Note on Abbott Laboratories' Single Malt Tax Shelter
Christian Aid Ireland – September 2021

Summary

- **Abbott Laboratories, one of the world's largest pharmaceutical companies, has since 2019 built a tax shelter in Ireland and Malta for profits from its 'rapid diagnostics' division**, and specifically its 'emerging markets infectious diseases' unit. This division already used a subsidiary in low-tax Ireland to sell its rapid testing products all over the world, from Ethiopia to Nepal. Its new Irish-Maltese tax shelter ensures that it pays no tax in either Malta or Ireland on income attributable to the intellectual property for its rapid tests – including its rapid COVID tests.

- **Abbott's rapid diagnostics division has seen a dramatic increase in sales and profits since the start of the COVID-19 pandemic, driven by some $3.8bn in sales during 2020** (and likely more in 2021) of Abbott's COVID-19 rapid antigen tests. This includes tens of millions of Abbott's COVID tests to be supplied to low- and middle-income countries, purchase-guaranteed by the Bill and Melinda Gates Foundation, and part-funded by a $50m donation from the Global Fund as part of the World Health Organisation's programme to make COVID tools available to developing countries. As a result of the rapid testing boom, Abbott's net sales increased by nearly 10% in 2020 compared to 2019, and its pre-tax profits by over 20%.

- **Abbott's rapid testing tax shelter exploits a structure dubbed the 'Single Malt': a successor to the famous 'double Irish' tax structure** used by dozens of US-headed multinationals from Google to Pfizer, which the Irish government abolished through 2014 legal changes which came into force in 2020.

- In 2017 Christian Aid Ireland revealed the Single Malt structure, showed that it could produce exactly the same tax result as the 'double Irish', and showed that several multinationals from Microsoft to Allergan were already setting such structures up. **Irish finance minister Paschal Donohoe called the Single Malt "aggressive tax planning" and pledged to end its use.[1] In December 2018 the Irish government signed an agreement with the Maltese government which it said would ensure that the Single Malt tax structure couldn't work.**

- **This is clearly not the case. Three months after the Irish and Maltese governments signed this agreement, Abbott set up its Single Malt structure**. It appears to work despite the Ireland-Malta agreement, thanks to IP tax breaks accorded by the Maltese government, and the extremely narrow provisions of the Ireland-Malta agreement itself. There is no suggestion that Abbott has acted in any way unlawfully: it has lawfully taken advantage of provisions and mismatches of Irish, Maltese and US tax laws.

- Abbott has also chosen to set up this structure despite the various efforts by European and US governments in recent years to stop such tax behaviour, including EU member states' introduction of exit taxes for the migration of intellectual property under the EU Anti-Tax Avoidance Directive (ATAD), and the US' 2017 introduction of a minimum tax on US

[1] http://paschaldonohoe.ie/ireland-takes-next-step-in-tackling-aggressive-tax-planning-through-work-with-oecd-minister-donohoe/

multinationals' offshore profits (the 'GILTI' tax). Below (paragraphs 27 and 35) we explore why these measures may not have made the 'Single Malt' structure inoperable in this case.

- Abbott's Single Malt structure shifts taxable profits out of the countries where its products have been developed, including the USA. However, **it also shifts taxable profits from the sales of 'limited risk distributors' which sell its products, registered in countries ranging from South Africa to Indonesia, into its Maltese/Irish tax shelter.**

- **Abbott's Single Malt tax shelter enables the company to legally avoid paying corporate income tax on up to €477m in profits from Covid-19 and other rapid tests**. The full amount of taxable profits sheltered in the structure isn't yet clear, as accounts are only available for its first partial year (2019), in which EUR 62m of revenue / EUR 31m profits were sheltered from Irish and Maltese tax. However, this amount is likely to be much greater in 2020, both due to the full operation of the structure, and the huge COVID-19 boom in Abbott's rapid testing sales.

Background

1. **US pharmaceuticals giant Abbott Laboratories has flourished during the COVID-19 pandemic.** Abbott's net sales increased by nearly 10% in 2020 compared to 2019, and its pre-tax profits by over 20%.[2]

2. This increase in sales and profits is almost entirely due **to $3.8bn sales of COVID-19 rapid antigen tests in 2020** (and likely much more in 2021), using testing platforms and technology that Abbott acquired in October 2017 when for approximately $4.5bn it acquired **Alere Inc**, a major multinational producer of 'point-of-care' diagnostics: rapid tests for diseases and medical conditions, performed outside the laboratory.[3]

3. In its 2020 annual financial review, Abbott describes falling demand in all but one of its product divisions as non-COVID medical procedures shrank substantially worldwide; but a massive increase in sales in its 'diagnostics' (i.e. medical tests) division driven by sales of COVID-19 rapid tests:[4]

   > "*Abbott's Diagnostics business experienced the most significant change in sales from 2019-20 as sales from new tests and other related products to detect COVID-19 more than outweighed the negative impact of COVID-19 on routine diagnostic testing volumes…. In 2020, Abbott's COVID-19 testing related sales totaled [sic] approximately $3.884 billion, led by sales related to Abbott's BinaxNOW, Panbio and ID NOW rapid testing platforms*."

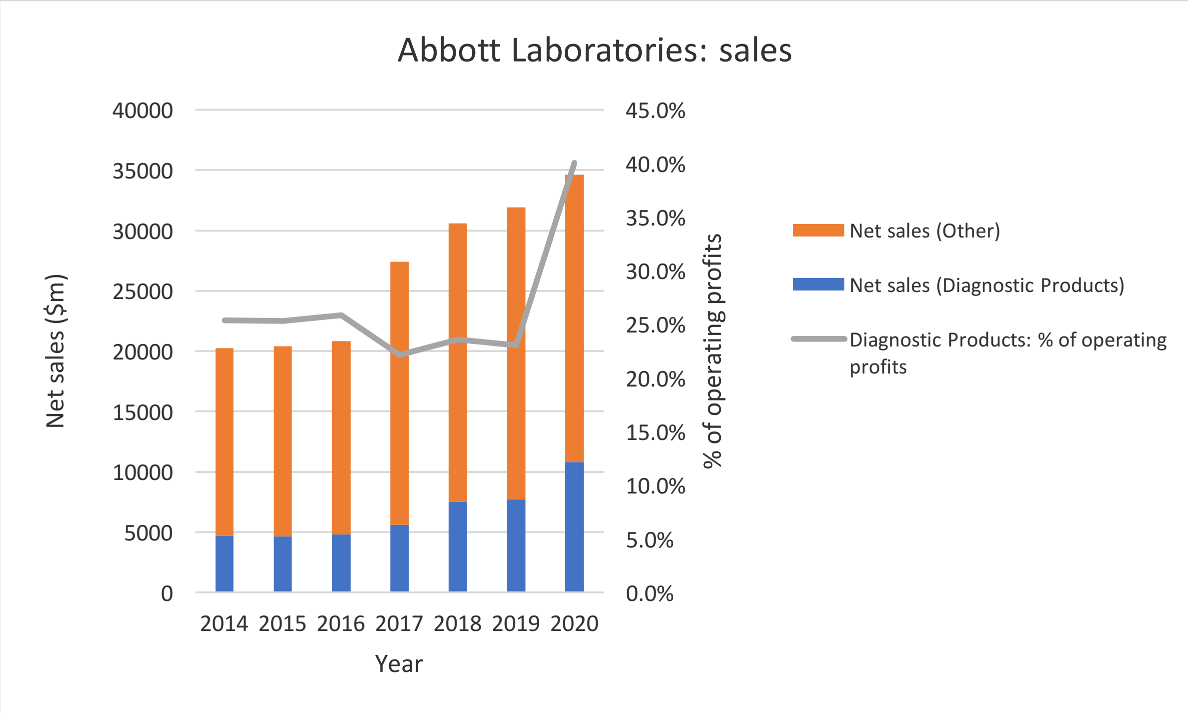
   All three of the trademarks it mentions (BinaxNOW, Panbio and ID Now) are former Alere Inc intellectual property. [5]

4. Since acquiring Alere Inc, Abbott has reorganised the intellectual property and sales functions of Alere Inc, and of Abbott's wider Rapid Diagnostics Division, into a new set of

[2] Abbott Laboratories, 10-K filing for CY 2020.
[3] Alere Inc, form 8-K filed 3 October 2017, https://www.sec.gov/Archives/edgar/data/1145460/000110465917060404/a17-21092_48k.htm
[4] Abbott Laboratories Inc, 10-K filing for CY 2020.
[5] Search in EUIPO trademark database.

Irish and Maltese subsidiaries. This reorganisation took place in 2019 – fortuitously, since its diagnostics sales and profits would see their biggest ever increase the following year. These subsidiaries are exploiting a tax-driven structure which the Irish government claimed in 2018 it had abolished, but evidently has not.[6] This note discusses the tax treatment of these entities' income and profits.

