Ireland’s Corporation Tax Games

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Dr. Nessa Ní Chasaide (nessa.nichasaide@mu.ie)
Department of Sociology
Maynooth University

Background research questions

Research question:

- Why did Ireland win the tax games?

- Why are the corporate tax games legal?
- What are the non-legal aspects of the tax games?

Method:

- Documentary study+ elite interviews from public, private (for profit & non-profit) sectors in Ireland/US

Literature

Classic tax competition

- Transnational corporations can design their activities through accounting decisions to be ‘tax-efficient’
- States compete with each other, to a greater or lesser degree, to attract those corporations

Global Wealth Chains

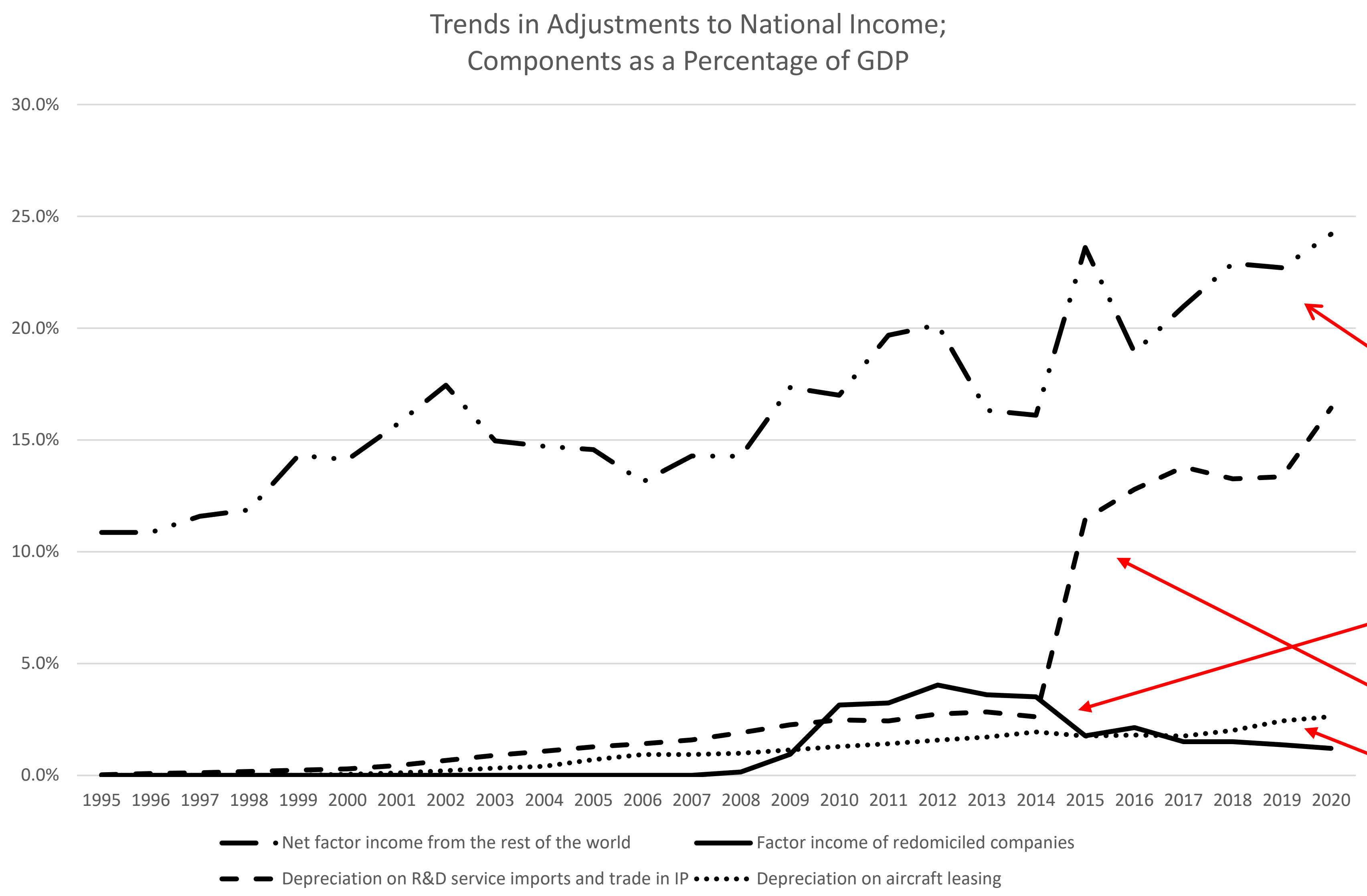
- Transnationalisation of tax competition Global wealth chains around their production networks.
- Looks beyond formal actors to e.g. Big 4, regulators
- Diverse states efforts through the treatment of corporate forms and financial flows.
- Rules and legal instruments increasingly important.

