CNBC

September 1, 2016

The EU's tax crackdown on Apple is just the beginning

By Brad Anderson, former CEO of Best Buy

The silver lining of this week's tax ruling against Apple is that it may finally spur U.S. legislators to reform the country's corporate tax code in order to protect American companies and keep corporate assets in the U.S.

The European Commission's $14.5 billion tax ruling against Apple is as unprecedented in its logic as it is audacious in its scope. It doesn't find that Apple broke any tax law. Rather it concludes that Apple's low tax burden in Ireland, where the company houses its international headquarters and employs some 6,000 people, amounts to illegal "state aid," which is a violation of European Union antitrust regulations.

Apple officials responded that the low tax rate that the commission said the company paid was "completely made up" and that it was trying to "rewrite Apple's history in Europe." It pointed to the fact it paid $400 million in taxes to Ireland in 2014, making it the country's biggest taxpayer. (Apple is also the biggest taxpayer in the U.S. and the world.)

According to Apple CEO Tim Cook: The commission "is effectively proposing to replace Irish tax laws with a view of what the commission thinks the law should have been… Using the commission's theory, every company in Ireland and across Europe is suddenly at risk of being subjected to taxes under laws that never existed."

Apple played by the rules. But now EU bureaucrats are trying to change them after the game in order to achieve a naked tax grab for political purposes. The result will be a chilling of economic activity, investment, and job creation in the European Union. No wonder Britain wanted to leave.

And this is only the beginning. Next in the commission's tax crosshairs are U.S. multinationals including Google, McDonald's, and Amazon.

The U.S. should act to protect its companies by reforming its outdated and uncompetitive corporate tax code. Moving to a territorial tax system that only taxes U.S.-based earnings would cause U.S. multinational companies to bring home their estimated $2.4 trillion of stranded foreign earnings — eliminating the treasure chest that EU regulators are targeting with their tax decisions.

"Apple played by the rules. But now EU bureaucrats are trying to change them after the game in order to achieve a naked tax grab for political purposes. The result will be a chilling of economic activity, investment, and job creation in the European Union. No wonder Britain wanted to leave."

"Since the U.S. has been very slow to enact reform and get revenue, the status quo has allowed the Europeans the opportunity to move in and get tax money for their governments," says Kimberly Clausing, an international tax expert at Reed College. These funds should go to creating jobs and economic activity in the U.S., not bureaucracy and government in Europe.

Reforming the corporate tax code would also protect U.S. companies from foreign takeovers. Because the value of a company is a multiple of its future earnings, and because these earnings are artificially deflated due to the U.S. tax code, U.S. companies are takeover targets for foreign ones looking to unlock their true value.

At the moment, longstanding American companies are facing an onslaught of foreign takeover attempts. This summer France-based Danone bought American WhiteWave Foods for $12.5 billion, and Luxembourg-based Samsonite bought American competitor Tumi for $1.8 billion. And earlier this year, German-based Bayer launched a $62 billion takeover bid for St. Louis-based Monsanto.

Also this year, Winston-Salem-based Krispy Kreme was taken over by Keurig owner JAB Beech, which is also based in Luxembourg, and Chicago-based Baxalta was taken over by Ireland-based Shire for $32 billion. Last year saw the most U.S.-targeted foreign acquisitions in history, with a total value of more than $400 billion.

Moving to a territorial tax system, which is used by every other developed country in the world, would protect U.S. companies from takeovers and bring their foreign profits home. These companies create jobs, opportunities, and capital that should that should benefit the U.S., not European bureaucrats. It might take the status of Apple to drive this point home.

Commentary by Brad Anderson, the former CEO of Best Buy and a member of the Job Creators Network.