Figure 1



Source: Abbott Laboratories Inc 10-K filings, 2015-2021

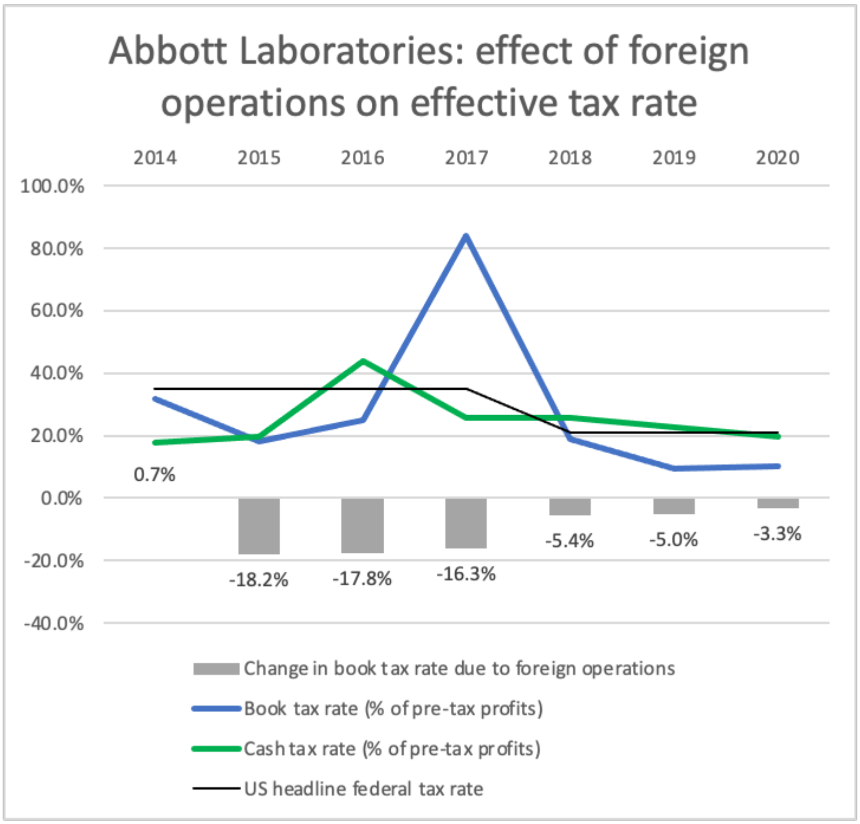
5. In September 2020, the World Health Organisation announced that as part of its Access to COVID-19 Tools (ACT) Accelerator, the Bill and Melinda Gates Foundation had agreed a volume guarantee arrangement with Abbott and another test manufacturer (SD Biosensor) to make 120 million Abbott 'Panbio' and SD Biosensor 'Standard Q' COVID tests available to lower- and middle-income countries at a maximum $5 each.[7] The Global Fund provided an initial $50m to fund L/MIC purchases of these tests.[8] It isn't clear what Abbott's profit margin is on these $5 tests; nor which other L/MIC countries Abbott has sold its Covid-19 rapid antigen tests to outside this agreement, and at what prices.

[6] The economic ownership of two of the three trademarks was moved in 2019 to the Ireland/Malta entities that this note discusses below. Since the Irish/Malta entities' balance sheets show that they also hold the (much more significant) manufacturing IP and customer relationships for Alere's testing products, it is very likely that the Irish/Malta entities' income derived from royalties payments for the manufacture and sales coordination of the COVID-19 tests themselves, and not just from the use of their tradenames.
[7] https://www.who.int/news/item/28-09-2020-global-partnership-to-make-available-120-million-affordable-quality-covid-19-rapid-tests-for-low--and-middle-income-countries
[8] https://www.who.int/news/item/28-09-2020-global-partnership-to-make-available-120-million-affordable-quality-covid-19-rapid-tests-for-low--and-middle-income-countries

6. **Abbott Laboratories, as a group, has consistently achieved effective book and cash tax rates well below US headline rates.** Abbott's SEC filings state that this is primarily due to lower effective tax rates on profits booked in "Puerto Rico, Switzerland, Ireland, the Netherlands, Costa Rica, Singapore, and Malta."[9] In 2019 and 2020 Abbott has enjoyed a worldwide effective tax rate of approximately 10% (Figure 2), well below the headline rates in most of the countries where it manufactures and sells its products.

7. **(Note:** in order to avoid any possible exaggeration of the tax-minimising effects of Abbott's activities, in the following analysis we have primarily used the book tax liabilities of Abbott and its subsidiaries, since these reflect the corporate income taxes due on profits both in the current period and in future periods, rather than simply the corporate income taxes paid in a given period. While book tax and cash tax will vary substantially from each other in a given year, over several years they tend to roughly equalise. During 2014-20, Abbott Laboratories' book tax liabilities (US$5.03bn) approximately matched its cash taxes paid (US$4.91bn). Where there are significant tax liabilities not captured in book taxes, we have noted these).

Figure 2



Source: Abbott Laboratories Inc 10-K filings, 2015-21. Note: the high effective tax rate in 2017 is due to the one-off 'transitional tax' on unrepatriated overseas profits imposed by the US Tax Cuts and Jobs Act (TCJA) passed that year. Abbott's 10-K SEC filings show that most of the TCJA's tax impact fell in 2017, with some in 2018. The TCJA also reduced the US headline tax rate from 35% to 21%, which may explain why the impact on Abbott's effective tax rate of its foreign operations in low-tax jurisdictions has been lower in absolute terms (but not in proportional terms) from 2018 onwards.

9 Abbott Laboratories Inc, 10-K filing, 2021, p. 33

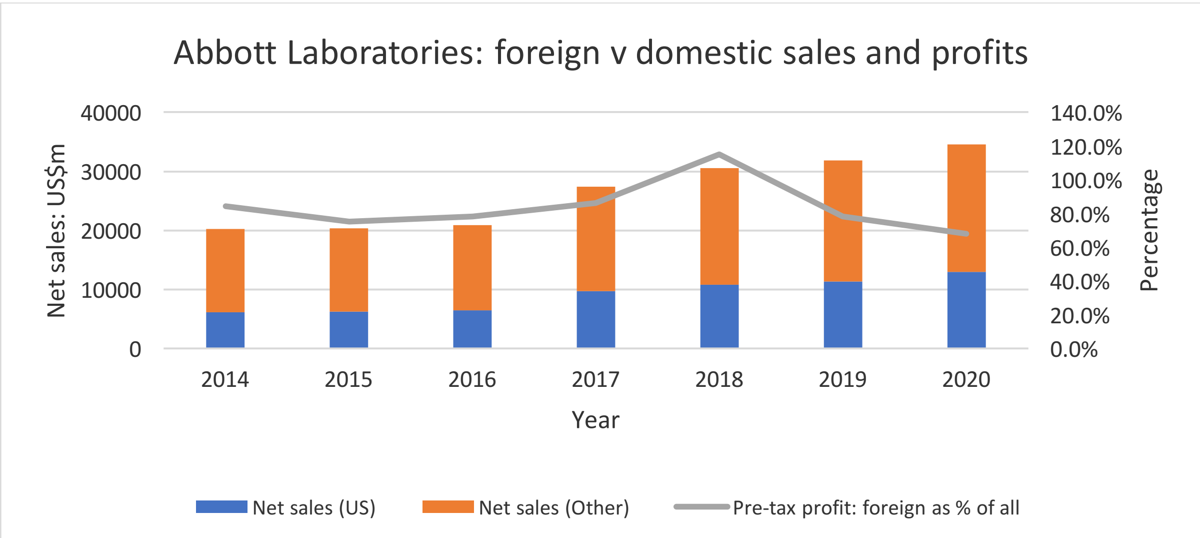
Tax structure prior to the Alere acquisition

8. **Prior to Abbott's acquisition of Alere, both multinationals had organised non-US sales via Irish-incorporated subsidiaries.** (Abbott's non-US sales have long been significant: since 2014 they have constituted two-thirds of its global sales, and contributed nearly three-quarters of its operating profits – see Figure 3).

