

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95 HC Deb 3 December 2014 c314
96 *Autumn Statement*, Cm 8961, December 2014 p33

> On the face of it, the chancellor's words appear to fall short of the pact agreed by the Northern Ireland Executive and the Westminster government in June 2013 that committed to a "final decision" on corporation tax in the 2014 Autumn Statement and, in the event of a positive decision, a standalone bill "with the aim of it becoming law before the prorogation of Parliament prior to the 2015 General Election".
>
> George Osborne's conditional approach does not seem "unreasonable" so far as First Minister and DUP leader Peter Robinson is concerned. His statement has also been welcomed by the Ulster Unionists and Alliance. But the SDLP has objected to being "strong-armed" by the Treasury and Sinn Féin has accused Mr Osborne of demonstrating "breathtaking arrogance". Sinn Féin says it won't implement Tory welfare policies just to get the power over corporation tax. If nationalists stick to that line it looks like there won't be a comprehensive deal in the Stormont talks, and the politicians won't get to take a bite out of the chancellor's carrot.[97]

As it transpired, political leaders concluded an agreement on 23 December, after extensive negotiations at Stormont House, the headquarters of the Northern Ireland Office in Belfast.[98] The Agreement confirmed that "legislation will be introduced as soon as Parliament returns to enable the devolution of corporation tax in April 2017."[99] A financial annex to the Agreement gave more details:

> In view of the progress made in the talks, including agreement on measures to secure the long term sustainability of the finances of the Executive, legislation will be introduced as soon as Parliament returns to enable the devolution of corporation tax in April 2017.
>
> This legislation will devolve the power for the Assembly to set a rate of corporation tax for trading profits with the responsibility for allowances and credits remaining at Westminster. The block grant will be adjusted to reflect the corporation tax revenues foregone by the UK Government due to both direct and behavioural effects but it will not take into account second round effects on other taxes.
>
> Progress of the legislation through Parliament this session will proceed in parallel with implementation of key measures to deliver sustainable finances, including:
>
> - agreement in January 2015 on a final balanced budget for 2015-16 with a clear commitment to put the Executive's finances on a permanently sustainable footing for the future; and
> - progress on welfare reform in January with the Welfare Bill passing through Consideration Stage in the Assembly before the end of February.
>
> The legislation to devolve corporation tax will also include a commencement clause. The powers will only be commenced from April 2017, subject to the Executive demonstrating that its finances are on a sustainable footing for the long term including

97 "Corporation tax: carrot or stick?", BBC News online, 3 December 2014
98 "Northern Ireland's parties reach broad deal but obstacles remain", *Financial Times*, 23 December 2014. See also, "Stormont House agreement addresses several key issues", BBC News online, & "Northern Ireland parties agree £2bn deal to secure power-sharing", Guardian, 23 December 2014.
99 Northern Ireland Office, Stormont House Agreement, December 2014 para 8

> successfully implementing measures in this agreement and subsequent reform measures.
>
> An implementation plan for the delivery of the commitments made must also be agreed with the Government and this will include the efficiency measures needed to put Executive finances on a sustainable basis for the future.[100]

On 7 January 2015 the then Secretary of State for Northern Ireland, Theresa Villiers, gave a statement on the Agreement. Ms Villiers explained that legislation would be presented to the House shortly, while its Parliamentary progress would proceed in parallel with the implementation of key measures to deliver sustainable Executive finances:

> The agreement sets a path for the Executive to put their finances on a sustainable footing for the future, averting the impending budget crisis that was threatening the stability and credibility of the institutions. That includes the implementation of welfare reform, with certain agreed adaptations to be paid for out of the Northern Ireland block grant, alongside efficiency measures and reforms to the public sector …
>
> The agreement paves the way for legislation to devolve the power to set the rate of corporation tax for Northern Ireland. A Bill will be presented to the House shortly for First Reading. If the Stormont parties press ahead on agreeing their final budget and on delivering welfare reform legislation, the Government will use all their best endeavours to get the corporation tax legislation on to the statute book before Dissolution.[101]

Speaking for the Opposition Ivan Lewis raised concerns that there should be a "proper consultation process" for this measure:

> Turning to the agreement itself, we welcome the adoption of a viable budget for the next financial year. It is right that it includes some elements of welfare reform while excluding the pernicious bedroom tax, which an incoming Labour Government will scrap. However, we remain concerned by the Government's rush to introduce legislation on corporation tax devolution, a decision that will have profound implications for Northern Ireland and the rest of the United Kingdom. We believe that there should be a proper consultation process, including an analysis of the financial impact of significant reductions in corporation tax on Northern Ireland's block grant, before legislation is introduced in this House.[102]

Both Mr Lewis and Peter Hain asked the Secretary of State about the implications of a lower rate of corporation tax for the block grant. The Secretary of State replied:

> I welcome the hon. Gentleman's [Mr Lewis] comments about progress on budget matters … I was disappointed to hear his comments on corporation tax devolution, because I think that change could have a significantly transformative effect on Northern Ireland's economy. Northern Ireland is in a unique position in the United Kingdom, because it shares a land border with a jurisdiction that has a much lower rate of corporation tax. I urge the hon. Gentleman to urge the shadow Chancellor to allow

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[100] Northern Ireland Office, The Stormont House Agreement - Financial Annex, December 2014 pp4-5
[101] HC Deb 7 January 2015 cc296-7
[102] *op.cit.* c298

> Labour to support that change, which I believe is good for Northern Ireland.
>
> The hon. Gentleman asked about the implications for the block grant. The Azores criteria mean that any future reduction in corporation tax in Northern Ireland needs to be funded from the block grant. Various estimates have been made of what that might look like, but at this stage it is impossible to be certain, not least because no final decision has been made on what the rate would be reduced to …
>
> The right hon. Gentleman [Mr Hain] … says that corporation tax devolution is not a silver bullet. I agree that on its own it will not transform the Northern Ireland economy, but combined with other economic reform, a focus on skills and competitiveness, and economic reform across the board, it can have a significant and transformative effect. That is why I am disappointed that Labour is not supporting it.[103]

Several other Members made observations or asked questions about this aspect of the Agreement. Owen Paterson argued that "the decision to introduce a Bill on corporation tax is tremendous and a tribute to all parties."[104] David Anderson argued that devolving the tax should not "disadvantage other parts of the UK." Ms Villiers replied, "it is key to recognise that Northern Ireland is different and that there are specific reasons to justify its devolution in Northern Ireland that do not apply to the rest of the UK."[105] Sammy Wilson asked if the Secretary of State could not "give total clarity that the legislation will go through before the end of the Session." Ms Villiers responded:

> The reality is that introducing legislation at this stage of a Parliament runs the risk of running out of time for it, in which case we become dependent on the Opposition for getting it through. We will try to speed it through as best we can, assuming that the Northern Ireland Executive do their bit. We had hoped to introduce the legislation in December, in which case we would have been pretty confident of getting it through on time without the support of the Opposition. Given the delay of a few weeks, it is more uncertain. That is why I put the question I did to the shadow Secretary of State, but we will certainly try our very best to get this legislation on the statute book.[106]

The *Financial Times* reported that both business commentators and political leaders in Northern Ireland strongly welcomed the announcement:

> Linda Brown, the Northern Ireland head of the Institute of Directors, said the business community was keen to see the new powers become law before the election. "We see it as an opportunity for the Northern Ireland economy to grow and create wealth rather than always seeking handouts . . . It is an opportunity for us to take control of our destiny." The transfer of control has cross-party support in Northern Ireland, where businesses and politicians believe it would help boost growth and reduce the province's dependence on the public sector. Profits are taxed there at 21 per cent, compared with 12.5 per cent in the Republic … Eamonn Donaghy, head of tax for KPMG in Belfast,

[103] *op.cit.* c299, cc300-1
[104] *op.cit.* c301
[105] *op.cit.* cc306-7
[106] *op.cit.* cc310-11

> said that in economic terms the move would be "as significant to Northern Ireland as the Good Friday agreement was to the political side of things".[107]

When the Chancellor first announced the Government's decision, the Chartered Institute of Taxation noted that a majority of its local members took the view that this would be the "simplest and quickest way of making [the] region more competitive", but that it was important to recognise devolution was "not a one-way bet":

> Malachy McLernon, Chair of the CIOT's Northern Ireland Branch, said: "The power to set corporation tax rates would be an exciting opportunity for Northern Ireland. … However it would not be a one-way bet. Cutting corporation tax will leave a shortfall in our region's finances. Of course, the plan is that this will be made up by increased inward investment. But there is a risk here, and people should be aware of it. Additionally, firms that operate across the UK would face an additional administrative burden, requiring them to spend time calculating the profits earned in Northern Ireland separate from those earned elsewhere in the UK. There would also be enforcement issues for HMRC, who would need to make sure businesses are not wrongly assigning profits to NI rather than the rest of the UK to save money.
>
> "Of course economic competitiveness is not just about tax levels. When the CIOT surveyed our local members in 2010, most agreed that a cut in corporation tax rates was the simplest and quickest way of making our region more competitive. But over a third thought that non-tax measures were even more important. Better infrastructure, including IT, and a stable NI executive were top of the non-tax list."
>
> CIOT Tax Policy Director Patrick Stevens added: "Tax competition is already a feature of the international business world, with countries competing with low rates to attract business investment. This announcement fires the starting gun for tax competition for business within the UK. It is sure to lead to calls from Scotland and Wales, and perhaps the regions of England, for similar powers. The problem for cross-border businesses is the more that rates change and systems are varied the less the benefits of a single UK tax regime are sustained. For British businesses, operating in Northern Ireland will become the equivalent of doing business in another country, with the additional bureaucratic hurdles that entails."[108]

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[107] "Theresa Villiers announces plan to give Northern Ireland corporate tax control", *Financial Times*, 8 January 2015. See also, Q&A: Corporation tax in Northern Ireland", BBC News online, 8 January 2015

[108] CIOT press notice, Devolution of corporation tax opportunity for N Ireland, and fires the starting gun for tax competition within UK, 3 December 2014

5. The *Corporation Tax (Northern Ireland) Act 2015*

The *Corporation Tax (Northern Ireland) Bill 2014-15* was presented to the House on 8 January 2015.[109] The Bill was given a Second Reading on 27 January 2015, when it was generally welcomed by Members, and completed its Committee stage over three sittings on 3 & 5 February 2015. One minor technical amendment, moved by the Government, was agreed without a vote.[110] The Opposition did not table any amendments, and while several probing amendments, put down by backbenchers, were discussed, none of these were put to the vote. Subsequently the Bill completed the remaining stages of its scrutiny without further amendments, and received Royal Assent on 26 March.

The Act inserts a new part – part 8B – to one of the two Acts that consolidate most corporation tax law: the *Corporation Tax Act (CTA) 2010*. The explanatory notes to the Act give a short summary:

> The Act contains taxation provisions under which the Northern Ireland Assembly will have the power to set the main rate of corporation tax in respect of certain trading profits, to be called the Northern Ireland rate.
>
> The rate, in general, will apply to all of the trading profits of a company if that company is a micro, small or medium-sized enterprise (SME), and the company's employee time and costs fall largely in Northern Ireland. It will also apply to a corporate partner's share of the profits of a partnership trade if that company and partnership are both SMEs and the partnership's employee time and costs fall largely in Northern Ireland.
>
> The rate will also apply to the profits of large companies, and (in the case of a corporate partner not covered by the SME rules referred to above) to a corporate partner's share of the profits of a partnership that are attributable to a Northern Ireland trading presence, that presence being termed as a "Northern Ireland regional establishment" (NIRE). The trading profits attributable to the NIRE are computed using internationally recognised principles with some modifications and adaptations.
>
> A company (or partnership) that is within the Part 8B regime in an accounting period is referred to in Part 8B as a "Northern Ireland company" (or a "Northern Ireland firm"). In an accounting period in which it is a Northern Ireland company (or Northern Ireland firm), the company's (or partnership's) trading profit or trading loss is split between what Part 8B refers to as "Northern Ireland profits or losses" of the trade (which are taxed and relieved at the Northern Ireland rate) and "mainstream profits or losses" of the trade (which are taxed and relieved at the main rate).
>
> It is possible that a company (or partnership) making profits overall could in certain circumstances make a Northern Ireland loss (in conjunction with a mainstream profit) or a mainstream loss (in conjunction with a Northern Ireland profit). Similarly a company

[109] Northern Ireland Office press notice, New Bill to devolve Corporation Tax in Northern Ireland, 8 January 2015

[110] Public Bill Committee (*Corporation Tax (Northern Ireland) Bill*), Third sitting, 5 February 2015 cc79-80

> (or partnership) making a loss overall could in certain circumstances made a Northern Ireland profit (in conjunction with a mainstream loss) or a mainstream profit (in conjunction with a Northern Ireland loss).[111]

HM Revenue & Customs published a tax information note on the Bill when it was first published which summarises the changes to be made to *CTA 2010*, and associated legislation:

> The new rules will amend *CTA10* to provide for identification of the profits chargeable at the Northern Ireland rate. This includes a separate regime for large companies and SMEs. SMEs are as defined in the Annex to Commission Recommendation 2003/31/EC of 6th May 2003, with minor amendments.
>
> The Bill introduces new rules requiring SMEs with employees in NI to establish whether their profits and losses are chargeable in NI via an "in/out" test – if at least 75 per cent of their staff time and staff costs relate to work in NI then all of their trading profits will be chargeable at the Northern Ireland rate, if not, all will be chargeable at the UK main CT rate.
>
> The Bill inserts into *CTA10* rules which require large companies (those which are not EU SMEs) to determine whether they have a regional establishment in NI – broadly, similar to the permanent establishment rules found in Chapter 2/Part 24/CTA 2010. They must then, if they have a presence in both NI and the rest of the UK, apply rules similar to those governing the allocation of profits to a PE, which are found in Chapter 4/Part 2/CTA09. This effectively means that the company would treat their Northern Ireland trading activity as if it were a separate business from its activity in the rest of the UK, and apportion profits appropriately between the two.
>
> The Bill excludes certain trades and activities from the NI regime including:
>
> - lending and investing activities;
> - asset management;
> - long-term insurance (mainly life insurance);
> - reinsurance of both general and long-term insurance; and
> - profits subject to the Oil and Gas Regime ring-fence and activities of oil and gas contractors working on the UK Continental Shelf.
>
> Companies with excluded trades and activities other than those relating to Oil and Gas or long-term insurance may make a one-off election for their back-office functions of those excluded trades of activities to qualify for the NI regime.