Why Tax Games?: Need for analytical flexibility

Jurisdictions described in multiple ways – e.g. Ireland:

Descriptions	Reason
‘Tax haven’ (O’ Boyle & Allen, 2021)	Tax evasion and avoidance across sectors
‘Corporate tax haven’ (TJN, 2021)	Concentrated US MNCs profits
‘Conduit jurisdiction’ (Garcia-Bernardo, Fichtner, Takes and Heemskerk, 2017)	Net Factor Income from Abroad
‘Coordination centre’ (Reurink and Garci-Bernardo, 2021)	Top and intermediary holding companies; Shared Services Centres
‘Offshore centre’, ‘financial centre’ (Ayadi & Arbak, 2014) or ‘investment hub’ (IMF, 2022)	Concentration of treasury & financial services activity
A ‘higher activity haven’ (Clausing, 2020)	Entanglement of ‘real’ and ‘artificial’ FDI

‘Artificial’ FDI



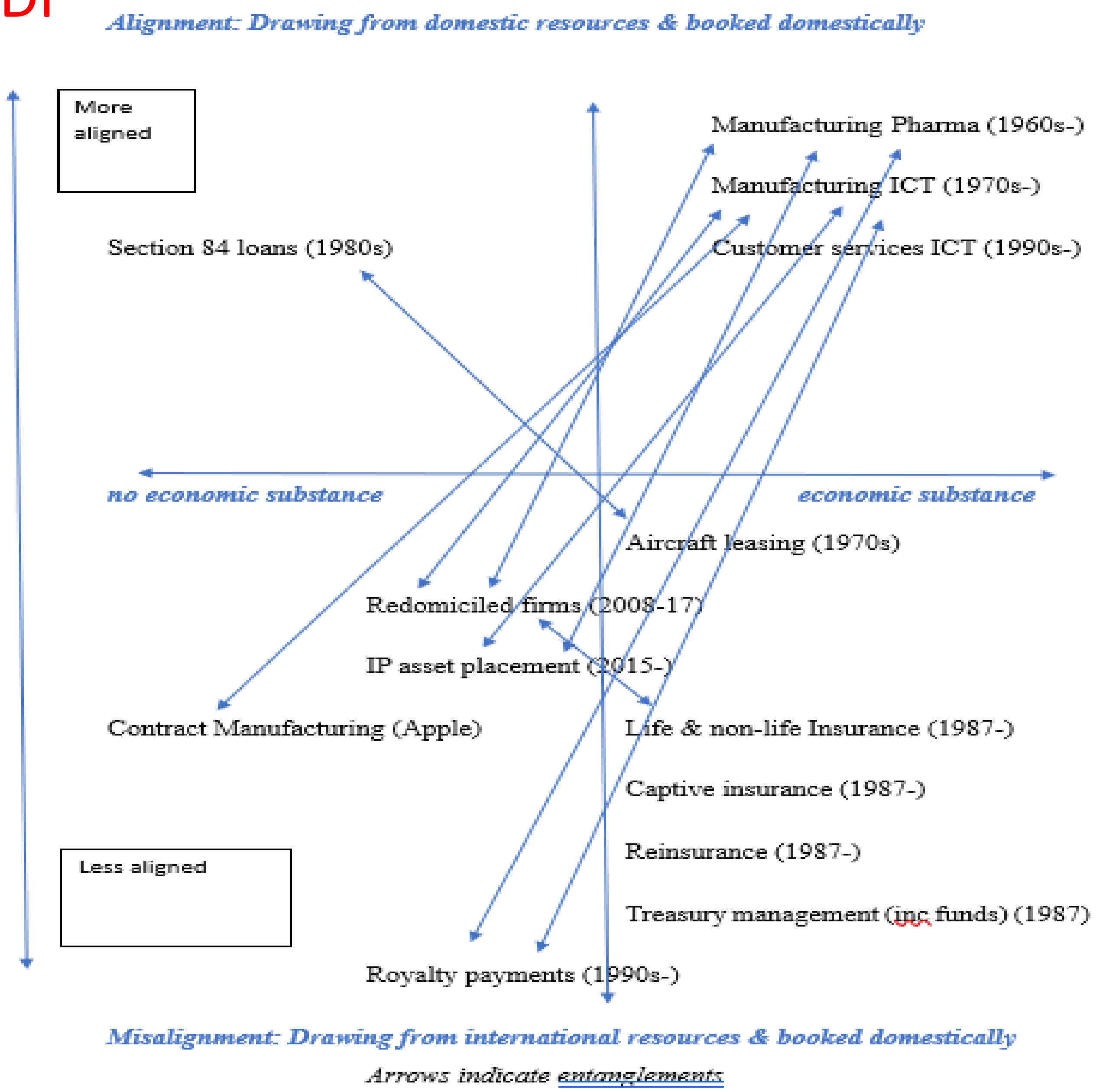