    - Abbott operated a classic 'double-Irish' structure from 2003 onwards: non-US sales were booked in the Irish-resident branch of Abbott Ireland (a Bermuda-incorporated company). Abbott Ireland in turn paid its parent company, Abbott Laboratories Vascular Enterprises (Irish-incorporated but Bermuda-resident), for distribution services and licences to use Abbott's intellectual property (IP). *(This double-Irish structure will have lost much of its tax advantage in January 2020, when Irish legal changes aimed at abolishing the 'double-Irish' structure came into force, making Abbott Laboratories Vascular Enterprises tax-resident in Ireland).*

    - Likewise since 2011 Alere International Ltd, an Irish-registered company, has acted as Alere Inc's 'International business service centre' for its non-US sales. Alere International Ltd (now renamed Abbott Rapid DX International Ltd) organises the contract manufacturing of Alere's products and sells those products on to Alere subsidiaries in other countries, which act merely as 'limited risk' (and thus likely low profit) distributors of Alere's products in their own countries and regions (Figure 4).[10] Alere does not appear to have operated a fully-fledged 'double Irish' structure prior to its takeover: the intellectual property it used was owned primarily by Alere International Ltd's parent company, Alere Switzerland GmbH, incorporated in Switzerland; and also by Alere International Ltd (Ireland) itself.[11]

Figure 3



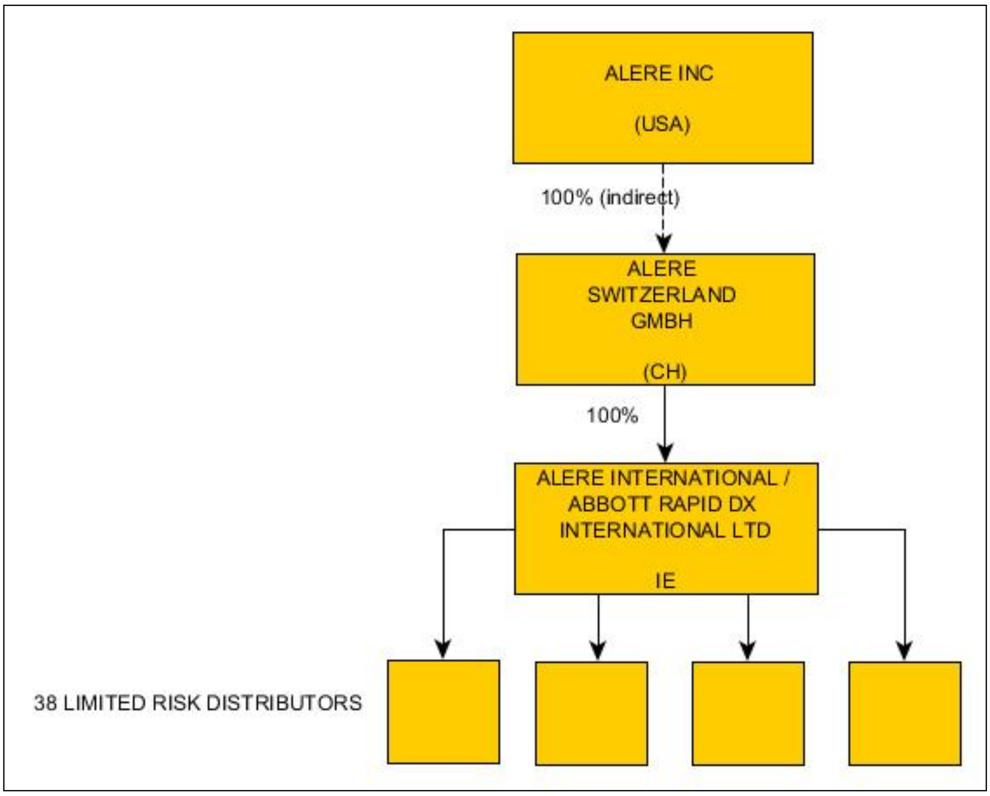
Source: Abbott Laboratories 10-K filings, 2015-21

[10] Alere International Ltd accounts, 2015-19.
[11] Alere International Ltd accounts, 2015-18.

9. **A detailed geographical breakdown of the sales facilitated by Alere/Abbott's Irish-resident subsidiary is not available. However, the locations of its subsidiaries (which act as distributors for the products it sells) are diverse, from Europe and North America to Brazil, Pakistan, South Africa ('Abbott Kenya Limited'), Indonesia, Malaysia and Argentina.**[12] Bank guarantees issued by this Irish subsidiary provide further clues to the identity of some of its direct customers: they include guarantees in 2018 in favour of the **Ethiopian Pharmaceuticals Supply Agency**; and in 2019 in favour of the **National Centre for Aids & STD of Nepal**.[13]

10. **The Irish government has rewarded both Abbott and Alere with significant industrial incentives.** In 2019 and 2018, Abbott was reportedly the single largest recipient of Irish Development Authority (IDA) grants, and has received over EUR 50m in IDA grants to date.[14] Alere Inc has also benefitted from IDA grants of EUR 7.2m from 2014 to 2019. This is despite the fact that Alere's Irish operations are only a sales and logistics centre: its Irish subsidiary's accounts state that both research and development, and the manufacturing of the products that its Irish subsidiary sells and distributes, take place elsewhere.[15]

Figure 4: Alere Inc Irish structure, pre-2019



[12] Abbott Rapid DX International Ltd (formerly Alere International Ltd), annual accounts filed with Irish CRO for CY 2019, Note 19 (Financial assets / subsidiaries).

[13] Abbott Rapid DX International Ltd (formerly Alere International ltd), annual accounts for CY 2018 and CY 2019.

[14] https://www.thejournal.ie/abbott-ireland-tax-avoidance-4528308-Mar2019/ accessed 19 June 2021

[15] According to Alere International Ltd's annual accounts: "The Company's inventory is manufactured by other group entities on the Company's behalf or sourced from third party vendors"

Abbott's post-2018 reorganisation of Alere and the Abbott Rapid Diagnostics division

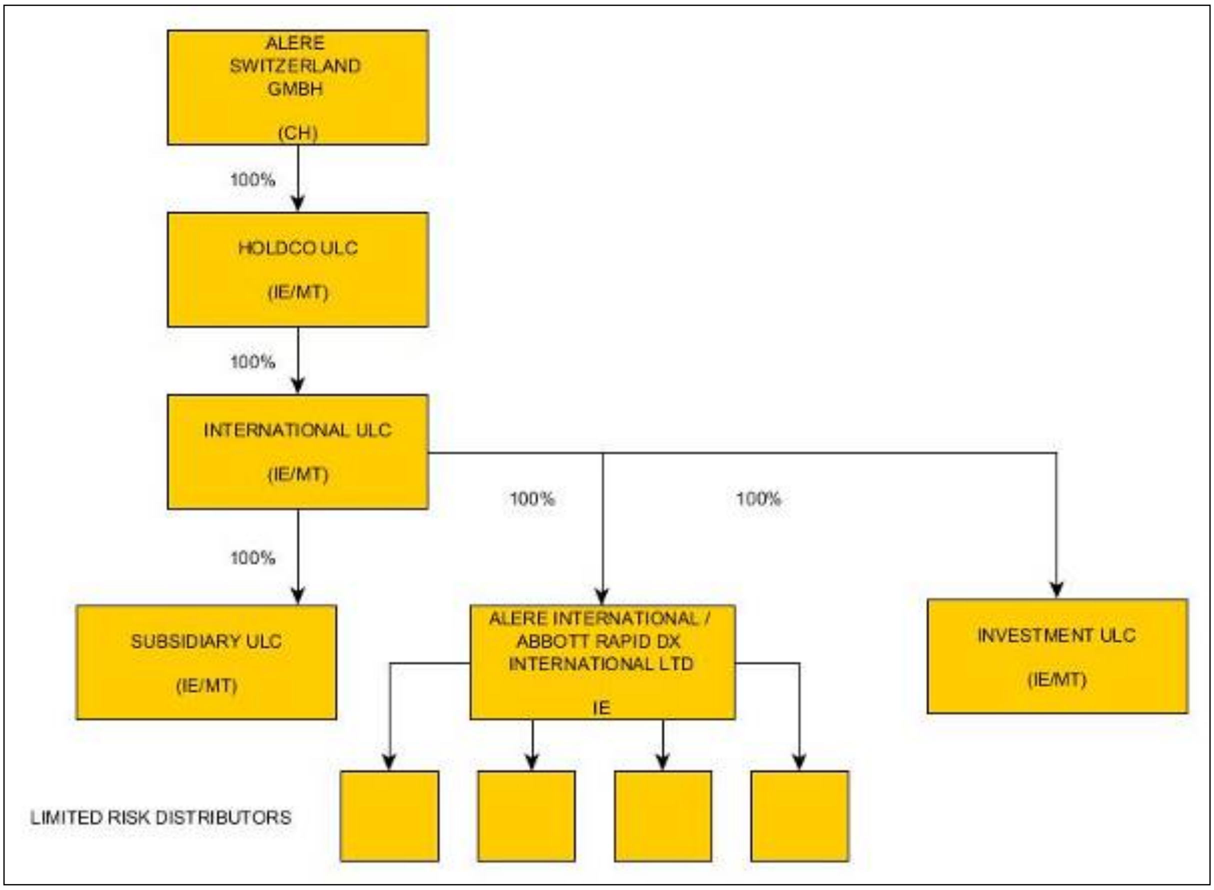
11. In 2019, the Abbott Rapid Diagnostics Division, including the Alere companies it had acquired in 2017, began what Abbott's financial reporting describes as a "*multi-year restructuring project aimed at improving control, compliance and governance for international markets. This project is focused on supply-chain restructuring and global business transformation*."[16]

12. The most visible part of this restructuring was the establishment in February 2019 of a stack of three Irish-incorporated companies (Figure 5):

- Abbott Rapid Diagnostics International Holdco ULC (hereafter referred to as 'HoldCo ULC');
- Abbott Rapid Diagnostics International ULC (hereafter 'International ULC');
- Abbott Rapid Diagnostics International Subsidiary ULC (hereafter 'Subsidiary ULC').

(In September 2020 Abbott added a fourth, Abbott Rapid Diagnostics International Investments ULC, whose function and finances are not yet clear since it has not yet had to file any annual accounts).