HMRC estimate that the Northern Ireland rate would affect "34,000 companies of all sizes, including 26,500 SMEs" though "the burden will vary greatly depending on their size, existing tax arrangements, whether they have any NI based trading activity in a given year, and whether their activity is wholly based in NI."[112] HMRC put the present value of total compliance costs for business at £35m. With regard to SMEs, "over 99 per cent of affected small and micro-businesses have 100 per

[111] *Corporation Tax (Northern Ireland) Act 2015 – Explanatory Notes*, 2015 para 5-7
[112] HMRC, Corporation Tax: devolution of rate-setting power to Northern Ireland – tax information & impact note, 8 January 2015

cent of their trading activity in Northern Ireland and so would not be affected by the thresholds applied in the test."[113]

Following the publication of the Bill Treasury Minister David Gauke wrote to the Treasury Committee, giving a short summary of its provisions, and underlining the Government's view that "Northern Ireland's particular economic circumstances mean there are strong arguments in favour of corporation tax devolution, which do not apply to other parts of the UK." A longer extract is reproduced below:

> The Corporation Tax (Northern Ireland) Bill … Bill defines a set of rules on the treatment of losses, reliefs and allowances between Northern Ireland and the rest of the UK, and which activities are not covered by the Northern Ireland regime.
>
> Anticipating potential questions you may have regarding avoidance, the rules have been designed to deter businesses from seeking to exploit, through profit shifting and related techniques, any rate differential between Northern Ireland and the rest of the UK. We have also designed the regime with a strong regard to minimising additional administrative burdens on companies to ensure they can benefit as fully as possible for any decision to lower the rate in Northern Ireland.
>
> I am aware of the particular interest your Committee has taken in the fiscal elements of devolution, including most recently for Scotland, and that you have considered the issue of Northern Ireland corporation tax in the past.
>
> As you will know, the Government's view as set out by the Chancellor at Autumn Statement 2014 is that Northern Ireland's particular economic circumstances mean there are strong arguments in favour of corporation tax devolution, which do not apply to other parts of the UK. The Government has however also made clear that devolution of this power can happen provided that the Northern Ireland Executive is able to manage the financial implications.
>
> It will be for the Executive to decide what to do with the rate-setting power and how it will manage the reduction in its budget associated with any reduction in the rate of corporation tax, and the 23 December Stormont House Agreement confirmed the need for the Executive to work to balance the Northern Ireland budget.[114]

5.1 Second Reading

Introducing the Bill the Secretary of State, Ms Villiers, observed that the Government's consultation on this measure has received "near-unanimous support from Northern Ireland's political leaders and the business community." She acknowledged concerns that a lower CT rate in Northern Ireland could be an incentive for tax avoidance:

> We want to minimise the risks of matters such as brass-plating and artificial avoidance schemes, so the Bill maintains the coherence of the corporation tax system as a whole … Existing anti-avoidance measures will continue to apply, including the UK

[113] *ibid.*
[114] Treasury Committee, Letter from David Gauke to Andrew Tyrie, 12 January 2015

> targeted anti-avoidance rules and the general anti-abuse rule, and further protections may be introduced before implementation.[115]

Ms Villiers went on to highlight several aspects of the Bill: the exclusion of certain activities from the scope of the Northern Ireland rate; the way existing corporate tax reliefs would apply for calculating trading profit; and, the different tests to apply to large and small businesses:

> A new Northern Ireland rate would cover trading profits, such as those associated with manufacturing and providing services. Other profits—non-trading profits, such as those associated with property income— … will continue to be subject to the UK-wide rate. Similarly, activities such as lending, leasing, and reinsurance offer significant scope for profit shifting without the benefits of bringing substantial new jobs, so these, too, will be excluded from the Northern Ireland provisions. To promote continued success in Northern Ireland in attracting back-office functions, companies with excluded trades and activities may make a one-off election for the back-office functions of those excluded trades or activities to qualify for the Northern Ireland Office regime …
>
> A number of rules will be amended to reflect the new circumstances. For example, if there is a lower rate of tax in Northern Ireland, then research and development tax credits, capital allowances and creative reliefs for the film, TV and computer game industries will be adjusted to ensure that they continue to be broadly equivalent in value to those in Great Britain …
>
> Larger businesses will need to divide their profits between Northern Ireland and Great Britain, as they do now between the UK and other countries … We recognise, however, that this would be burdensome for smaller businesses … Therefore, if at least 75% of such a business's staff time and staff costs relate to work in Northern Ireland, then all their trading profits will be chargeable at the Northern Ireland rate. If not, they will be chargeable at the UK corporation tax main rate. This simple in/out test will mean that the majority of small and medium-sized enterprises are spared the burden and cost of apportioning profits.[116]

Speaking for the Opposition Ivan Lewis announced that while it was a "fundamental mistake" to regard the measure be a "panacea", "[we] accept that the devolution of corporation tax and its subsequent reduction could play an important part in boosting private sector investment in Northern Ireland, alongside a range of other measures":

> It is clear from the Stormont House agreement and the commencement clause in the Bill that the final transfer of the powers will not take place until April 2017 at the earliest. That ensures that there is adequate time for the proper impact assessment and consultation that the Opposition feel is essential in the interests not only of Northern Ireland, but of the rest of the United Kingdom … [Consequently] we will not seek to divide the House. Moreover, I want to make it very clear that, assuming we have reasonable time for an acceptable level of scrutiny, we will work with the Government to facilitate the passage of the Bill in this Parliament.[117]

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115 HC Deb 27 January 2015 cc743-4
116 *op.cit.* cc744-5
117 *op.cit.* c749, c748

In general Members who spoke during the debate were supportive of the Bill, but raised a number of concerns, including the point made by Mr Lewis, that by itself devolving corporation tax would not be a 'game changer'.[118]

Owen Paterson, who had proposed this measure in 2010 when shadow Secretary of State, argued that cutting corporation tax in Northern Ireland could have a significant impact, though "the real trick in the long term is [for local politicians] to make a clear statement that, as in the Republic of Ireland, there will be absolute determination to keep corporation tax low."[119] Sammy Wilson drew attention to the implications of the Azores ruling, which, to his mind, meant that cutting corporation tax would be "a gamble":

> Under the Azores ruling, we will have to pay for whatever the forgone revenue happens to be. That will depend on the rate we eventually set. At maximum, it could be about 3% of the current revenue budget available to Northern Ireland. In the current circumstances, to try to find that immediately would be very difficult, which is one reason why the decision to introduce this will not be implemented until at least 2016-17. That will give the Executive time to plan.
>
> We must remember, however, that the reduction in the block grant and money available for public expenditure in Northern Ireland will be offset by the expansion in other parts of the economy. Yes, that is a gamble, but can we politicians in Northern Ireland sit on our hands and do nothing, knowing that public expenditure is going to tighten, regardless of whether there is a Labour or Conservative Administration, given how heavily reliant we are on public expenditure? That would be wrong.[120]