From GDP to GNI*

Subtract from Irish GDP:

- Net factor income from abroad (MNC profits)
- Redomiciled companies
- IP
- Aircraft

=Irish GNI*

‘Artificial’ FDI



Misalignment: drawing from international resources and booked domestically

Disconnection: no impact on the domestic economy

Tax games: *Institutionalised, reflexive modes of strategic interaction among states and corporations, constituted by the configuration of four fundamental dimensions of tax*

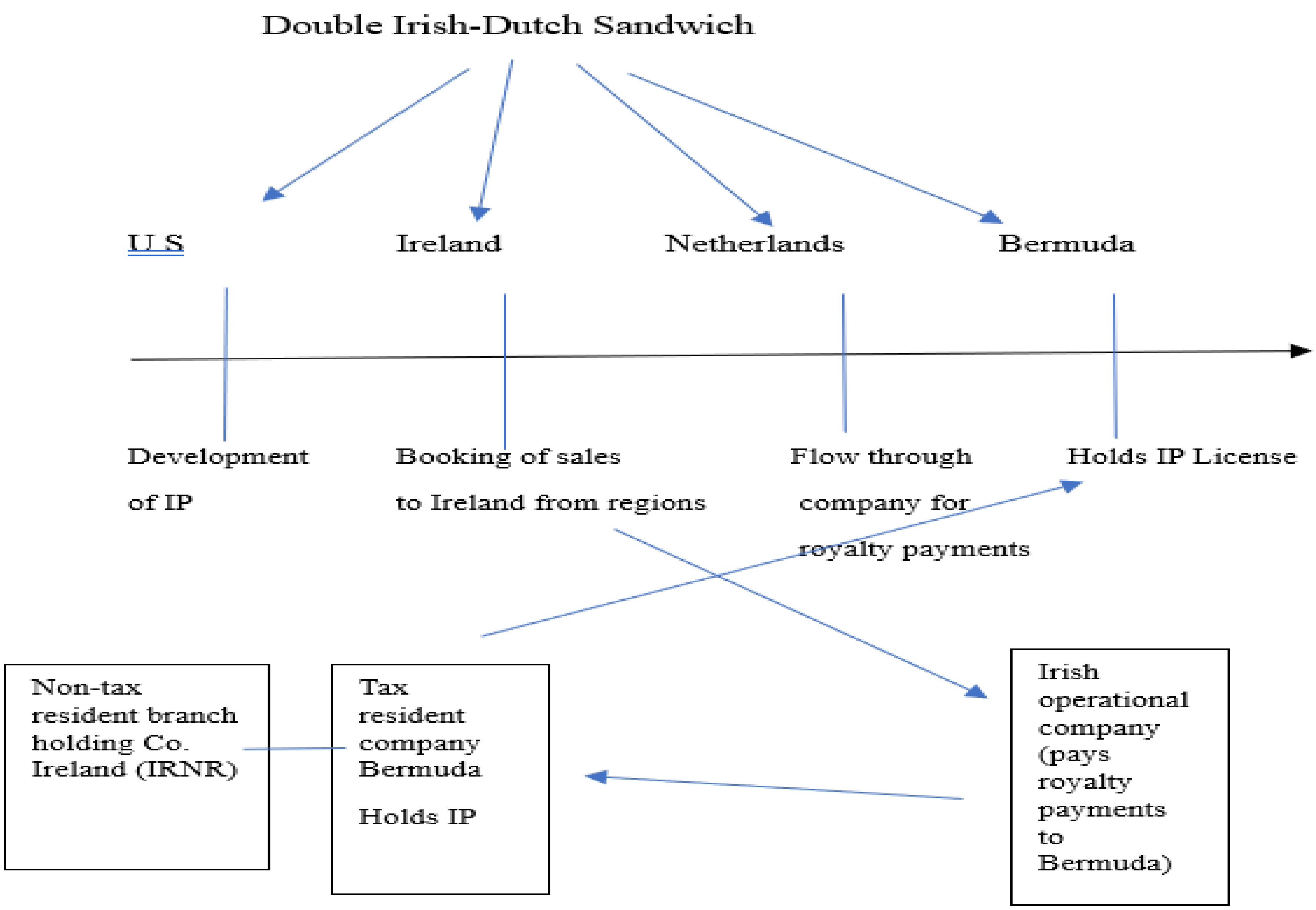
Tax Game Dimension	Function of dimension
Rate	The scope of the state claim
Jurisdiction	Rules that link a taxpayer or an item of income to claims made by a certain tax jurisdiction
Owner	Entity responsible for paying the tax claim
Return	The taxable asset or stream of income

