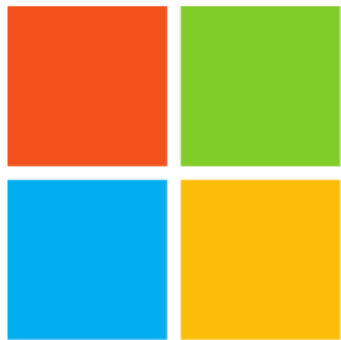




# Corporate Income Tax and Multinational Enterprises – The Way Forward?

Associate Professor Antony Ting  
University of Sydney



# Microsoft



# Re:think

Question 34: How can tax avoidance practices such as transfer pricing be addressed without imposing an excessive regulatory burden and discouraging investment?

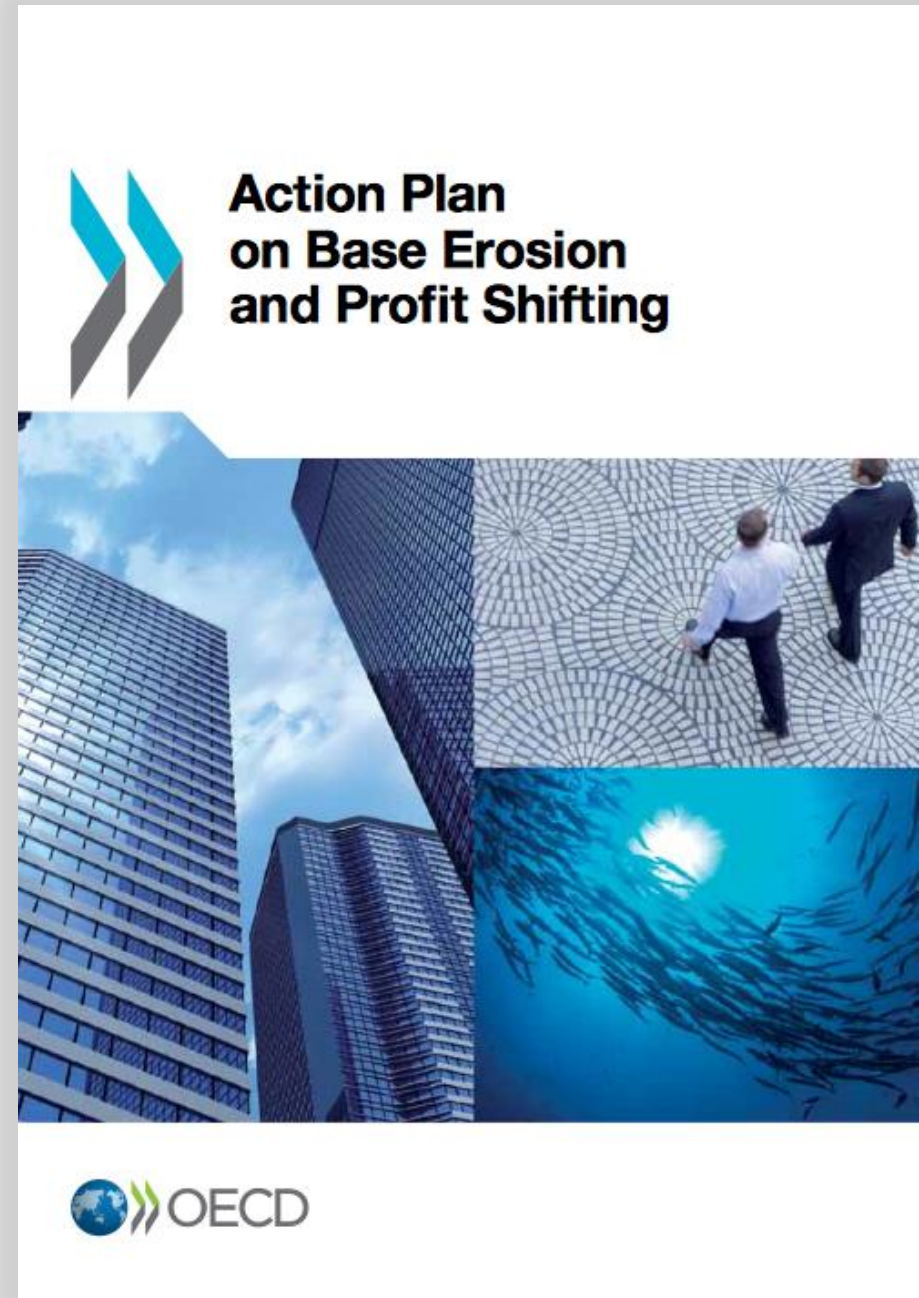
The logo for 'Better tax' is set against a dark background with a pattern of light grey circles. The word 'Better' is in white, and 'tax' is in blue. Below it, the tagline 'Lower, simpler, fairer.' is written in white, with the word 'fairer' circled in red.