Figure 5: Abbott Rapid Diagnostics/Alere structure, post-2019



[16] Alere International Ltd (now Abbott Rapid DX International Ltd), 2018 annual accounts, p.4

13. All of these four new companies are **Irish-incorporated but tax-resident in Malta** due to their place of business, effective management and control being deemed to be in Malta. **Note: This is purely a function of the location where its directors hold board meetings and make key decisions**. None of these companies have any employees – in Malta, Ireland or anywhere else; the three Abbott managers who serve as their directors are based in Illinois, USA, and Hessen, Germany; and the companies' only permanent Maltese presence is their three other (Maltese-resident) directors, none of whom are Abbott employees. One of these three, the company secretary, is a Malta-based accountant who was previously the CEO of Deloitte Malta until 2013 and now runs his own consulting firm. Abbott's registered 'place of business' in Malta is a corporate office hire company in an unmarked building in the industrial area of Birkirkara, an address which is also the 'place of business' of hundreds of other offshore companies, including many listed in the Paradise Papers and similar leaks.[17]

14. **This is very clearly a 'Single Malt' structure: a functional replacement for the infamous 'double-Irish' tax structure** used by dozens of US-headed multinationals during the 2000s and 2010s, but made inoperative from January 2020 by Irish tax law changes instituted in 2014 after US and EU outcry about the double-Irish.

- The double-Irish structure was intended to defeat US 'Subpart F' legislation which would otherwise tax profits that US-headed multinationals shift into low/no-tax jurisdictions like Bermuda and Jersey. It did so by booking international sales in an Irish-resident company (Company A), which then minimised its Irish profits by paying out royalties to an Irish-incorporated but offshore-resident company (Company B), usually Company A's parent company, which owned the intellectual property related to the products that Company A sold. Since Company B would be tax-resident in a tax haven with no corporate income tax, these royalty revenues would be received tax-free. Meanwhile the US' 'Subpart F' legislation, designed to stop such profit-shifting to tax havens, had a provision called 'check-the-box' which amongst other things allows transactions between two companies incorporated in the same jurisdiction to be disregarded for tax purposes, even if they are tax-resident in different jurisdictions; thereby allowing Company B's revenues not to be taxable in the US either. The double-Irish structure and the US tax loophole it exploits were not accidents, but came about after sustained corporate lobbying. [18]

[17] Abbott Rapid Diagnostics International ULC, Abbott Rapid Diagnostics International Holdco ULC, Abbott Rapid Diagnostics International Subsidiary ULC, 2019 annual accounts; see also LinkedIn profiles for the six directors. The Ireland-Malta bilateral tax treaty, like most such treaties, determines that the 'place of effective management' is the place of tax-residence of Irish-incorporated but Maltese-'managed' companies. See *Convention Between Ireland and Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income*, 14 November 2008, Article 4 (Residence). The 'place of business' of Abbott's Maltese subsidiaries, given in correspondence with the Malta company registry, is Office 32, Verdala Business Center, Triq Il-Birrerija, Birkirkara, Malta.

[18] The check-the-box provisions in the US' 'Subpart F' tax regime were designed and introduced in the 1980s -- following corporate lobbying – by then IRS official Will Morris. Morris went on to become both an Anglican priest, chair of the OECD's tax advisory committee, and a full-time tax lobbyist for the notoriously aggressive tax department of General Electric. He helped negotiate a £760m UK tax break for GE that the UK's revenue authority HMRC has now unusually charged was fraudulently obtained. (The claim is set to go to trial in October 2021; Will Morris is not himself a defendant; GE denies the charges). See Tabby Kinder, 'Test of Faith: Will Morris, PwC tax expert and part-time priest', Financial Times, 14 August 2020. For similar background to the 'double-Irish' and changes to Ireland's royalties taxation regime to make the structure work more tax-

15. When the Irish government moved to abolish the double-Irish in October 2014 (by changing Irish tax law to insist that Irish-incorporated companies like Company B should be *prima facie* Irish tax-resident, and thus liable to Irish tax on their profits), several tax advisers pointed out that a functionally similar replacement was possible. **This replacement structure envisaged placing the tax residence of Company B in a country with which Ireland has a bilateral tax treaty, like Malta or Dubai, and ensuring that it is 'effectively managed' in that country, and thus tax-resident there under the terms of the tax treaty**. Crucially, this is possible as the provisions of any bilateral tax treaty override domestic tax law. Although Ireland – like most countries – has not signed tax treaties with true 'no-tax' havens like Bermuda or the Cayman Islands, nonetheless some of its tax-treaty partners like Dubai or Malta provide such wide tax breaks on corporate income on intellectual property or other forms of foreign corporate income, with such little requirement for economic activity in their jurisdictions to qualify, that the same 'no-tax' result could be achieved. Such a structure would avoid US 'Subpart F' tax liabilities in the same way as the previous 'double Irish' structure (i.e. by allowing the company to disregard, for tax purposes, transactions between two companies incorporated in the same jurisdiction – Ireland – although tax resident in two different jurisdictions).

16. This possibility received little attention until 2017, when Christian Aid reported that large US-headed multinationals including Microsoft, Allergan and Teleflex had begun setting up such so-called 'Single Malt' structures using Irish-incorporated but Maltese-resident companies.[19]

17. After press and parliamentary attention, and advocacy from Christian Aid, the Irish government eventually agreed to close down the 'single Malt' structure through an agreement signed with the Maltese government. This agreement, signed in November 2018, ostensibly ensured that Irish-incorporated companies receiving income tax-free in Malta would be deemed to be Irish-resident regardless of the country from which they were managed and controlled.[20]

18. This 2018 agreement appeared to end the spate of new single-Malt structures that multinationals had begun to set up from 2015 onwards. Since November 2018 only four companies have been incorporated in Ireland with a place of business registered in Malta: the four Abbott subsidiaries listed above, registered in February 2019.[21]

efficiently from 2010 onwards, see Jesse Drucker, 'Man Making Ireland Tax Avoidance Hub Proves Local Hero', Bloomberg, 27 October 2013.

[19] Christian Aid Ireland, *Impossible Structures*, 12 November 2017; Dominic Coyle, 'Multinationals turn from 'Double Irish' to 'Single Malt' to avoid tax in Ireland', *Irish Times*, 14 November 2017; Peter Hamilton, 'Ireland's 'single malt' still aiding tax avoidance', *Irish Times*, 25 September 2018.

[20] *Competent Authority Agreement under the Ireland-Malta Double Taxation Convention 2008.*

[21] Comparison of Unlimited Companies registered in Ireland and Malta via www.opencorporates.com, Irish company registry (www.cro.ie) and Maltese company registry (http://registry.mbr.mt).

How does Abbott's 'single Malt' structure work?

19. Unlimited companies do not have to file public financial accounts in Ireland, but if they are tax-resident in Malta they have to file accounts with the Maltese company register. We can therefore see one year's accounting (for calendar year 2019) for three of the four Abbott Ireland/Malta subsidiaries.

- **First, Abbott moved its and Alere's intellectual property (IP) for its testing products into two of the three Ireland/Malta subsidiaries (Figure 6).**
    - Abbott Rapid DX International Ltd (formerly Alere International Ltd, hereafter referred to as 'Rapid DX') sold EUR 13.9m of its IP – primarily consisting of trademarks and manufacturing know-how – to Subsidiary ULC.[22]
    - EUR 13.9m is this IP's 'carrying value' i.e. its cost at acquisition minus depreciation.[23] The sale price, however, was EUR 331m.
    - Subsidiary ULC paid for this IP using a EUR 331m capital contribution made in 2019 by its parent company, International ULC, which in turn funded this capital contribution out of a EUR 490m dividend paid by Rapid DX (its first ever dividend payment). The money for this transaction thus effectively goes round in a circle. The internal transaction appears to have been tax-neutral (Figure 6): International ULC receives the dividend tax-free thanks to Malta's participation exemption regime, in common with most other jurisdictions; the capital contribution is not classed as income, so is received by Subsidiary ULC tax-free; and finally, Rapid DX's accounts show that the EUR 331m payment it received for its IP was not subject to Irish tax: the accounts do not explain this fully, but it is likely that the cost of the IP when Rapid DX acquired it was equal to or greater than EUR 331m, so no taxable gain was realised on its sale.[24]
    - Meanwhile, Alere Switzerland GmbH, now owned by Abbott, moved IP valued at EUR 94m into International ULC. Once again, this was done as a cascade of capital contributions from parent companies (Figure 6), thereby being tax-neutral and not incurring tax in Switzerland or Malta. This IP consisted of 'developed technology'.[25]

[22] Abbott Rapid DX International Ltd, 2019 annual accounts, Note 17; Abbott Rapid Diagnostics International Subsidiary

[23] This is a relatively low carrying value. Christian Aid Ireland is not in a position to check the transfer pricing of this IP when transferred from Alere to its Irish subsidiary in 2016 (for EUR 18.2m), prior to Ireland's adoption of the post-BEPS OECD transfer pricing guidelines. See Alere International Ltd, annual accounts 2016 (note 14: intangible fixed assets).