The evolution of tax games

Tax Dimension	1)Manufacturing export platform ('60s-'90s/'00s)	2)Financial sector and services ('80s-present)[1]	3)Redomiciled firms (2008-circa 2017)	4)Double Irish-Dutch Sandwich /Single Malt (2003- 2020)	5)Statelessness (Apple example) ('90s-2015)	6)Onshoring (Apple example) (2015-present)
Evolution	Reconfigured into Games 4, 5 & 6	Steady, tax-regulatory style game, ongoing	Began and ended	Some companies reconfigured to game 6	Reconfigured to Game 6	Ongoing
Rate	0%: manufactured export	10%, 12.5%	12.5%	12.5%	12.5%, APAs	12.5%, 10% (KDB)
Jurisdiction	Shannon Export Zone	Ireland special zones (up till 2010), tax treaty partners	US, UK, Ireland HQ	US, Ireland, EU; Netherlands, Malta	US, Ireland	Ireland
Owner	Manufacturing subsidiaries CSA members; branches	Financial services subsidiaries & hubs; SPE style entities	Parent, SPEs	US-Ireland-Bermuda-Malta CSA members	US-Ireland-nowhere CSA members	US-Ireland CSA members
Return	Capital allowances (tangible) Section 84 loans Profit shifting Tax deferral - US	Capital allowances (tangible) Depreciation (e.g. aircraft) Section 84 loans SARP Debt and profit shifting Tax deferral - US	Debt & profit shifting Tax deferral -US	Royalty fees Ire-Bermuda Sales- Ireland R&D tax credit - Ireland SARP - Ireland Tax deferral - US	Booking of profits - 'nowhere' R&D tax credit – Ireland SARP - Ireland Tax deferral - US	Booking of profits - Ireland Capital allowances (intangible) – Ireland R&D tax credit - Ireland Interest expense deduction on IP loan - Ireland SARP - Ireland
	Intra-company loans Operating across the tax games, increasingly complex over time					

