The Apple tax tussle shows the need for a new way of taxing profits
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In ruling that Ireland must collect 13 billion euros in back-taxes from Apple, the European Commission resisted sustained lobbying by the U.S. Treasury on Apple's behalf. Treasury argues that if Apple were to pay the back-taxes to Ireland, then U.S. taxpayers would bear the burden in the form of a foreign tax credit to Apple.

This argument is so absurd that it should be an embarrassment to the Treasury. Whenever an American company pays a tax levied in Europe, U.S. taxpayers inevitably bear some of the cost as a result of our worldwide tax system. According to Treasury's logic, Europe should never levy taxes on American firms!

Treasury's argument is a colossal blame shift. The truth is that if the taxes were properly collected by the U.S. and Ireland in the first place, we would not be in this situation. But just as lax regulation enabled the financial crisis and led to the bank bailouts of 2008, massive loopholes allow the fifty biggest U.S. companies, including Apple, to stash an estimated $1.3 trillion offshore and untaxed.

The real source of blame is the transfer pricing system—established and maintained by the advanced countries. This system allows corporations to artificially segment their activities into infinite numbers of subsidiaries which are taxed as separate businesses, and gives corporations wide latitude to move profits into low-tax jurisdictions like Ireland, using mythical internal prices. In this case Ireland went one step further by allowing the shifting of profits to subsidiaries that exist in cyberspace and have no employees.

By working together, Apple and Ireland have enabled Ireland to reap a few tax dollars and jobs and Apple to reap massive tax savings, but all at the expense of other countries. The European Commission has stripped the mask off Apple's pretence at corporate responsibility: the first responsibility of any corporation is paying your fair share of taxes. No matter how much Apple might claim it was within the law, it was deeply morally wrong. Now the European Commission has ruled that what these two connivers did was actually against the law, against the regulations of the European Union.

When Ireland joined the E.U., the country knew it was getting lots of benefits in return for obeying certain limitations. But now, Ireland, who will appeal the Commission's ruling, wants to keep the benefits while ignoring the rules concerning special tax breaks. The fact that the arrangement was kept secret suggests that the Irish authorities knew this was a sweetheart deal: if every company had access to similar treatment, the tax coffers of Ireland and every other country would be quickly drained.

But as the Luxembourg Leaks and the Panama Papers have shown, such manoeuvres are all too common. Corporations can move money out of one pocket and into another through a simple stroke of a key and, with secrecy laws that hide the beneficial owners of shell companies enforcement becomes next to impossible for tax collectors. The problems have only been amplified by the growth of intellectual and other forms of "soft" capital, often developed with the help of taxpayer dollars, which forms the core of operations for tech companies like Apple.

While global companies like Apple can get away with paying little or no taxes, small- and medium-size businesses pay the full rate. Average workers have no choice in the matter because their income taxes are paid even before they receive their pay check. Meanwhile, tax dodging drains public revenues that fund healthcare, law enforcement, education, and infrastructure investments, which are public goods that we all depend on.

The Independent Commission for the Reform of International Corporate Taxation has proposed that we ditch these outdated rules and adopt an approach similar to that of many US States: tax global corporations as single firms by allowing each country where a corporation operates to tax a portion of its worldwide profits according to a formula. This proposal has received little attention by world leaders, who through the G20 have continued to prop up an ineffective transfer pricing system.

The Apple tax fight demonstrates that the current system is no longer tenable. When Germany takes over the G20 presidency from China in December, the German government has a unique opportunity to push for an ambitious new tax agenda that goes beyond the rather narrow reforms that are currently on the table. Public outrage over corporate tax dodging is at an all-time high and governments are under pressure to prove that they are able to tame corporate power. This means that global leaders must look beyond special interests and undertake an honest assessment of who benefits from the dysfunction in the global tax system.

Although the G20's project through the OECD to curb base erosion and profit-shifting was a step in the right direction, this reform project failed to produce an effective way to tax global profits. Some of the loopholes Apple used to avoid taxation have been closed by BEPS, but the major deficiency—the transfer pricing system—remains intact. This means that global companies can move profits around through the ever-increasingly complex transfer pricing rules without being subject to taxation. The European Commission knows that, and is moving toward a better system with a re-launch of its proposal later this year for a Common Consolidated Corporate Tax Base (CCCTB), which would eliminate the need for transfer pricing among companies in the E.U.

The Apple case also demonstrates that lobbying for corporations is bad business for governments. The U.S Treasury should not be functioning as the de-facto corporate ambassador for Apple and the European Commission should be commended for not backing down. The U.S. public is not buying the argument either. Giving in to Apple would lead to a massive giveaway to one of the richest corporations in the world. The Obama Administration should be embarrassed by Treasury's position. It's time for governments to act in the public interest and to end the current system of taxation of multinationals which has enabled them to so successfully escape paying their fair share of taxes.

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