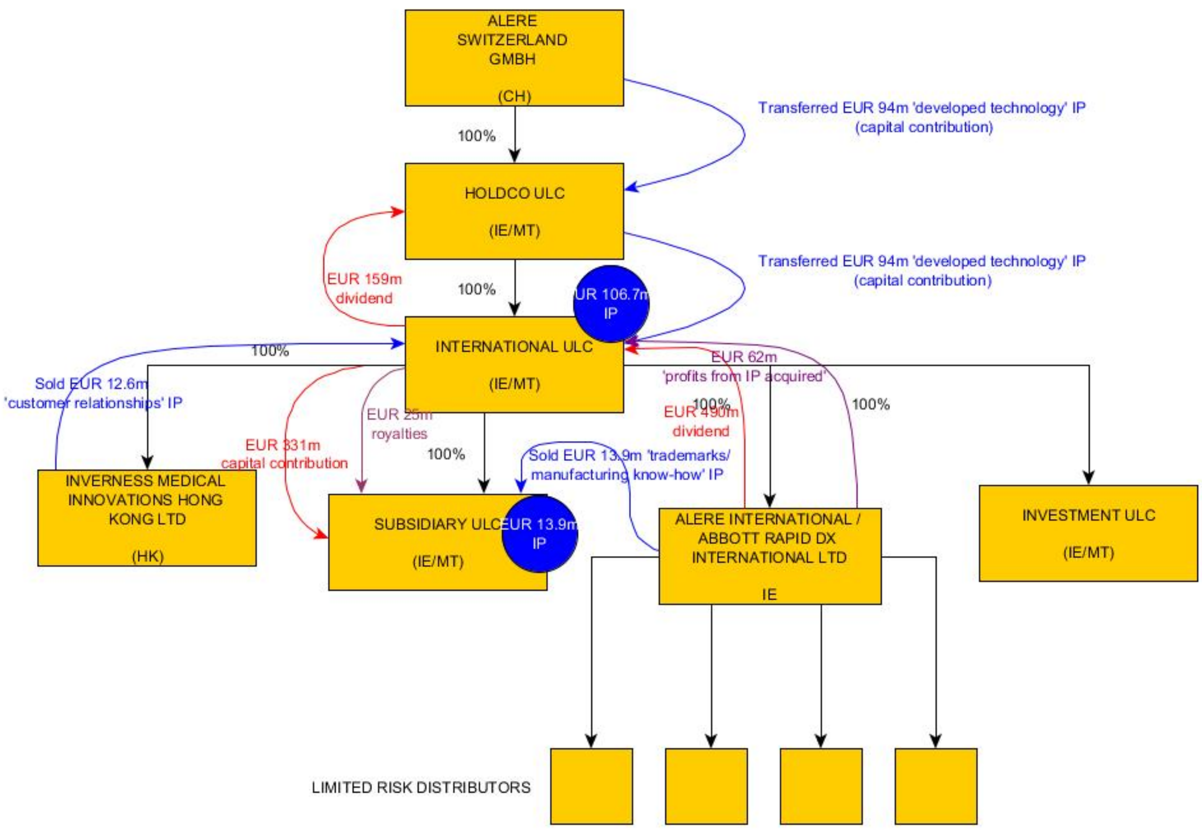
[24] International ULC, annual accounts 2019; Subsidiary ULC, annual accounts 2019; HoldCo ULC, annual accounts 2019; Rapid DX, annual accounts 2019 (note 16: taxation).

[25] International ULC, annual accounts 2019, Note 14 (Intangible Assets), Note 23 (Related Party Transactions); HoldCo ULC, annual accounts 2019, Note 17 (related party transactions).

- Now that Alere's intellectual property for its rapid testing products is owned by International ULC and Subsidiary ULC, these two companies begin to receive **royalty payments** for the use of that intellectual property from the subsidiaries that organise sales and manufacturing of the products. Thus during 2019, the first year of the structure's operation, Rapid DX paid International ULC a sum of EUR 62.3m described in International ULC's accounts as "profits earned in respect of IP acquired during the year", and other group subsidiaries also paid it an additional EUR 2.6m in royalties. International ULC in turn paid royalties of EUR 25.7m to Subsidiary ULC during the same year.
- In this way, profits from sales of Abbott's rapid tests, received by Rapid DX (in Ireland) from the Abbott subsidiaries around the world that actually make the sales (see below on 'low risk distributors'), are shifted into International ULC and Subsidiary ULC.
- **These two companies' 2019 accounts show that they paid no tax at all on this EUR 65m of income** (which after IP amortization and other costs resulted in pre-tax profits of EUR 31.3m (EUR 22m in Subsidiary ULC and EUR 9.3m in International ULC)).[26]

[26] This EUR 9.3m pre-tax profit figure for International ULC disregards the EUR 490m received from Rapid DX as a one-off dividend payment. As in most countries, dividends received from subsidiary companies are not subject to corporate income tax in Malta, since they are regarded as having been paid from profits which have already been taxed.

Figure 6: intra-group transactions within Abbott's Rapid Diagnostics companies



20. In comparison to Rapid DX's 2019 turnover of some EUR 247m from Abbott's non-US rapid testing sales, these do not appear particularly large figures shielded from tax.[27] (They seem even smaller when set against Abbott's overall non-US diagnostics turnover of perhaps $5bn in that year, and the operating profit from its non-US diagnostics business of some $1.5bn).[28] However, it is notable that in 2019 Rapid DX paid out a sum greater than its gross profits to International ULC as "profits for intellectual property acquired". Were it not for the exceptional income from the transfer of its IP to Malta, it would have made a pre-tax loss that year (its first since 2011), with all its profit effectively shifted to Malta.[29] Given the huge 2020 boom in Abbott's COVID-related rapid testing income, it is likely that the income received by Rapid DX in 2020, and the IP income subsequently shielded from tax by International ULC/Subsidiary ULC, will have been much larger than that shielded between

[27] Abbott Rapid DX International Ltd, annual accounts, 2011-19.

[28] Abbott Laboratories' consolidated financial statements do not separate out US and non-US diagnostics product sales. We have thus estimated the net sales income from Abbott's non-US diagnostics business by assuming that the ratio of US diagnostic sales to non-US diagnostics sales is roughly the same as the ratio of US to non-US sales overall. We thus multiply Abbott's net sales from diagnostic products in 2019 ($7.713bn) by the proportion of overall net sales in 2019 accounted for by non-US sales (64.3%). Similarly, we have estimated the operating profit from Abbott's non-US diagnostic product sales by multiplying the overall operating profit of its Diagnostic Products division in 2019 ($1.912bn) by the proportion of its pre-tax profit Abbott states is attributable to its non-US business (78.2%). Since the assumptions here are unlikely to be entirely accurate, these estimates should be taken as 'order of magnitude' only.

[29] Abbott Rapid DX International Ltd, annual accounts 2019, Statement of Comprehensive Income.

February and December 2019. **This will be apparent once the Maltese/Irish companies file their 2020 accounts, likely around December 2021**. That these Maltese/Irish companies are destined to receive IP income from Abbott's Covid testing windfall is confirmed by the fact that in May 2021 Abbott notified the EU trademark office that it had transferred the PanBio trademark from its Irish Rapid DX subsidiary to the Maltese-resident Subsidiary ULC.[30] At some point it also transferred the BinaxNow trademark from Alere Switzerland to International ULC.[31] Patent records indicate that International ULC has also acquired patents to at least 44 of Alere/Abbott's patents for testing devices.[32]

21. ***Figure 7: BinaxNow and Panbio home COVID rapid tests (source: Abbott).*** *The trademarks – and likely the technology itself – for these testing platforms are now owned by Abbott's Irish/Maltese IP holding companies, International ULC and Subsidiary ULC.*

[30] EUIPO trademark search.

[31] EUIPO trademark search. Though EUIPO records International ULC as the assignee of the BinaxNOW trademark, for some reason correspondence regarding the trademark since 2018 is not available in the database, so the precise date of transfer to International ULC is not clear.

[32] Search in Patentscope database, 26 July 2021, https://patentscope.wipo.int

22. **How is this tax result possible: how is Abbott's 'single Malt' structure able to shield its testing products profits from tax?** Why are these Maltese-resident companies not paying Maltese corporate income tax at the statutory 35% Maltese rate? And since they are Irish-incorporated companies, why are they not subject to Irish corporate income tax, as envisaged by the 2018 Ireland-Malta agreement which the Irish government claimed would make the 'single Malt' tax shield ineffective?

23. The answers lie in Malta's IP tax regime, and in the very narrow drafting of the Ireland-Malta agreement.

24. International ULC and Subsidiary ULC pay no tax on the EUR 31.3m profits from their IP income. In fact, they are granted substantial Maltese tax credits, far larger than these profits: EUR 53.6m in the case of International ULC, and EUR 64.2m in the case of Subsidiary ULC. These tax credits may also wipe out the companies' tax liabilities in future years. As their accounts show, these tax credits arise principally due to the "*difference in the cost of [an] intangible asset for tax and accounting purposes*".