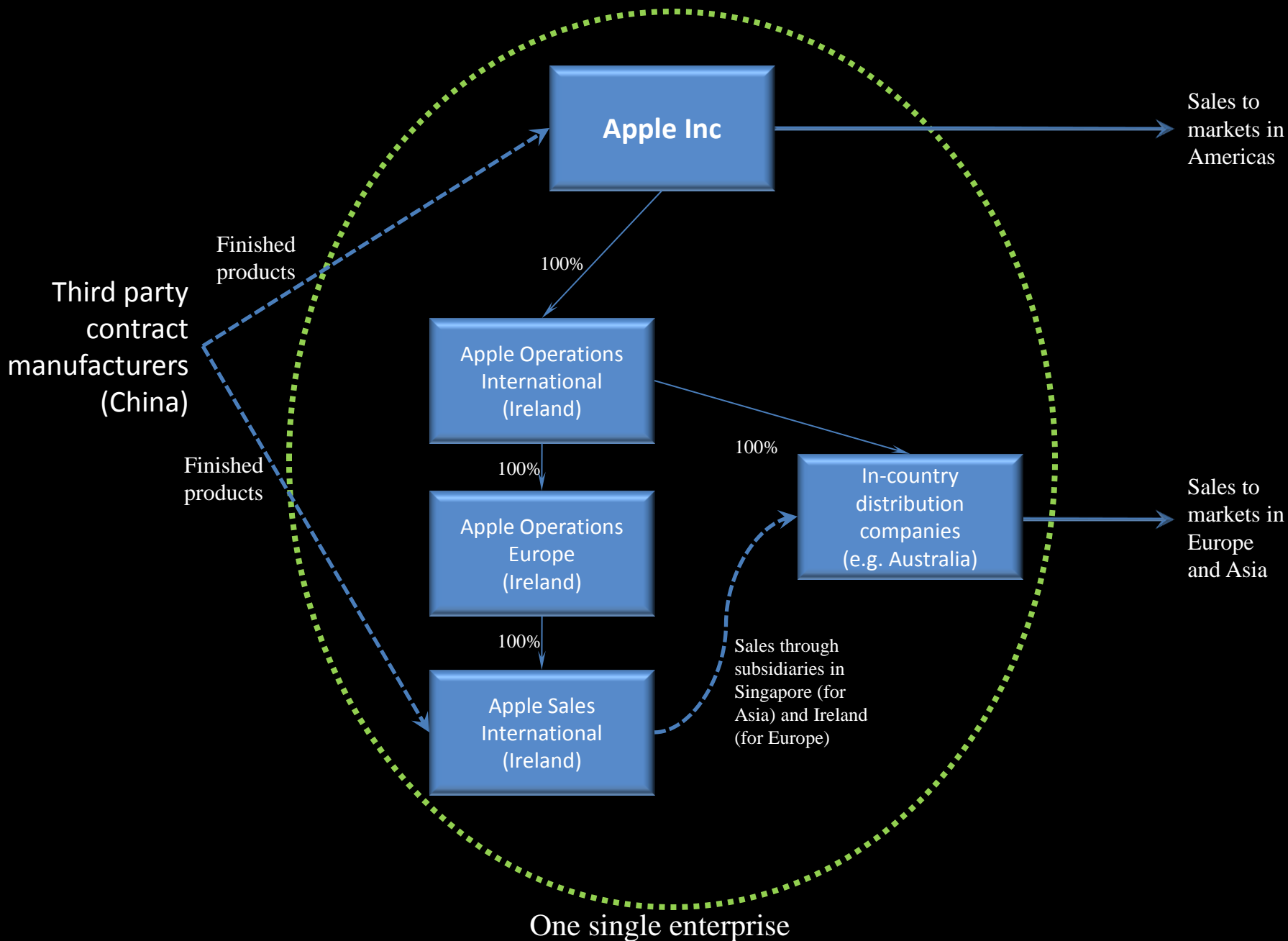
**Better tax**

Lower, simpler, fairer.

# OECD BEPS Project

- 2-year project since 2013
  - 15 Action Items
- Main target: double non-taxation
  - Example: Apple
    - “successfully” created US\$44 billion double non-taxed income from 2009 to 2012







**\$220**

Apple Sales  
International  
(Ireland)

**\$550**

Apple Pty Ltd  
(Australia)

**\$600**

# Apple Pty Ltd - 2014

	Company (\$M)	Company margin	Group margin
Revenue	<b>5,800</b>		
Cost of sales	<b>(5,300)</b>		
Gross profit	<b>500</b>	<b>9%</b>	<b>40%</b>
Operating expenses	<b>(250)</b>		
Profit before income tax	<b>250</b>	<b>4%</b>	<b>30%</b>



## US attitude towards BEPS

- Testimony of a prominent US tax lawyer before a US congressional hearing (emphasis added):

Why should we – rather than the UK tax authorities – worry if [US MNEs] are employing strategies to minimize their UK taxes? ... Ultimately, in considering the appropriate reaction to [BEPS] whose primary impact is foreign tax minimization, we must consider carefully *whether the United States has an interest in imposing and enforcing rules whose primary beneficiaries are foreign fiscs, rather than the US treasury.*



# US attitude towards BEPS

- Caterpillar hearing: further evidence of the US attitude
  - 3 out of the 4 Senators in the hearing *defended* Caterpillar, even after learning that Caterpillar has successfully avoided *US income tax* by shifting US\$8 billion taxation income from the US to Switzerland
  - One Senator even declared in the hearing (emphasis added):