Several Members also raised the issue of how, exactly, the block grant would be adjusted following a cut in the CT rate;[121] Naomi Long noted that in setting the rate, "we [will] need to carry out due diligence … to ensure that we know exactly what it will cost the Northern Ireland Assembly in block grant and exactly how we will manage the bridging period between making the cut to the block grant and seeing some reward from the economic investment that will follow."[122] Another concern mentioned several times during the debate was the risk that a lower CT rate would act as an incentive for tax avoidance, with companies establishing 'brass plate' subsidiaries.[123]

The Chair of the Select Committee, Laurence Robertson, noted that the Committee's recommendation in favour of devolution was "not a unanimous decision" but "we felt that the benefits would be overwhelming and that we could address the problems that the decision might throw up." Mr Robertson asked whether the Committee stage of the Bill might not be taken on the floor of the House, as "there are a

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118 For example, Mark Durkan (c768), David Simpson (c782) & Margaret Ritchie (c784)
119 *op.cit.* c755
120 *op.cit.* cc759-60
121 for example, Mark Durkan (cc769-70), Nigel Mills (cc778-9) & Margaret Ritchie (c785)
122 *op.cit.* c774
123 for example, Naomi Long (c743), Mark Durkan (c769), Ian Swales (c772) & Jim Shannon (c789)

number of issues that perhaps need to be looked at in greater detail" and if the new power might not be in place before April 2017.[124] In response to these points the then Financial Secretary, David Gauke, said:

> As has been said by a number of hon. Members, it is important that we set a sense of direction so that businesses can see where things are going in future years, but it takes some time to implement a change of this sort. Therefore, the 2017 timetable is as fast as is realistic.
>
> [My hon.Friend] also asked whether we should have the Committee stage on the Floor of the House or upstairs. That is largely a matter for the usual channels, but given that we want to make progress as quickly as possible and that a limited amount of time is left in this Parliament, it is right that we take every opportunity to make progress on this as quickly as we can. The fastest and easiest way of doing that is by holding the Committee stage, which will involve detailed scrutiny of some 87 pages of legislation, upstairs.[125]

Responding to the debate for the Opposition, Shabana Mahmood, asked for more details on how the block grant would be adjusted following any cut in the CT rate, and reiterated concerns about tax avoidance:

> The Northern Ireland Executive [will] need to bear the full fiscal consequences of changes in tax revenues resulting from a new corporation tax rate so the block grant would be adjusted to reflect the fiscal costs of a reduction in the corporation tax rate … The hon. Member for East Antrim (Sammy Wilson) asked some questions about the formula that will be imposed in order to calculate the forgone tax by the rest of the UK. It would be helpful to have some clarification from the Financial Secretary when he responds on how that formula will operate in practice …
>
> We want responsibly to consider and ventilate the risks [this measure] … poses, which we will carefully scrutinise as we progress. We will also carefully consider anti-avoidance measures, to ensure that the Bill does not simply become an opportunity for businesses to brass-plate and base themselves in Northern Ireland, with no other economic benefits for the people of Northern Ireland.[126]

In answer to Members' concerns about tax avoidance the Financial Secretary said:

> This is not about profit shifting or a brass plate … We will ensure that HMRC has the capacity to deal with these matters. For example, when dealing with transfer pricing matters, HMRC will have a risk-based approach to ensure that the system works, so that we do not see the type of activity that so concerns Members …
>
> It is worth pointing out that it will not be possible for companies to set up a brass plate to benefit from a lower rate in Northern Ireland. The rules require a permanent physical presence in Northern Ireland and, more fundamentally, a calculation of Northern Ireland's trading profits based on the profits that the Northern Ireland activity would have made as a stand-alone entity.

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[124] *op.cit.* c762, c763
[125] *op.cit.* cc794-5
[126] *op.cit.* cc792-3

> That separate enterprise approach coupled with the exclusion of investment profits from the Northern Ireland regime should ensure that common international tax avoidance arrangements cannot be replicated within the Northern Ireland regime.[127]

Mr Gauke went on to say a little about the current state of play regarding agreement on making suitable adjustments to the block grant:

> On the block grant adjustment, the Stormont House agreement sets out that the block grant will be reduced to reflect the tax revenues forgone by the UK Government as a result of devolving tax powers. We will continue to work with the Northern Ireland Executive on the detailed mechanics to ensure that the Northern Ireland block grant is reduced appropriately.
>
> The reduction will depend on the rate that is set by the Northern Ireland Executive … there are no particular restrictions on that. Conceivably, it could be a 0% rate, but that would have to be paid for and it would be expensive. An estimate of the cost to the Northern Ireland Executive of a 12.5% rate is in the region of £300 million by 2019-20, which is when the steady state will be in place. That will depend on a number of factors, not least the growth of the economy.[128]

5.2 Further debate & scrutiny

In its first sitting, the Public Bill Committee took evidence from the Secretary of State, Ms Villiers, the Financial Secretary, and officials from Treasury and HMRC. As on Second Reading, Members asked for details of the timetable for implementing devolution, the likely impact on the Executive's block grant, and the risks of tax avoidance. On the first question the Secretary of State underlined "a timetable has not been set as yet", adding, "everyone is working to the April 2017 deadline, which gives us time to get this right."[129] On the consequential changes to the block grant, the Financial Secretary made the point that the Azores judgement did not specify "precisely what formula is used." Mike Williams, director of business & international tax at Treasury, added:

> There has to be an effect of devolution. As the Financial Secretary said, the effect of devolution has to mean that the body to which there is devolution bears the risk of tax revenues coming in lower but equally it gets the benefit of them coming in higher. If that does not happen, you have not really devolved at all. If there is some sort of hidden hand that holds the devolved body good and protects against loss, you do not have devolution. Equally, if you bear the risk of tax revenues coming in lower, it is logical that you get the benefit of them coming in higher.[130]

At a later stage in the Committee debates, Shabana Mahmood asked for more details, and what assessment had been made of a potential legal challenge to the Bill. Mr Gauke replied:

> There is no standard EU formula, because member states all have different tax systems and different ways of funding devolved Administrations, but the approach that we and the Northern

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127 *op.cit.* cc795-6
128 *op.cit.* c796. As noted, the Bill was given a Second Reading unopposed.
129 PBC, 3 February 2015 cc4-5
130 PBC, 3 February 2015 cc14-15

> Ireland Executive are working on is based on the arrangements agreed with the Scottish Government on the Scottish rate of income tax … I can confirm that we are in discussions [with the Commission], which I hope to be completed later this year. As for state aid, let me be clear: we are confident that the regime is within state aid rules.[131]

The Secretary of State underlined that a reduction in the block grant would only reflect changes in corporation tax revenues; as the Stormont House agreement had made clear, "second-round effects are not taken into account in the calculation."[132] At a later stage in Committee, David Gauke, added to this, while underlining that a final agreement had yet to be made:

> As set out in the Stormont House agreement, the block grant will be reduced to reflect tax revenues forgone by the UK Government as a result of devolution, plus the additional tax revenue forgone due to the behavioural effects resulting from a lower corporation tax rate in Northern Ireland. The Executive will then retain all Northern Ireland corporation tax revenues.
>
> I stress again that the arrangements for calculating the block grant need to be agreed between the Treasury and the Executive, so I cannot provide more details here … Our current estimate, assuming rates of 12.5% in Northern Ireland and 20% in the UK, is an adjustment of £325 million in 2019-20, assuming that that is the first steady-state year when compared to existing arrangements … There will also be a process of reconciliation to compare forecasts with actual results once Northern Ireland corporation tax receipts are known.[133]

On the risks of tax avoidance, specifically profit shifting, Jon Sherman, director of corporation tax at HMRC, gave details of how HMRC would monitor this:

> The rules are pitched to minimise the opportunities for profit shifting, but we will look at the approaches to routing profits taken by companies that have what we call Northern Ireland regional establishments, to make sure they are in line with agreed international principles. Larger companies will, in many cases, already be taking that sort of transfer-pricing approach and we will already have taken that into account in our risk working with those companies.[134]

Mike Williams went on to make the point that in this case HMRC would have the advantage of "sitting on both sides of the fence":

> Often, the difficulty with profit shifting is that you can see what is happening in the UK, but you may struggle to get enough information about what is happening outside. If there was any shifting, HMRC would be getting information on the Northern Ireland element as well as the rest of the UK element, and that would help to counter that risk.[135]

At a later stage in Committee David Gauke made the point that HMRC was "continuing to proof the Bill, as it does for all legislation":

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[131] PBC, 5 February 2015 c77
[132] PBC, 3 February 2015 c13
[133] PBC, 5 February 2015 c61
[134] PBC, 3 February 2015 c10
[135] *ibid.*

> If it is deemed necessary, there is time and we can introduce further anti-avoidance rules to target any potential weaknesses before or after the regime comes into effect … clearly the intention of the Northern Ireland Executive is to encourage genuine economic activity in Northern Ireland. It would bear a cost if there were profit shifting in an artificial movement from the rest of the UK to Northern Ireland, and experience little benefit in extra reward. Interests are aligned on that front.[136]

As noted above, the Bill is largely comprised of one clause, to insert a new section in the *Corporation Tax Act 2010*. The Minister summarised the key changes **clause 1** would make as follows:

> Clause 1 inserts part 8B into the *Corporation Tax Act 2010*, which makes a number of changes. First, it allows the Northern Ireland Assembly to set the rate of Northern Ireland corporation tax by way of a resolution. The regime is designed to give the Assembly similar rate-setting flexibility to that of the UK Parliament. Being able to set the Northern Ireland rate by resolution means that it will be able to act speedily if it wishes to change its rate. In operation, the rate or rates will be proposed by the Executive, with the Minister of Finance and Personnel making the recommendation to the Assembly. The clause also allows the Assembly to set any rate that it sees fit.[137]

The Committee debated several probing amendments, tabled by Nigel Mills and by Mark Durkan, though none of these were put to the vote. Mr Mills raised concerns that some SMEs might not meet the 75% employment threshold, possibly when opening new branches, and should be able to elect into the large company regime. The Minister argued that this was unlikely to affect many SMEs in Northern Ireland. SMEs who had a rapidly changing workforce would benefit from the 'grace period' to apply to the 75% test:

> HMRC analysis indicates that there are approximately 26,500 SMEs active in Northern Ireland, and under our current rules, 97% of those are eligible for the Northern Ireland corporation tax rate. That leaves only 3% of SMEs unable to access the Northern Ireland rate. However, the majority of those have less than 10% of their employment in Northern Ireland …
>
> We have included a grace period for SMEs so that they will continue to qualify for the Northern Ireland rate during the first year in which they dip below the 75% threshold or no longer meet the SME size definition. They would have to fail one of the tests for two periods in succession to move out of the SME regime. If a Northern Ireland SME construction company wins a contract in Liverpool, for example, which results in a shift in location of its employees, even if it no longer passes the 75% work force test, it will continue to benefit from the Northern Ireland rate for at least a year. Temporary shifts in employee demographics will not penalise such companies.[138]

Mr Mills also moved an amendment to apply a motive test to the Northern Ireland rate, to bar companies whose "sole or main purpose" to be in Northern Ireland, rather than elsewhere in the UK, was to obtain a tax advantage. The Minister suggested that determining a

[136] PBC, 5 February 2015 c47
[137] PBC, 5 February 2015 c60
[138] PBC, 5 February 2015 c37

company's "main purpose" in these circumstances would be difficult, that such a test might be entirely counter-productive, and that the Bill had robust provisions to prevent aggressive tax avoidance.

Mr Durkan moved an amendment to except credit unions from the general exclusion to apply to financial services. The Minister opposed this change on the grounds that this was unnecessary:

> Importantly, credit unions do not pay tax on their income from loans that they make to their members because they have a specific exemption. To charge them at the Northern Ireland rate would therefore put them in a less favourable tax position than they currently enjoy, which is not his intention.
>
> Credit unions pay corporation tax on investment income and on capital gains, but those are not covered by the Northern Ireland regime. As credit unions do not have a trade of lending money for corporation tax purposes, they are therefore neither explicitly included nor excluded from the Northern Ireland rate and as such are in no worse a position because of it.[139]

Mr Durkan also moved amendments to ensure that the Northern Ireland Assembly would be fully informed of any changes to the scope of the regime that might be made through secondary legislation. The Minister agreed that the Assembly and Executive "will need the most up-to-date information on the regime as they consider whatever rate will be appropriate for Northern Ireland", but that this would be the case without requiring any amendment to be made to the Bill:

> Any legislative proposals are likely to be published in draft and will be published again once finalised. The Assembly—and indeed anyone else—will have access to them. Secondly, and possibly more helpfully, there will exist a number of channels for these issues to be discussed. The exact nature of governance arrangements between the Government and the Executive is yet to be agreed, but I can reassure the Committee … that they will be of a form that ensures full Executive visibility when using such a power; and that should also be communicated to the Assembly.
>
> To use the example of Scotland, arrangements are set up via a memorandum of understanding to manage governance of the Scotland Act, and in particular the Scottish rate of income tax, between the Government and the Scottish Government. That is at both ministerial and official level. For example, the uses of powers … under the Scotland Act have been shared in draft with the Scottish Government and have been the subject of public consultation prior to laying before Parliament. In addition, the memorandum of understanding sets out further reporting arrangements, including for the laying of accounts with the Scottish Parliament by HMRC, and reporting and evidence from the HMRC additional accounting officer, who at present is Edward Troup, HMRC second permanent secretary and tax commissioner, to the Scottish Parliament.[140]

The Committee proceeded to agree **clause 1**, and the remaining provisions of the Bill. **Clause 5** provides for the start date for these

[139] PBC, 5 February 2015 cc50-51
[140] PBC, 5 February 2015 cc58-9

provisions to be set by regulations. The Financial Secretary moved one, technical amendment to this clause:

> The clause gives the Treasury the power to set the start date of the new regime through regulations before Northern Ireland can set its own rate of corporation tax … The earliest the regime can come into effect is April 2017 … The 2017 start date, if met, will allow Her Majesty's Revenue and Customs to update its systems for the new regime. Importantly, it will also give companies two years to prepare. Finally, it will allow for any necessary tweaks to the legislation to ensure that it functions as we intend when the new regime begins. The clause also includes provisions for companies whose accounting periods straddle the commencement date.
>
> The amendment ensures that the clause has been drafted in line with normal practice for commencement powers that give the Government the power to turn on the legislation by regulations made by statutory instrument. It is a minor, technical amendment to ensure that the legislation does what it is intended to do and that there is no scope for misinterpretation.[141]

On report the House debated a similar probing amendment moved by Mark Durkan to extend the scope of the NI rate to both credit unions and building societies. Treasury Minister David Gauke opposed both changes – first, in the case of credit unions, because such a measure was unnecessary …

> Credit unions already benefit from special corporation tax rules and those will continue to apply once the Northern Ireland regime and rate commence. Under those special rules, when a credit union makes a loan to its members the related income is removed from the trading income charge, so credit unions do not pay corporation tax on loan interest that is received from members. Credit unions are not permitted to make loans to non-members. Therefore, they are subject to corporation tax only on capital gains and income arising from the investment of surplus funds ...
>
> Changing the rules to bring the income of credit unions within the trading income charge would almost certainly have the perverse effect of increasing the tax that credit unions pay, because their trading income would then fall within the corporation tax net, which it does not currently.[142]

… and second, in the case of building societies, because of the risk of profit shifting:

> Hon. Members will see that the Bill does not distinguish between different types of industry or business—for example, it does not exclude financial services, banking or building societies—but the nature of the excluded trades and activities means that they are those predominantly carried out by the financial sector, including building societies. Excluding trades and activities, rather than types of business, ensures that the rules do not have an adverse impact on a particular type of business structure; the focus is on the mobility of the activity.
>
> The mobility of profits for building societies is similar to that for banks, and building societies and banks both carry out similar activities, as defined in chapter 17. It is therefore hard to argue

141 PBC, 5 February 2015 c80
142 HC Deb 4 March 2015 c961

> that building societies should be treated differently from other organisations, such as banks, that carry out the very same types of activity. To do so could undermine the principles that I have outlined, particularly the principle of limiting profit shifting. Furthermore, there is a risk that the amendment would provide building societies with a competitive advantage over banks, which was never the intention of the reforms.
>
> Similarly, to treat building societies differently on the basis of whether all or only some their activity is in Northern Ireland could lead to an uneven playing field. It might provide opportunities for companies to profit shift—for example, by setting up subsidiaries in Northern Ireland without bringing additional private sector employment.[143]

The Minister went on to give more detail on how the NI rate would apply to certain designated 'back-office' functions:

> In line with the objective of attracting genuine growth and employment, we will, however, allow companies with certain excluded trades and activities the option to make a one-off election for their back-office functions to qualify for the Northern Ireland rate. Not only do those activities not pose the same risk of profit shifting as the excluded activities, but they provide a fertile area of employment in Northern Ireland, so we take the view that it is right to allow them within the regime.
>
> Such activities are generally to support other profit-making activities, rather than to be directly profit making in themselves. Therefore, we will compute a notional profit for the activities, which will be chargeable at the Northern Ireland rate. It will be calculated by applying a 5% mark-up to the costs of the Northern Ireland back-office activity.
>
> For example, if a company has eligible costs of £1 million from back-office activities, £50,000 of its profits would be chargeable at the Northern Ireland rate. That levels the playing field with companies that provide back-office functions through stand-alone companies—in other words, companies whose back-office functions are not part of an excluded trade.
>
> Such stand-alone companies will have their profits charged at the Northern Ireland rate because they will be carrying out a non-excluded trade—usually that of providing services. I believe that that is the fairest approach. It places all companies with similar lending and investing activities on a similar footing, while supporting the services sector and minimising the risk of profit shifting.[144]

In the event Mr Durkan withdrew the amendment without putting it to the vote. The Bill's scrutiny in the Lords was completed in a single day, and the Bill agreed without any further amendments.

Further to the passage of this legislation, HMRC has published draft guidance on the Northern Ireland Corporation Tax (NICT) regime, and a Memorandum of Understanding agreed with the Northern Ireland Executive's Department of Finance and Personnel setting out arrangements for implementing NICT.

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143 HC Deb 4 March 2011 c960
144 HC Deb 4 March 2011 cc960-1

6. Recent developments

Over 2015 the political situation in Northern Ireland deteriorated, creating considerable delays to the implementation of the Stormont House Agreement (SHA). Following further talks in November 2015 the Government announced a set of actions agreed between the Northern Ireland executive and the UK and Irish governments.[145] As part of this the NIE confirmed that it would set the Northern Ireland rate at 12.5% from April 2018.[146] Two extracts from the '*Fresh Start*' agreement are reproduced below – first from the NIE's assessment of its existing financial reforms and efficiencies …

> **NI Executive's position on Corporation Tax**
>
> 1.16 As a means of rebalancing the economy and addressing the social and economic challenges facing Northern Ireland, the Executive is committed to an affordable and more competitive Corporation Tax rate.
>
> 1.17 In this context the Executive attaches importance, on the basis of fairness and proportionality, to Northern Ireland bearing the full costs and receiving the full benefits of the devolution of Corporation Tax consistent with the Azores criteria.
>
> 1.18 In accordance with the requirements of the Stormont House Agreement, the Executive reaffirms its commitment to take all the actions necessary to demonstrate that its finances are on a sustainable footing for the long term including successfully implementing measures in the Stormont House Agreement, this Agreement and subsequent reform measures.
>
> 1.19 On this basis:
>
> The NI Executive commits to a commencement date of April 2018, and a Northern Ireland rate of 12.5%.

… and second from that section of the agreement setting out the UK Government's financial support:

> **Corporation Tax**
>
> 6.1 The UK Government recognises the Executive's commitment to introduce a devolved Corporation Tax rate to Northern Ireland of 12.5% from April 2018. The UK Government remains committed to the devolution of Corporation Tax powers, subject to the conditions set out in the SHA.
>
> 6.2 The UK Government will undertake an ex-post review of the costs of the devolution of Corporation Tax four years after the implementation of a devolved rate by the Executive. This review will consider the extent of behavioural costs (but not second round effects) and will make further adjustments to the Northern Ireland Block Grant as supported by new evidence.[147]

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[145] Northern Ireland press notice, *A fresh start for Northern Ireland*, 17 November 2015

[146] Department of Finance press notice, *Foster and Bell welcome 12.5% Corporation Tax rate*, 17 November 2015

[147] NIE, *A Fresh Start - The Stormont Agreement and Implementation Plan*, 17 November 2015 p21, p27

In this context, it is worth noting that the Republic of Ireland currently has two rates of corporation tax:

- 12.5% for trading income unless the income is from an "excepted trade" in which case the rate is 25%
- 25% for non-trading income (e.g. investment income, rental income)

Excepted trades include certain land dealing activities, income from working minerals and petroleum activities.[148]

Following this announcement the Oxford Centre for Business Taxation published a short piece of analysis to determine how competitive the Northern Ireland regime would be with a 12.5% rate. This used two measures of tax competitiveness:

- the effective average tax rate (EATR), to measure the tax burden on a project that makes a profit, which would be important in the choice of location for firms' investment projects; and,
- the effective marginal tax rate (EMTR), to measure the tax burden on a project that just breaks even, which would be important in firms' decision of the level of investment they undertake.[149]

In both cases, the 12.5% rate gave Northern Ireland a more competitive rate than many G20 countries, but not the Republic of Ireland; this was because the Republic has more generous allowances for capital expenditure than the UK:

> Table 1 shows that decreasing the corporate tax rate to 12.5% will make Northern Ireland a more attractive option with respect to investment location decisions relative to all G20 countries' tax regimes in 2015.