25. **This indicates that both companies have elected to take advantage of Malta's 'step up' provision for IP acquisition or transfer by companies that transfer assets to Malta**. Under this provision when an IP-owning company transfers its tax residence to Malta, or transfers assets into Malta, it may 'step up' the value of its IP for tax purposes from its original cost (or 'carryover basis') to an assessed market value which may be much larger than its accounting value.[33] Maltese tax rules then allow these much larger stepped-up values to be deducted (amortized) from income for tax purposes. This can generate huge tax deductions each year, wiping out taxable profits. If the 'step up' is large enough and the amortization period short enough, it can create an effectively tax-free environment over several years for the income attributable to the intellectual property. (N.B. Subsidiary ULC did pay a cash tax charge of

[33] This market value is difficult to assess independently given that these are company-specific intangibles traded only between commonly-controlled companies.

EUR 6.48m in 2019. Since there is no 2019 book tax expense on its income, and 2019 is the company's first year of operation, it appears likely that this cash tax charge relates not to tax on the company's income, but to the Irish exit tax generated by the transfer of the company's assets from Ireland to Malta when the company moved tax residence. See paragraph 27 below for more discussion of this).

26. In the case of the IP acquired by Subsidiary ULC from Rapid DX, its accounting value is EUR 13.9m, but Subsidiary ULC acquired the IP for some EUR 331m.[34] In the case of International ULC, it acquired 'customer relationships' IP from another Alere/Abbott rapid testing subsidiary, Inverness Medical Innovations Hong Kong Ltd, for EUR 12.557m, which was immediately 'stepped up' to a market value of EUR 172.779m.[35] **Taken together, the IP acquired and 'stepped up' by International ULC and Subsidiary ULC during 2019 have a value for tax deduction purposes of some EUR 504m: EUR 477m more than their 'book' (i.e. cost) value. In short, these transactions can shelter EUR 477m of those companies' 2019 and future profits from tax**.[36]

27. Though the IP-related profits booked during 2019 have been free of Maltese tax, setting up the structure *did* incur a tax charge relating to EU anti-avoidance measures. The migration of Subsidiary ULC from Irish to Maltese tax residence (though it remains incorporated in Ireland) appears to have generated an Irish exit tax, under the terms of an anti-avoidance measure introduced by Ireland in 2018 to comply with the EU's ATAD anti-avoidance directive.[37] However, this exit tax, charged at 12.5% on 'deemed' gains on the company's assets, was EUR 38.9m: much less than the EUR 111m Maltese tax reduction from the amortization of the migrated, 'stepped up' IP.[38] Though the exit tax will counteract the tax benefit of migrating IP from Ireland to Malta (when the Irish-incorporated Subsidiary ULC migrated its tax residence), much of the IP moved into the Single Malt structure has come from Abbott subsidiaries in Switzerland and Hong Kong (see Figure 6), not covered by ATAD exit taxes. In addition, International ULC's accounts show no trace of incurring an exit tax on its migration from Ireland to Malta, for reasons we have not been able to determine.

28. Other countries also offer 'step up' provisions for the tax-deductible cost of migrated IP. However, few are as generous as Malta. Some require a substitute tax to be paid in return for the 'step up' (e.g. Italy, which has instituted a 3% substitute tax on the value of the

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[34] The tax note in Subsidiary ULC's 2019 accounts confirm that this 331m price is the basis for the IP's tax amortisation: the tax effect of the "difference in the cost of intangible asset for tax and accounting purposes" is given as EUR 111.017m. This is almost exactly 35% of the difference between the EUR 331m paid for the IP and its EUR 13.9m historical/accounting value (the Maltese corporate income tax rate is 35%). Rapid DX booked a EUR 317m gain on this IP sale in 2019 (Rapid DX Ltd annual accounts 2019, note 7); but its accounts indicate that this gain did not incur tax, for reasons that we have been unable to fully determine.

[35] International ULC annual accounts 2019, note 23.

[36] This is confirmed by the tax notes of both companies' 2019 accounts: International ULC's tax note records that the effect of a 'difference in cost of intangible asset for accounting and tax purposes' creates a decrease in tax due of EUR 111.017m. Subsidiary ULC's tax note similarly records the effect as a decrease in tax due of EUR 56.078m. Together this constitutes a tax reduction of EUR 167.096m, which is 35% of EUR 477m (the Maltese headline corporate tax rate is 35%). Since the companies' 2019 profits are much less than these tax deductions, the deduction creates a large deferred tax asset to offset future tax.

[37] https://www.revenue.ie/en/companies-and-charities/anti-beps-measures/exit-tax-provisions.aspx

[38] Subsidiary ULC annual accounts 2019, note 9 ('charge on migration of business residency')

'stepped up' asset).[39] In addition, most allow the 'stepped up' value to be amortized (deducted) for tax purposes only over a much longer period, typically the same as the accounting amortization which is usually over the useful lifetime of the IP. This is the case in the UK and Ireland, for example.[40] In Malta, the minimum amortization period is just three years. Research for this note has not so far been able to find another jurisdiction with both a step-up provision and a tax amortization period for IP of three years or less. After full amortization the Maltese company can also sell the IP to another company and acquire more for the same purpose, without incurring capital gains tax on the IP sale (so-called 'roll-over relief') – and potentially start the whole process of tax deductions again.[41]

29. In addition, Malta is relatively unusual amongst effective low-tax jurisdictions in lacking any 'substance' requirements for the attribution of income to IP transferred to resident companies (without being developed by those companies themselves).[42] In 2018 the OECD issued guidance under its BEPS Action 5 workstream for low/no tax jurisdictions to institute requirements for companies exploiting IP income to have 'core income generating activities' relating to that IP take place locally, in order for it to qualify for low/no tax regimes: "conducting research and development (rather than simply acquiring or outsourcing it)" in the case of patents and similar IP; and "branding, marketing, and distribution" in the case of marketing intangibles such as customer relationships and trademarks. Under these rules companies could not simply passively hold IP and receive income for it, but would have to have "decisions made and activities performed" by staff in the jurisdictions itself.[43] If jurisdictions did not have such requirements, they risked being labelled as having 'harmful' tax regimes by the OECD's Forum on Harmful Tax Practices. Various jurisdictions including the Cayman Islands, Bermuda, the BVI, Jersey, Guernsey and the Isle of Man consequently issued substance requirements to comply with these rules during 2019.[44] Malta did not do so, perhaps because its effective 0-10% tax regime is the result of its imputation system,

[39] https://blogs.pwc.de/german-tax-and-legal-news/2020/10/09/italy-step-up-regime-italy-reinstates-modified-step-up-regime-with-3-substitutive-tax/

[40] For the UK, see DLA Piper, 'UK tax amortization of IP', 27 July 2020, https://www.dlapiper.com/en/us/insights/publications/2020/07/uk-tax-amortisation-of-ip/; for Ireland, see https://www.revenue.ie/en/companies-and-charities/reliefs-and-exemptions/capital-allowances-for-intangible-assets/index.aspx

[41] https://taxsummaries.pwc.com/malta/corporate/income-determination. Options in Malta for the tax-free disposal of IP include capital gains tax exemptions on intra-group sales of IP, and the absence of tax on capital gains from a foreign buyer accruing to a Maltese-resident but foreign incorporated company (as in this case). See Deloitte, Intertrust, IPEG, 'Malta: Intellectual Property Tax Planning Opportunities', London, 30 January 2012, https://www.ipegconsultancy.com/wp-content/uploads/120309-malta-the-ip-jurisdiction_deloitte-intertrust_ipeg.pdf

[42] For absence of economic substance requirements in Malta, see Deloitte, *International tax: Malta highlights 2021* (January 2021), https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-maltahighlights-2021.pdf

[43] OECD, *Resumption of Application of Substantial Activities Factor to No or only Nominal Tax Jurisdictions* (2018), https://www.oecd.org/tax/beps/resumption-of-application-of-substantial-activities-factor.pdf

[44] Marbury, 'Economic Substance – an overview and comparison summary of requirements', 31 May 2019, https://marburys.com/economic-substance-comparison-summary/ ; Bedell Cristin, 'Economic Substance Requirements in the Channel Islands', 11 May 2020, https://www.bedellcristin.com/knowledge/briefings/economic-substance-rules-in-the-channel-islands/

which allows it to claim that it is actually high tax (35%) jurisdiction, according to its headline rates.[45]

30. Tax planners have long advertised Malta's 'step up' and tax amortization provisions as making Malta an attractive place for multinationals to transfer IP.[46] When Christian Aid Ireland revealed the start of 'single Malt' structures in 2017, it warned that Malta's 'step up' system, amongst other IP tax breaks, made Malta an effective IP tax haven.[47] More generally, tax planners have hailed step-up/amortization provisions for IP as the new way for companies to maintain very low tax on IP income in the 'post-BEPS' era when more obvious tax shelters have been neutralised.[48]

31. **If Subsidiary ULC and International ULC are receiving IP income effectively free of Irish or Maltese tax, why does the 2018 Ireland-Malta agreement – specifically intended to target such structures – not neutralise it by making these companies subject to Irish tax?** After all, Ireland's Finance Minister Paschal Donohoe had promised at the time that: "*While I am confident that US tax reform has already significantly reduced the concerns around the Single Malt structure… I am pleased that this agreement has been reached which should eliminate any remaining concerns about such structures. This is another sign of Ireland's commitment*

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[45] Under Malta's imputation system a Maltese-resident company is taxed on its profits at 35%. However, its shareholders, whether or not resident in Malta, can then claim a refund of 6/7ths of the tax paid when the profits are distributed as e.g. dividends. This lowers the effective tax rate in Malta to 5%. The shareholders of holding companies can claim all of the tax paid by the holding company on income and gains from its subsidiary companies. Where the income of the company is passive interest or royalties, the shareholder refund is 5/7ths, resulting in an effective tax rate on that income of 10%. See e.g. KPMG, *Malta's Tax System* (November 2019), https://assets.kpmg/content/dam/kpmg/mt/pdf/2019/12/malta-tax-system.pdf

[46] See e.g. Deloitte, Intertrust, IPEG, 'Malta: Intellectual Property Tax Planning Opportunities', London, 30 January 2012, https://www.ipegconsultancy.com/wp-content/uploads/120309-malta-the-ip-jurisdiction_deloitte-intertrust_ipeg.pdf; R Global, 'Understanding the taxation of IP', Virtual Round Table Series, Tax Working Group 2019, https://members.irglobal.com/file/acdab18cdc0f99af8c373a1cab27f53b.pdf.

