Irish government defends tax dodging by Apple

By Chris Marsden
21 December 2016

The Fine Gael government and Apple Inc. are mounting what is in effect a joint challenge to the European Union (EU) to overturn a ruling that the corporation pay the Irish state at least €13 billion in uncollected taxes.

The extraordinary alliance is determined by the necessity for the bourgeoisie in Dublin to maintain Ireland as a low--to almost zero--tax regime so as to attract investment from the major transnational corporations. The EU, on the other hand, is pursuing a trade war offensive against not just Apple but a host of US corporations.

In August, the EU ruled that Ireland had broken European law by giving special tax preferences to Apple and must bill the makers of iPhone for €13 billion in back taxes, plus interest, from 2003 to 2014--likely to be in excess of €20 billion. This amounts to over five percent of Ireland's GDP and is equivalent to the state's entire education budget.

The ruling followed a three-year investigation by a team of civil servants and ex-bankers under the control of the European Commission (EC), the EU's executive arm, and nicknamed "The Maxforce" after its leader, Max Lienemeyer. The German lawyer is no friend of Ireland. He rose to prominence initially as one of the architects of the bailout of Europe's banks following the crash of 2008. The crash cost Ireland a massive €64 billion, which is still being paid back by the working class through savage austerity.

The "Maxforce" has previously investigated the tax status of hundreds of companies. The *Irish Times* described its record as a story chronicling "a growing clash between Europe and the US and a shift in the EU's approach to the tax affairs of multinationals."

The US financial journal, *Fortune*, was blunter still, declaring in September, "Apple Is Just the Beginning of Europe's New War on US Business."

"It has been more than 200 years since the US waged war with a European power over taxes. But now a more modern transatlantic struggle is brewing over much the same issue-this time with enormous sums in play," it wrote.

The US Treasury told EU officials the ruling would have a "chilling effect" on trade and "alleged that Brussels wanted to inflict pain on the largest US company by market cap," *Fortune* continued. "At stake is what happens to about $2 trillion that US companies are estimated to have stashed abroad, out of reach of the US's 35 percent corporate tax."

In 2015, EU Competition Commissioner Margrethe Vestager ordered Starbucks to pay $35 million in back taxes to the Netherlands, where it was headquartered until 2014, as well as Fiat Chrysler in the duchy of Luxembourg. Other US corporations under investigation include Amazon, McDonald's and Google and Microsoft—the latter two for alleged abuse of market dominance under antitrust legislation. Starbucks responded by relocating to London in 2014.

The EU decision against Apple dwarfs all previous rulings. The EC investigation focused on whether two Irish tax rulings, granted to Apple in 1991 and 2007, amounted to special treatment or reiterated a more general interpretation of Irish tax law. This second interpretation is the basis for the appeal of the Irish government launched last month and by Apple on Monday.

The disputed rulings allowed two Irish-registered Apple units to acknowledge only a small part of their $130 billion in profit to Ireland, based on the argument that almost all of Apple's intellectual property is developed in the US. What it meant in practice was that Apple paid just €90 million in tax in Ireland between

2003 and 2014--as little as 0.005 percent as opposed to Ireland's already extraordinarily low 12.5 percent corporation tax. The outstanding profits were effectively untaxed anywhere, including in the US.

The 130-page report of the investigation was only released after several months to allow for the censoring of commercially sensitive information. It stated that the company channelled profits from dozens of countries through the two Ireland-based units. The most striking example is of how, in 2011, Apple Sales International recorded profits of about €16 billion across Europe, of which only €50 million was considered taxable in Ireland--a form of illegal state aid that rendered the two units "stateless" for tax purposes.

The Irish government reacted furiously to the ruling, with Minister for Finance Michael Noonan claiming that the EU would only insist that the revenue was used to pay off the State's national debt of over €204 billion--a contention rejected by Brussels. The government is taking its stand on nothing less that Irish self-determination! It argues, "The Commission has exceeded its powers and interfered with national tax sovereignty."

But Ireland isn't the only government that doesn't want to tax Apple. Earlier this year, a US Senate inquiry into the tax strategies of US multinationals by the Permanent Subcommittee on Investigations found that Apple shifted tens of billions of dollars in profit into its stateless affiliates based in Ireland. But on Monday, the US Treasury Department objected that the EU's decision is "retroactively applying a sweeping new State aid theory that is contrary to well-established legal principles" and "threatens to undermine the overall business climate in Europe."

John McGuinness, chairman of Ireland's all-party Finance Committee, has, with all due deference and humility, written to Apple chief executive Tim Cook to invite him to attend a hearing into the affair scheduled for late next month. Cook described the EU's ruling as "total political crap."

In a comment that underscores the dependence and subservience of national governments to the major corporations, Apple has accused the EC of ignoring decades of "Irish tax law, US tax law, as well as global consensus on tax policy, that everyone has relied on," based upon a political agenda.

"If their opinion is allowed to stand, Apple would pay 40 percent of all the corporate income tax collected in Ireland," it complained.

Apple added that the billions of dollars it routes through Ireland should be taxed in the US, in the full knowledge that this simply does not happen.

The case is to be heard in the EU's general court in Luxembourg, but this will take years during which the disputed sum will be held in escrow.

The main opposition party, Fianna Fáil, also opposes the ruling, leaving Sinn Fein and the small pseudo-left parties to pose as an opposition.

The Socialist Workers Party back in September was piling on the rhetoric, with one article, "Rotten Apple--Rotten Government," describing Ireland (accurately) as "a global hub for tax evasion" and "little more than a glorified money launderer."

But its electoral front, People Before Profit, goes no further than to urge the government to take the money offered by the EC and, in future, to make "corporations pay a minimum tax on profits on [sic] 12.5 percent by closing loopholes" and to then "Raise the rate to 15 percent over the life of the Dail."