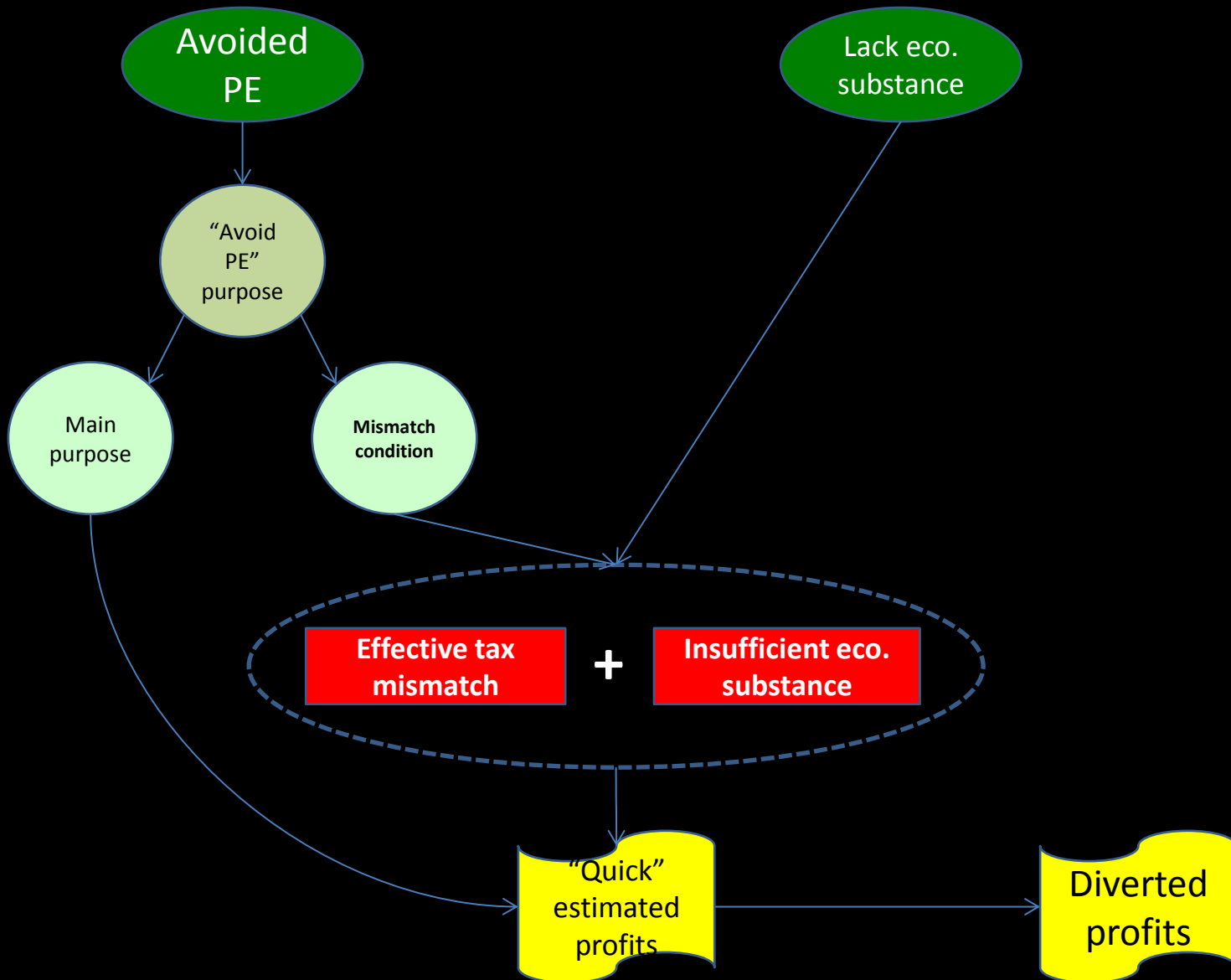
I would like to take my time to apologize to Caterpillar for this proceeding ... Rather than having an inquisition, we should probably bring Caterpillar here to give them an *award*.



# OECD BEPS Project

- Strive to achieve international consensus on anti-BEPS recommendations
- Doubts:
  - “International” consensus
    - Strong oppositions against proposals for Actions 8 to 10 on transfer pricing rules, which are often at the core of many BEPS structures
    - Professor Vann: the Project “does not seem to be making significant progress in [transfer pricing rules]”
  - Only “recommendations”
    - Implementation subject to individual country’s political constraints

# UK's Diverted Profits Tax



# Key structural elements of a general anti-BEPS rule (“GABR”)

- Focus on aggressive BEPS structures with both of the following features:
  - Low-taxed income
    - DPT: threshold = 80% of UK corporate tax
  - Insufficient economic substance
    - DPT: compare tax reduction with either (1) other financial benefits; or (2) value contributed by staff of group companies
  - The focus helps to minimise compliance and administrative costs
- Application to Apple’s tax avoidance structure

# Second best solution - a GABR for Australia?

- General anti-avoidance provision (Part IVA):
  - ATO: unlikely to be effective to deal with most BEPS structures
- GABR within Part IVA?
  - Insights from an existing provision in Part IVA, namely section 177EA (franking credit trading schemes)
    - Purpose test: “A purpose” instead of “dominant purpose”
    - Effect: adjust taxable income of taxpayer to the extent that “the Commissioner considers reasonable in the circumstances”