[47] Christian Aid, *Impossible Structures* (2017), p. 17, https://www.christianaid.ie/sites/default/files/2018-02/impossible-structures-tax-report.pdf

[48] E.g. Frank Vari, 'How have global tax rates on intellectual property stayed so low?', *Accounting Today,* 20 March 2020, https://www.accountingtoday.com/opinion/how-have-global-tax-rates-on-intellectual-property-stayed-so-low : "*Many countries still offer preferable IP tax regimes, albeit ones that are now BEPS compliant and unlikely to draw negative EU scrutiny. One big but underpublicized piece of these IP regimes is an immediate tax-free step-up to fair market value for IP migrated to their jurisdiction. This may not sound like much, but while valuable IP attracts considerable income, it may not have much of a tax basis, especially when it is self-developed IP. This low tax basis remains low because it generally takes a taxable event, such as a sale with taxable gain to a seller, for the basis to step up. Under these IP rules, a company migrating IP to a new jurisdiction may get a new and large tax basis in the IP to amortize against its local country tax liability. The newly stepped-up IP value is amortized over time against local country taxable income. Because the IP value is so large, it is a significant factor in tax rate reduction, offsetting the taxable royalty income the IP attracts. That's a great cash tax savings strategy alone, but it gets much better. Under U.S. GAAP, these companies get a huge new deferred tax asset via this step-up without a corresponding income tax expense. For companies with significant IP, this could mean a new multimillion dollar asset on their balance sheet at basically no economic cost. There is also a large income tax expense benefit associated with the creation of this asset. It's not often that you see a tax-related item have such a large impact on overall U.S. GAAP, and corresponding earnings per share, reporting*." The 2019 balance sheets of Abbott's IP-holding Irish/Maltese subsidiaries (prepared under IFRS rather than GAAP, but nonetheless with similar accounting principles in this area) do indeed show such large deferred tax assets: a EUR 103.1m deferred tax asset on the balance sheet of Subsidiary ULC, and a EUR 53.6m deferred tax asset on the balance sheet of International ULC.

to tackling aggressive tax planning."[49]

32. This is not immediately discernable from the companies' accounts. However, the Ireland-Malta agreement itself suggests one possible reason. It is extremely narrowly drawn: while trailed by the Irish government as tackling classic Single Malt structure, in fact its text indicates that it is to be activated only in a narrow circumstance in which a Maltese-resident company's foreign-sourced income is not "subject to tax" in Malta because it is not "received" in Malta.[50] This appears to target only a particular circumstance in which a company is tax-resident in Malta but not tax-domiciled, in which case it is only subject to Maltese tax on a remittance basis i.e. its foreign-sourced income is only taxed if that income is remitted to Malta.[51] This is similar to the 'non-dom' tax loophole for individuals in the UK. Though tests for tax domicile are not defined in Maltese tax law (as in the UK), it is true that Maltese tax authorities may regard Single Malt companies (i.e. Irish-incorporate but Maltese tax-resident) as being resident but not domiciled in Malta by virtue of their Irish incorporation.[52] Nonetheless their foreign-sourced income is typically 'received' in Malta. In the case of International ULC and Subsidiary ULC, therefore, each company's IP income is 'subject to tax' in Malta, as their accounts show: it is simply not taxed in practice, because of the step-up/amortization tax incentive. **It is possible therefore that most or even all Single Malt structures fall outside the purview of the Ireland-Malta agreement that was designed to tackle them.**

33. The mechanics of the Ireland-Malta agreement require in practice that *"[t]he Competent Authorities [in Ireland and Malta] shall notify each other in a timely manner where they become aware of circumstances to which this Competent Authority Agreement refers*", and then agree between themselves whether it applies to a company in question. It is possible that neither the Irish nor the Maltese revenue authorities have spotted Abbott's single Malta companies. However, since the companies will have notified the Maltese revenue authority of their tax residence and filed tax returns, this seems unlikely on the Maltese side. It seems likely instead that either tax authority has spotted the structure but has decided that the anti-'Single Malt' Agreement does not in fact apply.

34. It is also possible that Abbott may have sought clearance from either the Irish or the Maltese tax authorities, or both, that the structure will not fall foul of the Agreement. (It seems unlikely that they would risk hundreds of millions of dollars of tax-free income without seeking assurances from the relevant tax authorities, particularly given the political prominence of the Single Malt structure). This is of course speculative, and Christian Aid are seeking to establish what communication Abbott and its representatives have had with the Irish Revenue about the structure. **If it transpires that the Irish government have effectively provide clearance for the first 'Single Malt' structure established since they pledged to**

[49] Ireland Department of Finance press release, 3 December 2018, https://www.gov.ie/en/press-release/723aff-minister-donohoe-welcomes-agreement-between-revenue-commissioners-ma/

[50] See text of agreement at https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-35/35-01-10.pdf

[51] Deloitte, *International Tax: Malta Highlights 2020*, https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Tax/dttl-tax-maltahighlights-2020.pdf

[52] https://corriericilia.com/publications/resident-non-domiciled-companies

abolish it in 2018, this would be extremely concerning and call into question the purpose of the agreement in the first place.

35. One other piece of wide-ranging anti-avoidance legislation was intended to stop US-headed multinationals earning profits from IP in low- or no-tax jurisdictions: the 'Global Intangible Low-Taxed Income' (GILTI) provisions of the United States Tax Cuts and Jobs Act (TCJA). This provision is supposed to generate an effective 13.125% tax on a portion of taxable profits (deemed to be attributable to intangible property) booked in foreign subsidiaries of US multinationals. It is unclear whether a GILTI charge applies to the IP-related profits of International ULC and Subsidiary ULC (the charge would apply to the headquarter company in the USA, Abbott Laboratories, which does not break out its GILTI tax liability in its consolidated accounts). The rules governing the calculation of taxable GILTI income are extremely complex. However, some tax advisers have advised their clients that stepping up the basis of IP and amortizing it reduces *both* local taxes and GILTI tax, suggesting that it is possible that International ULC's and Subsidiary ULC's tax losses are recognised as losses for the purposes of GILTI as well as Maltese tax, eliminating a GILTI charge.[53] This remains to be confirmed with Abbott in view of the specific fact pattern of its Maltese structure.

Who loses?

36. It could be argued that shifting profits as royalties to the Maltese/Irish companies which hold the IP is principally eroding the tax base of those countries where Abbott or Alere's original R&D took place (the US, and likely other high-income countries).

37. However, the structure also shifts profits out of the Abbott sales subsidiaries in many countries around the world, and into Abbott Rapid DX Ltd and Abbott Rapid Diagnostics International ULC. Both these companies are not only IP holding companies, but arrange manufacturing, sales and logistics of rapid diagnostics products on behalf of other Abbott group companies; they also sell the products directly to some third parties.

