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Rotten to the core: corporate tax & secrecy

Alessandro · Thursday, September 8th, 2016

Recently, former European Commissioner Neelie Kroes wrote on the recent Apple-tax case that: *"state aid is not a cure for all ills"*. While the airwaves have been full of debates on the rights and wrongs of the ruling, Kroes has hit the nail on the head. Retroactively looking at corporate tax arrangements, while welcomed, is both controversial and ineffective. What we need is real-time transparency.

Last week, the European Commission ruled that Ireland granted illegal tax benefits to Apple, enabling it to pay substantially less tax than other companies operating there. According to the Commission's ruling, Apple's tax rate was as low as 0.005% in 2014, equalling 50 Euros of tax for every one million Euros of profit. Apple is now being asked to repay 13 billion Euros of unpaid taxes to Ireland, ironically the same country which signed off the sweetheart deal.

The Apple case follows on from the Starbucks and Fiat cases in the Netherlands and Luxembourg and the InBev case in Belgium. Although the earlier cases didn't come close to the 13 billion Euros ruling, Competition Commissioner Vestager announced that the special tax agreement between Apple and Ireland constitutes state aid violating EU law.

Be it Apple or Fiat or Starbucks, the Commission cannot investigate all EU-based corporations. The Apple state aid ruling only reinforces the need for genuine transparency legislation that can shed a light on corporate secrecy.

There is a clear way to ensure the kind of permanent transparency which might end the need for lengthy state aid investigations in tax matters – public country-by-country reporting or CBCR. This is where companies are required to publish key financial data by multinationals for each country they operate in as part of their annual financial statements. This would give us all access to information about companies' whereabouts, operations and tax payments.

While this ruling is yet again an important investigation exposing multinationals' opaque tax planning practices and European governments' secret deals with multinationals, it is not a lasting solution to the problem. Tackling tax avoidance is a crucial objective. However, this is not going to happen through the implementation of state aid rules but *"such reform should come from a transparent legislative process within the EU"*.

Public CBCR would create a more level playing field. In picking and choosing which state aid cases to peruse the Commission has opened itself up to allegations of politicking. From the US government, to Apple and the Irish government the Commission has taken a lot of flak for the ruling.

EU Member States have the sovereign right to determine their own tax laws and the rates they set. What the EU needs to do is ensure that citizens, civil society and the media know how much big players, such as Apple, contribute to countries they are operating in.

There are many questions for policymakers, civil society and business to look at following this ruling. On whether it is legitimate for Member States to use state aid through tax instruments or if tax rulings harm or improve competition or even if it's time to review a basic principle of EU law having supremacy over national law. But for us the fundamental issue at stake here is a different one. To quote Kroes' once more: *"Rather than pursuing a handful of countries and companies for the past, we should focus on shaping a fair tax system for the future."*

At the very least we must ensure that we have clear rules about corporate financial information and tax rulings being made public. Transparency in corporate taxation would ultimately lead to an EU where every actor contributes to the public purse and where resources are openly managed and used in the public interest.

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