Table 1: Effective Average Tax Rate

Rank	Country	EATR
1	Republic of Ireland	11.3 %
2	Northern Ireland	12.0 %
3	Russia	16.7 %
4	Turkey	16.9 %
5	South Korea	18.0 %
6	Saudi Arabia	18.1 %
7	Great Britain	19.4 %
8	China	22.4 %
9	Indonesia	23.0 %
10	Canada	23.3 %
11	Italy	23.8 %
12	South Africa	24.1 %
13	Australia	25.3 %
14	Mexico	26.1 %
15	Germany	27.0 %
16	India	30.2 %
17	Brazil	30.7 %
18	Japan	31.5 %
19	Argentina	32.3 %
20	France	32.4 %
21	USA	34.9 %

> The Republic of Ireland's EATR is still a little lower due to more generous allowances. The UK has lower allowances for capital

[148] Further details are on the site of the Irish revenue authorities here.
[149] For a longer explanation of these different measures of tax competitiveness see, *Corporation tax changes and challenges*, Institute for Fiscal Studies, February 2015

expenditure than most other G20 countries; for example, there is no allowance for investment in buildings in the UK …

Table 2 shows that the decrease in Northern Ireland's corporate tax rate will make it more attractive with respect to the choice of increasing investment at the margin, relative to the rest of the UK. However, on this measure, Northern Ireland has a higher rate than the Republic of Ireland and also four other G20 countries.

Again, the difference between the Republic of Ireland and Northern Ireland is due to the more generous capital allowances allowed in the Republic.

Table 2: Effective Marginal Tax Rate

Rank	Country	EMTR
1	Italy	-9.8 %
2	South Korea	7.2 %
3	Russia	7.9 %
4	Republic of Ireland	8.1 %
5	Turkey	8.7 %
6	Northern Ireland	10.7 %
7	Saudi Arabia	13.4 %
8	South Africa	14.8 %
9	Canada	14.9 %
10	China	16.2 %
11	Mexico	17.1 %
12	Australia	18.0 %
13	Great Britain	18.0 %
14	Germany	18.2 %
15	Indonesia	18.5 %
16	France	19.9 %
17	India	22.3 %
18	Japan	22.9 %
19	USA	23.2 %
20	Brazil	23.9 %
21	Argentina	27.0 %

[150]

Over 2016 discussions continued as to putting the Executive's finances on a 'sustainable footing',[151] although political debate was dominated by the potential implications of Brexit, following the EU referendum vote in June. In November Malachy McLernon the Chairman of the Northern Ireland branch of the Chartered Institute of Taxation argued that the 12.5% rate "should not be a standalone tool disengaged from the needs of the rest of the economy":

> The approach of Brexit should hasten efforts to create an economy in Northern Ireland that can better compete with remaining EU member states, especially the Republic of Ireland, by going beyond just cutting corporation tax, says the Chairman of the NI branch of the CIOT …
>
> "A cut to corporation tax to make it competitive with the Republic of Ireland will help attract foreign direct investment and contribute to moving Northern Ireland from a public sector economy to a more dynamic and entrepreneurial one. While the cut in corporation tax is exciting, the North needs to offer more to witness the radical change that our members and their clients would like to see in the economy.

[150] Strahil Lepoev, *Northern Ireland Corporation Tax,* Oxford University Centre for Business Taxation, March 2016

[151] For example, see PQ HL114, 2 June 2016; PQ906768 26 October 2016; PQ HL3634, 12 December 2016

> There is widespread agreement that more can be done to drive down business costs, improve access to finance and more promotion of employment with a greater investment in skills education. A determined effort to streamline tax legislation and make it cheaper and easier to comply with, both with taxes devolved to Stormont and those that remain at Westminster, has an important part to play in this."[152]

Subsequently debate of the prospects of NI rate has been overshadowed by a series of wider political events: the collapse of the Northern Ireland Executive in January 2017, the outcome of the 2017 General Election, the Conservative Government's Confidence and Supply Agreement with the Democratic Unionist Party,[153] and the ongoing failure of talks to restore a power-sharing executive.[154]

Alongside the Confidence and Supply Agreement the Government published a note on the extra financial support to be given to Northern Ireland which stated, "the UK government notes that one of the first tasks for the new Executive will be to work towards the devolution of Corporation Tax rates, the timetable for its introduction, and how this might best be flexibly managed, with options being developed for Autumn Budget 2017."[155]

Prior to these events, in December 2016, as is normal practice, much of the forthcoming Finance Bill was published in draft. Among these measures, the Government announced modifications to scope of the devolved rate, to give all small and medium sized enterprises trading in Northern Ireland the potential to benefit from the lower rate. Details were given in a tax information & impact note:

> Under the current rules, SMEs which do not have at least 75% of employment time and costs in NI have all trading profits taxed at the UK Corporation Tax (CT) main rate … Industry representations were made during the passage of the Bill seeking an option for SMEs which do not meet the 75% employment test to access the NI rate on the same terms as large companies …
>
> **Current law**
>
> Current law on NI CT is contained in Part 8B of the *Corporation Tax Act 2010*, as inserted by the *Corporation Tax (Northern Ireland) Act 2015*. Schedule 1 to that Act also made amendments to the *Capital Allowances Act 2001* to make provision for NI CT.
>
> Part 8B provides rules to identify profits of a company which are chargeable at the NI rate. This includes at Chapter 6 a regime for large companies and a separate simplified regime at Chapter 7 for SMEs.
>
> Larger companies with both NI and rest of UK activity must use rules based on existing profit attribution principles to allocate

152 CIOT press notice*, Brexit vote must hasten efforts to make Northern Ireland's economy more competitive, says tax expert*, 11 November 2016

153 No.10 Downing Street press notice, *PM statement on Confidence and Supply Agreement with the DUP*, 26 June 2017; see also the statement made to the House by First Secretary of State, Damian Green (HC Deb 26 June 2017 cc229-330).

154 Northern Ireland office press notice, *Restoration of devolution a 'priority', says Secretary of State*, 22 August 2017

155 Prime Minister's Office, *UK government financial support for Northern Ireland – policy paper*, 26 June 2017. See also, "DUP-Tory deal: 'Not a penny' without NI devolution", *BBC news online*, 8 September 2017.