38. Alere International/Abbott Rapid DX Ltd (Ireland) acts as an 'international business service centre' overseeing the sales activities of other Abbott group companies selling rapid tests, from South Africa to Indonesia. It provides "*customer and technical support, finance, legal, vendor and logistics management, tolling/contract manufacturing management, quality assurance and regulatory affairs*" to them, in return for fees, and also makes product sales directly to third parties outside Ireland, booking the sales income in Ireland.[54]

39. Likewise Abbott Rapid Diagnostics International ULC (Ireland/Malta) acts as the "*principal operating company for the Infectious Disease Emerging Markets ('IDEM') business unit of the Abbott Rapid Diagnostics Division…consolidating business operations, economic ownership of the intellectual property ('IP') and supply chain flows*".[55]

40. The Abbott sales companies around the world, from South Africa to Indonesia, are by contrast classed only as 'limited risk distributors' for the rapid testing products in their local

[53] See e.g. DLA Piper, 'IP Planning – What Now', tax retreat presentation, 8 March 2018, slide 8 ('Onshore IP to step-up basis(local + FDII/GILTI amortization benefit)'), https://www.dlapiper.com/~/media/files/insights/events/2018/03/2018-tax-retreat-presentations.pdf
[54] Abbott Rapid DX International Ltd, 2019 annual accounts, p. 1
[55] Abbott Rapid Diagnostics International ULC, 2019 annual accounts, p. 1

markets. They purchase the products (as well as business and supply chain services) from Abbott Rapid DX Ltd and Abbott Rapid Diagnostics International ULC. Only a small amount of profit is left in these 'limited risk distributors', with much of the sales profit going instead to the Irish/Maltese companies (Table 1).[56]

41. The greater profit margin of the Irish and Maltese companies is supposed to compensate them for assuming the risk of holding inventory, offering credit to customers, exposure to changing interest rates or exchange rates, and so on. There is no allegation that the Irish or Maltese companies have artificially inflated or mispriced the prices of their intra-group product sales or services to the distributor subsidiaries. Nonetheless by splitting off higher value sales, inventory and marketing functions, and placing them – on paper at least -- in the Irish- and Maltese-resident companies, the taxable profits of the Abbott subsidiaries around the world that actually sell the products directly to customers are very slim.

42. As an illustration: the operating profit margin of the Irish 'international business centre', Rapid DX Ltd, has been nearly 38% from 2014-19, booking over EUR 460,000 in operating profit for each of its 162 employees. By contrast, operating profit margins of its distributors in the UK, Sweden, Norway and Malaysia ranged from 5.2% (Sweden) to 2.6% (UK), with operating profits at just EUR 30,650 per employee in Sweden and as little as EUR 9,709 per employee in Malaysia.[57]

43. N.B. Alere International/Abbott Rapid DX Ltd does have some 200 staff engaged in sales, distribution and administration.[58] The new 'principal operating company' for emerging market infectious diseases, Abbott Rapid Diagnostics International ULC, appears to provide these supply chain, legal and logistics services – for which other group companies paid it EUR 2.7m in 2019, and probably much more in 2020 - without having any employees at all.[59]

Table 1: operating profit margin, pre-tax profit margin, profits per employee, Abbott/Alere companies, 2014-19

Role	Company (country of incorporation)	Tax residence	Domestic CIT rate, 2019 (%)	Operating profit margin (%)	Pre-tax profit margin (%)	Average number of employees	Operating profits per employee (EUR)
'International business centre'	Abbott Rapid DX Ltd (IE)	Ireland	12.5%	37.8	37.5	162	460,630

[56] Annual accounts of Abbott Rapid DX International Ltd, Abbott Rapid Diagnostics Ltd (UK), Abbott Rapid Diagnostics AB (Sweden), Abbott Rapid Diagnostics AS (Norway) and Abbott Diagnostics Health Sdn Bhd (Malaysia), 2014-19. These are a selection of countries in which Abbott Rapid Diagnostics has distributor signatories where annual accounts of registered companies are publicly available. Other middle-income countries where it has 'low risk distributor' subsidiaries include South Africa (ostensibly for sales in Kenya), Indonesia and Brazil.

[57] Annual accounts of Abbott Rapid DX International Ltd, Abbott Rapid Diagnostics Ltd (UK), Abbott Rapid Diagnostics AB (Sweden), Abbott Rapid Diagnostics AS (Norway) and Abbott Diagnostics Health Sdn Bhd (Malaysia), 2014-19.

[58] Abbott Rapid DX International Ltd, annual accounts, various years 2015-19.

[59] Abbott Rapid Diagnostics International ULC, 2019 annual accounts, note 11.

IP holding and 'principal operating company'	Abbott Rapid Diagnostics International ULC (IE) *[2019 only]*	Malta	35% (but all taxable profits wiped out by step-up and accelerated IP amortization	361	19336	0	N/A (total pre-tax profits EUR 9,330,000)
'Limited risk distributor'	Abbott Rapid Diagnostics Ltd (UK)	UK	19	2.6	2.7	53	11,119
'Limited risk distributor'	Abbott Rapid Diagnostics AB (SE)	Sweden	21.4	5.2	-1.2	20	30,650
'Limited risk distributor'	Abbott Rapid Diagnostics AS (NO)	Norway	22	3.6	3.4	83	25,665
'Limited risk distributor'	Abbott Diagnostics Health Sdn Bhd (MY)	Malaysia	24	4.1	4.1	15	9,709

44. These are just four examples of the small slivers of profit left in Abbott's 'limited risk distributors' in different countries. Abbott's corporate structure shows that its rapid diagnostics division has at least 38 'limited risk distributors' selling products in countries ranging from Kenya to Pakistan. We can't see their sales, profits or tax payments, because Abbott, like most multinationals, is not required to report their 'country-by-country' results publicly, only privately to some revenue authorities. Making country-by-country reporting public would reveal the full extent of the profit-shifting out of these limited risk distributors.

45. Profit-shifting through risk-shifting -- and specifically by separating out higher-value supply chain functions and placing them in companies in low-tax environments, separate from the 'limited risk distributors' that actually make the sales locally -- is a prevalent practice amongst multinational companies. It was discussed in several parts of the OECD's Base Erosion and Profit Shifting (BEPS) international tax reforms. After objections from business representatives including the International Chamber of Commerce and others, the final BEPS reports explicitly ruled that 'limited risk distribution' would be out of the scope of proposed changes to the OECD model tax convention (under BEPS Action 7).[60] The transfer pricing

[60] See comments from the International Chamber of Commerce in OECD, *Comments Received on Revised Discussion Draft: BEPS Action 7: Prevent the Artificial Avoidance of PE Status, p. 199,* https://www.oecd.org/tax/treaties/public-comments-revised-beps-action-7-prevent-artificial-avoidance-pe-status.pdf ; and the subsequent disclaimer placed in the final Action 7 report that changes to the model tax convention's permanent establishment definitions should not encompass limited risk distributors: OECD,

parts of the BEPS process (Actions 8-10) also examined limited risk distribution arrangements when recommending changes to the OECD's transfer pricing rules, but its final recommendations do not specifically target these structures.[61] *(N.B. The use of limited risk distributors is a related but different practice from 'commissionaire' arrangements – where a local agent or subsidiary arranges sales contracts between the customer and another subsidiary in a low-tax environment – which Article 12 of the Multilateral Instrument is designed to tackle*

46. In addition, Rapid DX Ltd (Ireland) appears to make some sales directly to customers in countries where the Abbott Rapid Diagnostics division does not have registered subsidiaries. Rapid DX Ltd's accounts do not break down its sales by country or region, but contain some clues: for instance, it has issued bank guarantees in favour of the Ethiopian Pharmaceutical Supply Agency (2018) and the National Centre for Aids & STD of Nepal (2019), suggesting these agencies may be its direct customers.[62] In such cases, sales income may be booked directly in Ireland, unless the Ethiopian or Nepalese authorities deem Rapid DX Ltd to have a taxable branch in those countries by virtue of its sales or marketing activities there.[63] The ability of tax authorities in countries where such direct sales are made by Rapid DX Ltd to tax a portion of Rapid DX's profits may be impeded by Ireland's refusal to sign up to Article 12 of the OECD Multilateral Instrument, which might otherwise enable tax treaty partners to deem Rapid DX Ltd to have a taxable permanent establishment in their jurisdiction.

Preventing the Artificial Avoidance of Permanent Establishment Status: Action 7: 2015 Final Report (June 2015), pp. 15-16, https://www.oecd-ilibrary.org/docserver/9789264241220-en.pdf?expires=1624146782&id=id&accname=guest&checksum=2855350D7D8473DCC19D709D24CC0DB4

[61] OECD, *Aligning Transfer Pricing Outcomes with Value Creation: Actions 8-10: 2015 Final Reports* (June 2015), pp. 120-1, https://www.oecd-ilibrary.org/docserver/9789264241244-en.pdf?expires=1624147080&id=id&accname=guest&checksum=79FC3A2DB3CABD4FADB3222B0E3F3D91

[62] Abbott Rapid DX International Ltd (formerly Alere International ltd), annual accounts for CY 2018 and CY 2019.

[63] Without knowing the factual details of Rapid DX Ltd's activities in those countries it is difficult to determine a priori whether they might have such a taxable permanent establishment (PE). The Ireland-Ethiopia tax treaty restricts the definitions of PE beyond that in Ethiopian domestic law, but without factual details it is difficult to determine whether these restrictions impede Ethiopia from deeming Rapid DX Ltd to have an Ethiopian-resident PE. For PE definitions in Ethiopian domestic tax law, see 'Proclamation No. 979/2016 (Federal Income Tax)', S.4. in Federal Negarit Gazette of the Federal Democratic Republic of Ethiopia, No. 104, 18 August 2016, https://docs.google.com/viewerng/viewer?url=https://investin.et/wp-content/uploads/free-downloads-files/temp-files/00719221600.pdf . For PE definitions in Nepalese domestic tax law, see Income Tax Act, 2058 (2002), I.2.(aab), https://ird.gov.np/public/pdf/255574382.pdf