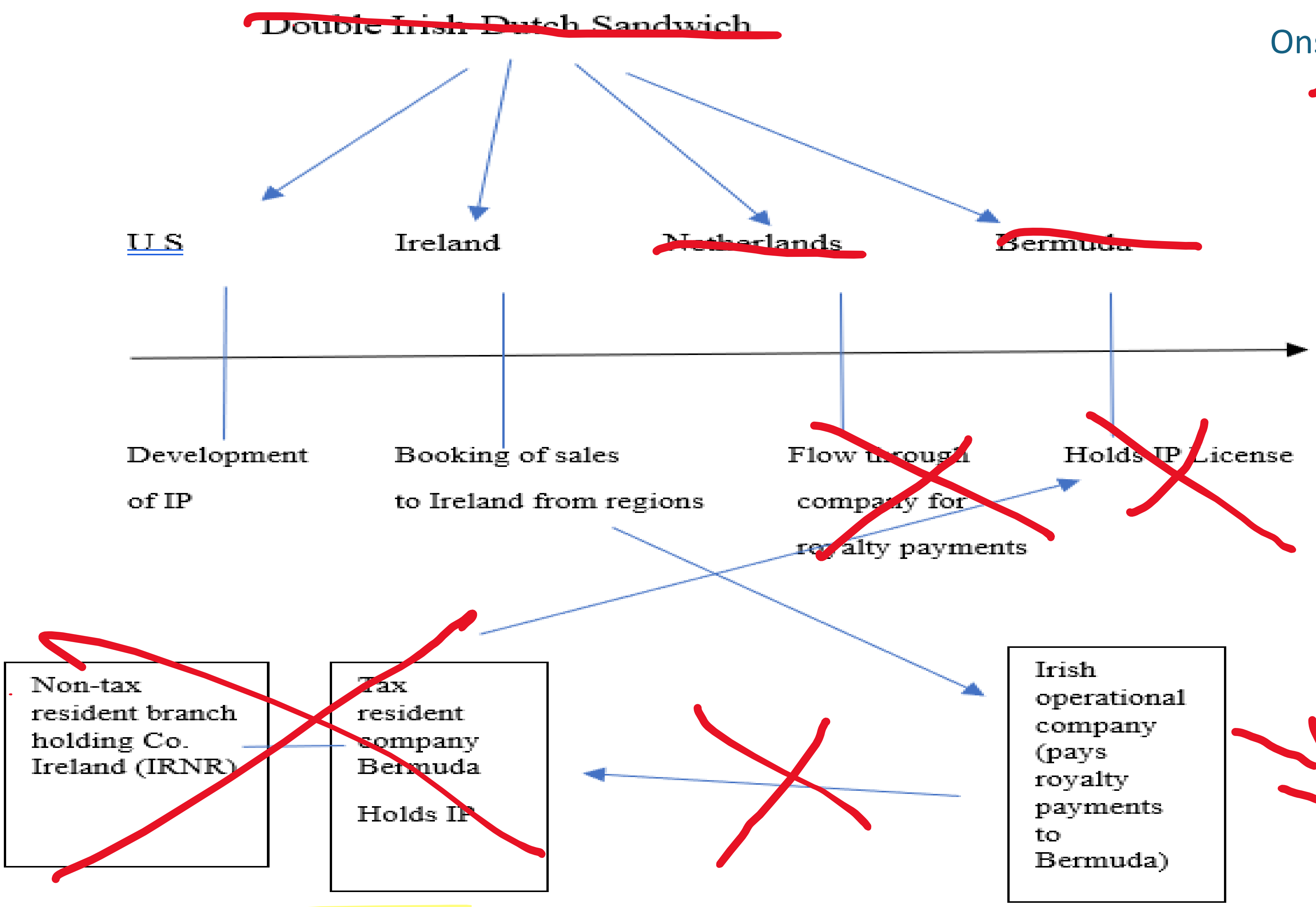
[1] Focus on aircraft leasing and insurance