> profits to a NI trading presence (termed a Northern Ireland Regional Establishment (NIRE)). This effectively means that the company treat their NI trading activity as if it were a separate business from its activity in the rest of the UK, and allocate profits to each appropriately.
>
> There is a simplified regime for SME companies, many of which would find this profit attribution an excessive administrative burden. SMEs with more than 75% of their employment time and costs in NI are not required to allocate profits to NI and the rest of the UK: instead all of their trading profits are charged at the NI rate. SMEs which do not have at least 75% of employment time and costs in NI have all trading profits taxed at the UK CT main rate.
>
> Chapter 4 provides the basic definitions for the regime, including that of 'NI company'. An SME company must also be a NI employer to be a NI company. A NI employer is a company which meets the 75% employment test which itself relies on the definition of a company's workforce as consisting of directors of the company, employees of the company and externally provided workers in relation to the company.
>
> **Proposed revisions**
>
> Legislation will be introduced in Finance Bill 2017 to give an option for an SME which is not a NI employer but has a NIRE to elect to use the large company rules for identifying profits and losses to which the NI rate applies.
>
> The meaning of NI company in Chapter 4 is expanded to provide for this election, and similar provision is made for partnerships, by amending the meaning of NI firm in Chapter 16. The large company rules in Chapter 7 are extended to apply to SMEs which are not NI employers and which have made the election. Amendments are also made to refine the workforce conditions in section 357KE to ensure they are robust to abuse.

HMRC's impact note also gave details of the anticipated impact on businesses:

> **Impact on business including civil society organisations**
>
> This measure gives greater flexibility for SMEs by providing an option to access the NI CT regime not available under the existing rules. If they do not want to exercise the option there is no increase in the administrative burden they bear, and they can stay with the simplified approach allowed for under the existing rules, which mitigates the impact on SMEs through an annual in/out test. Over 96% of SMEs with trading activity in NI have at least 75% of their employment in NI and so would not be affected by the thresholds applied in the in/out test.
>
> The large company rules require allocation of profits between NI trading activity and trading activity in the rest of the UK using profit attribution principles with which SMEs are not familiar. If a business uses the option, it is expected that there will be additional one off and ongoing costs in setting up and applying the required profit attribution and transfer pricing methodologies. Up to 500 businesses with less than 75% of their employment in NI will need to evaluate whether the increase in administrative

> burden associated with using the large companies rules outweighs the benefits of accessing the NI CT regime.[156]

The Government confirmed its plans to modify the scope of the NI rate at the time of the March 2017 Budget:

> As announced at Autumn Statement 2016 and confirmed at Spring Budget 2017, the government will amend the Northern Ireland Corporation Tax to give all small and medium sized enterprises (SMEs) trading in Northern Ireland the potential to benefit. Other amendments will minimise the risk of abuse and ensure the regime is ready for commencement if the Northern Ireland Executive demonstrates its finances are on a sustainable footing. The legislation has been revised with minor drafting improvements to ensure it works as intended.[157]

Press comment on the Budget focused on other issues, and generally there does not appear to have been any detailed commentary on this proposal.[158]

The *Finance Bill 2017* was published on 14 March, and initially this provision formed clause 36 & schedule 12 of the Bill. Following the Prime Minister's announcement, on 18 April, of the Government's intention to call a General Election on 8 June, the House completed all of the remaining stages of the Bill in the Commons on 25 April and the *Finance Act 2017* received Royal Assent on 27 April. With cross-party support the Government removed a series of clauses from the Bill, with the intention of legislating for these at the start of the new Parliament – including this clause.[159] In turn this second Finance Bill was published on 6 September, including this provision.[160]

Prior to the formal presentation of the Finance Bill, the House has to agree a series of 'Ways and Means' Resolutions, relating to the measures that will be in the Bill. Normally this occurs at the end of the Budget debates that the House has after the Budget statement – as happened on 14 March 2017. As the Government's second Finance Bill was a new one, the House approved a second series of resolutions on 6 September, and during this debate there was some mention of the Government's proposals to modify the application of the NI rate. Speaking for the Opposition Peter Dowd said:

> The devolution of corporation tax rates to Northern Ireland has been debated in the Chamber many times, and we do not seek to reopen the debate. Nevertheless, we have not debated and will not welcome the clear attempts by the Government to loosen the definition of a Northern Irish employer and water down the requirements for claiming the lower corporation tax rate in Northern Ireland. Under the measure before us, corporations

156 HMRC, *Northern Ireland rate of Corporation Tax: changes to small and medium-sized enterprise regime – tax information & impact note*, December 2016. This note states "this measure is expected to have a negligible impact on the Exchequer."

157 HM Treasury, *Overview of Tax Legislation & Rates*, March 2017 para 1.18

158 As with earlier inquiries, the Treasury Committee invited evidence from the four main professional bodies on the tax measures that had been announced in the 2017 Budget to be included in the Finance Bill, and this specific issue was not mentioned in any of their submissions.

159 HC Deb 25 April 2017 c1013.

160 specifically clause 25 and Schedule 7 of the Bill. For details see, *Finance Bill 2017 - Explanatory Notes* (Bill 102 – EN), September 2017

> would effectively use Northern Ireland as an onshore tax haven. They would set up small offices with a brass plate on the door, but bring in little of the real investment and jobs that Northern Ireland needs.[161]

At a later stage in the debate Wes Streeting raised concerns over this measure in the context of the controversy over the extra financial support that had been announced as part of the Government's Confidence and Supply Agreement with the DUP:

> The Government seem to be using the Bill to introduce measures that will loosen the definition of a Northern Ireland employer for SMEs, which will basically enable people to establish a business in Northern Ireland and claim the lower rate …
>
> I do not begrudge the people of Northern Ireland the investment in infrastructure, education and health that they need … I do, however, begrudge the unfairness of Northern Ireland being given preferential treatment over England, Wales and Scotland for no other reason than that the Prime Minister took a gamble … We have already had constituents writing to us about the cash outlay to Northern Ireland, and it seems that a lot of hidden benefits are now being given to it, including adjustments to the tax regime. That will not be good for maintaining a strong and cohesive United Kingdom.[162]

The Financial Secretary to the Treasury, Mel Stride, responded to these points when the Bill received a Second Reading on 12 September:

> In last week's debate, I was somewhat surprised by the concerns raised by some Opposition Members about the provisions relating to the taxation of businesses trading in Northern Ireland. They are nothing new.
>
> They were announced in the 2016 autumn statement and do not create a tax loophole. The legislation simply ensures that all small and medium-sized enterprises with trading activity in Northern Ireland will be able to benefit from the Northern Ireland corporation tax regime in the same way as larger companies already can, and it also introduces additional anti-avoidance rules to ensure that the regime operates as intended.
>
> The Bill's provisions do not weaken that at all; they simply mean that more businesses will be able to apply the regime to the taxation of profits genuinely arising, and only arising, from activities carried out in Northern Ireland once the regime is put into effect.[163]

However, Mr Dowd reiterated these concerns in his speech in the debate:

> As a result of the moves to undermine the rules on what can qualify as a Northern Ireland company, corporations will find it easier to shop around within the UK for where to put their brass plates. How does it benefit the people of Northern Ireland if we reduce the amount of jobs and investment that a company must make to qualify as a Northern Ireland company?[164]

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[161] HC Deb 6 September 2017 c206
[162] *op.cit.* c235
[163] HC Deb 12 September 2017 c674
[164] *op.cit.* c681

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