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Foiling Apple's Tax Dodge: The European Commission Ruling

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Mondialisation.ca, 06 septembre 2016

Région : Europe
Thème: Global Economy

For years, Apple has perfected the art of tax minimisation, hoovering up possibilities in creating an empire built on profit and return. It has cultivated a power that adapts the message of the bribing agent with that of the bully, tempting government hosts with promises of plenty, and withdrawing pledges on being pushed into moves it would rather not make for the sake of customers and shareholders. Permit tax breaks, and low tax bills, and your State prospers.

The European Commission, which occasionally comes across as a pushy regulatory bugbear, decided to make Apple accountable as a decent tax paying corporate citizen. Competition Commissioner Margrethe Vestager did to Apple what she had done to the Netherlands and Luxembourg in 2014 when she ordered the recovery of back tax revenue from Starbucks (20-30 million euros) and Fiat Chrysler (20-30 million euros) respectively.[1]

Apple was ordered to pay tax arrears totalling $14.5 billion into Irish treasury coffers, a decision that sent a hyper chill through the European corporate sector. Capital's power remains moveability, and corporate capital, when spooked, finds other sources. That is their magic wand, but on this score, the EU was refusing any bewitching on Apple's part.

Apple's response went by the book. The first was a promise that it would seek to overturn the ruling, suggesting it was not only flawed but a case of "total political crap," to use the words of CEO Tim Cook.[2]

Apple General Counsel Bruce Sewell rejected the EU Commission's claim that Apple's Ireland base has paid a mere 0.005 percent of taxes to the country in 2014. "We paid tax at the statutory rate of 12.5 percent tax on profits relating to our activities in Ireland."

Sewell's rebuttal list seemed impressive, but hardly addressed the more direct nature of the company's operations. The company, he insisted, has provided $400 million in corporate income tax in Ireland in the 2014 year, while also providing a further $400 million in current US corporate taxes on profits. Several billion dollars in US corporate tax has also been accrued "on a deferred basis."

A closer examination of the Irish operation gets shadier with greater digging, revealing an empire of tactical spread and heft. For one, Cook's explanation was that the activities were in line with that of a non-resident company, as permitted by Irish law.

The actual activities on research and development, including intellectual property came out of the Californian base in Cupertino, with the Irish office tasked with management. But

Apple did not, as Cook further explained, have an "office or employees in Ireland because it was not an operational business and its business was not specific to Ireland."

A "small resident company" in Ireland could hardly be expected to cover value created in other bases (say, back in Cupertino). A perfect ruse, in other words. Thus, we have a view into the world of global non-taxation, with Cook carefully avoiding the obvious point that US companies such as Apple prefer to hold cash overseas to avoid paying the US tax rate of 35 percent on profit.

When confronted by the *Frankurter Allgemeinze Zeitung* about the obvious point that Apple's subsidiary Irish operations were run purely to avoid paying taxes, Cook issued an emphatic denial.   The Irish operation, which commenced in 1980, had nothing to do with tax minimisation, or even avoidance, but everything about expansion and seeking "an extremely talented and well-trained workforce."

The Irish cabinet, happy with that olive branch, has agreed, and wants nothing of the arrears. The picture of a sovereign state nuzzling with a super company is never a pretty one, a matter normally concealed and obscured. Not in this case, where both entities intend dancing arm and arm in appeal against the ruling.

Taoiseach Enda Kenny decided to turn the sovereignty argument on its head: if Ireland wanted to make domestic policies favourable to companies, it was up to the Republic, rather than bureaucrats in Brussels. Odd sort of sovereignty, to be so hostile to the collection of tax while favouring the enormous scope of action on the part of a multinational. "This is about Ireland, it is about our people, it's about us as a sovereign nation, actually setting out what we consider our appropriate policies."[3]

Finance Minister Michael Noonan swirled with suggestions of offensive strategy on the part of Brussels. "I do think they are establishing a bridgehead."   A "proxy attack" had been mounted on the 12.5 percent corporate tax rate in small Ireland, using Apple as the wicked irresponsible multinational colluding with Dublin. "Envy," claimed Noonan, was driving the grubby campaign, one indicated by periodic efforts on the part of European leaders to make Ireland lift the corporate rate.

Not all Irish political figures favour the view that inviting back taxes should not be accepted. Their endorsement of an appeal about the decision is based as much on clarity as anything else. Who holds the strings on the issue of multinationals in Europe when it comes to tax? Children's Minister Katharine Zappone, for instance, felt that the Commission's decision had been "in the public interest."

What the episode starkly reveals is a global system of regulation that some governments, and regimes, simply refuse to accept. The continuing illusion is that having the grand Apple in one's backyard is a boon to jobs and a catalyst for other multinationals to join the tax free (or lower tax) playground.

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Notes

[1] http://www.theatlantic.com/business/archive/2015/10/ec-tax-starbucks-fiat-chrysler/411679/

[2] http://www.faz.net/aktuell/wirtschaft/apple-s-general-counsel-we-cannot-understand--where-these-numbers-are-coming-from-14418179.html

[3] http://www.bbc.com/news/world-europe-37251084

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