Example: Game 4 becomes Game 6: From Double-Irish to IP Onshoring



Game 4
becomes
Game 6

Onshoring game



Purchases IP

Capital Allowances on intangible assets

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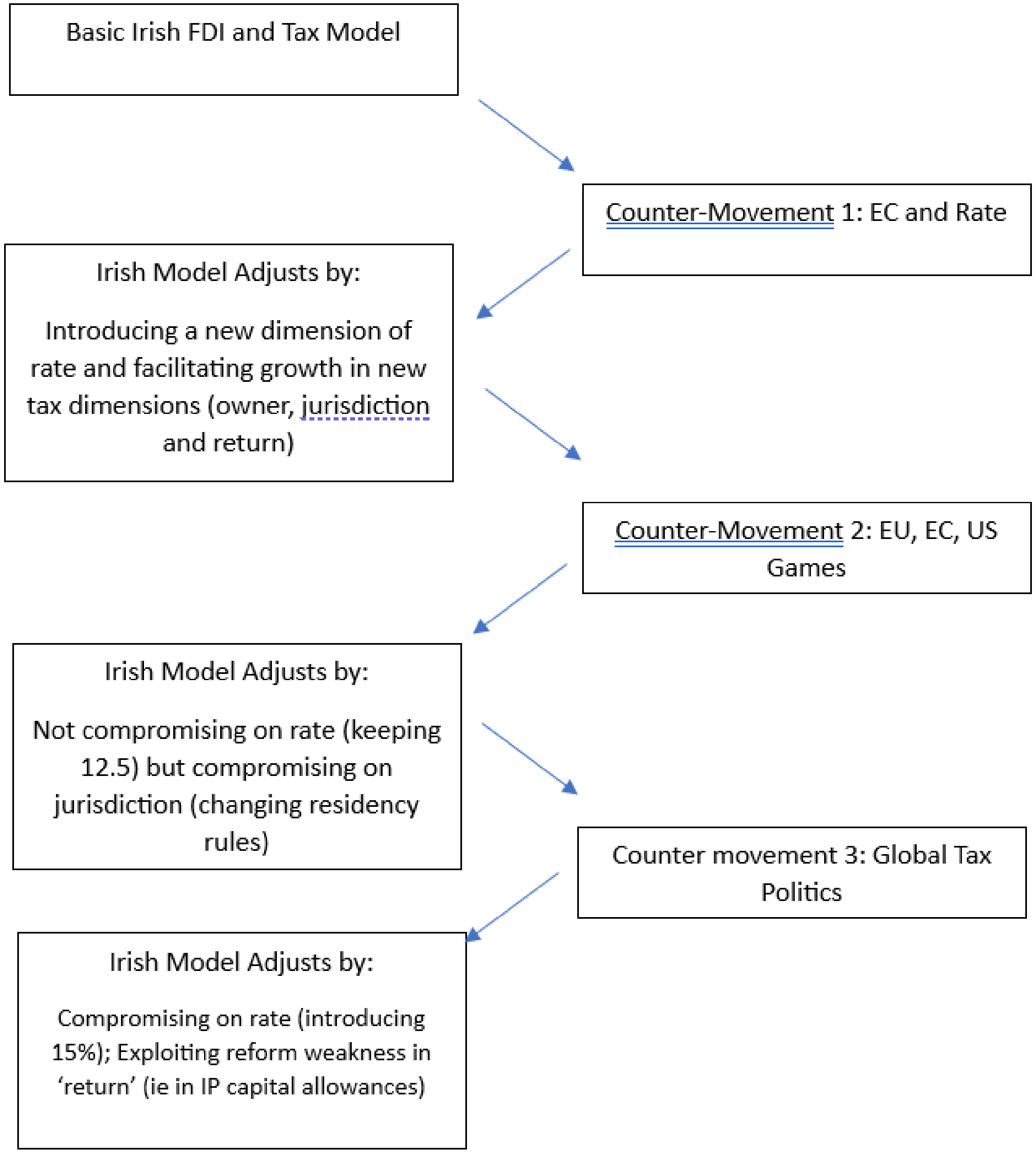
Continuation & disruption of tax games

States, corporations and rules	Example
Continuation of the games	
Institutionalised approaches to State based rule-making on tax (US and Ireland)	Ireland: evolution of public-private institutional cooperation at a distance US: corporate power in political and legal system
- Inaction / selective action on tax rule reform (US and Ireland)	Ireland: tax residency rules; transfer pricing rules, CFC rules US: tax deferral
- Inter-state synergies (US-Ireland)	Ire-US: interaction of tax residency rules (Apple Statelessness)
Disruptions to the games	
Firm-led disruptions	Redomiciled firms Apple Onshoring IP



Disruptions: Externally imposed

Ending of specific games ……

Continuation of games

Lessons?

- Reforming tax rules changes the games, but fall short of ending their re-configurations

- Rule changes are often externally enforced, but tax games are then reconfigured internally by Irish tax rules

- EC, US Senate counter-movements against Ireland’s tax games were combined responses to tax games becoming ‘visible’

Lessons?

- ‘Infrastructural power’ (Braun 2018, Pistor, 2023):

corporate power operating at a distance, through every-day, state-corporate interactions in the market.

- This form of power is held in place in Ireland through:
  - opacity of corporate decision-making in tax
  - in interaction with the technical tax rules of states
  - within a national context of sophisticated public-private tax administration and policy making
- Overall effect: tax games reconfigure; sometimes in unexpected ways; but are generally stable