

# Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

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*EU State Aid Rules - investigation into preferential tax rulings involving Apple Inc. in Ireland, published by the European Commission on 30 August 2016.*

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## **Opening Statement**

Thank you Chairman for the opportunity to contribute to your Committee's work in relation to this significant issue.

In 2011, Oireachtas Éireann amended the Ministers and Secretaries Act to put beyond doubt that the Revenue Commissioners are independent as they carry out their duties under the various taxation and customs acts. That amendment placed on a statutory basis what was the long standing convention in this area, a convention dating back to the establishment of the Office of the Revenue Commissioners. The political system may not interfere with the administration of the Irish tax system. In the decision published by the European Commission at the end of August last year, the Commission has taken upon itself powers of interference in the decisions of the Revenue Commissioners. It has assumed powers which Oireachtas Éireann formally denied to itself in 2011.

There are 13 billion reasons for wanting to accept the EU Commission decision, but we think it would be false economy to do so. Chartered Accountants Ireland is on public record in stating that the EU Commission ruling in the Apple case infringes on Irish sovereignty. Our belief is that the application of the State Aid rules to overturn an administrative decision on a direct tax matter goes beyond EU competence.

The boundaries within which the Commission must operate when addressing tax issues for all the EU Member States, and not just Ireland, are complex but nevertheless clearly set out in the EU treaties. Decisions that relate to taxation require unanimous consent. This principle was reaffirmed by the EU's own Legal Service as recently as November of last year, when it found that a proposed directive concerning the reporting of tax liabilities by multinationals would require unanimous approval as a fiscal measure, rather than requiring qualified majority approval as a reporting measure. Any adjudication by the Commission on any aspect of the direct tax affairs of an EU member state for whatever reason must therefore be

regarded with some suspicion. Much suspicion was voiced by members of this committee when it conferred with Commissioner Vestager last week.

Ireland has traditionally been respectful of the EU State Aid rules in accordance with our obligations under the EU Treaties. Tax incentives introduced in various Finance Bills have frequently been sent to Brussels for advance vetting before taking effect, a practice mentioned by the Revenue Chairman here last week. This is to ensure that they do not distort the Single Market by selectively conferring advantages which go beyond the limits tolerated under State Aid rules. On balance, we think that Irish tax legislation has been improved through this type of vetting. Indeed the 12.5% Corporation tax rate itself was created as a result of State Aid scrutiny. The State Aid rules did not permit an older two-tier regime of a 10% rate on the profits of manufacturing companies and a 40% rate on other companies.

However, the Commission's Apple ruling does not concern the design of Irish tax legislation. Instead, it concerns administrative opinions and confirmations made by officers of the Revenue Commissioners with regard to the apportionment of the profits of non-resident multinational companies. I do not propose to offer a critique of the Commission ruling here; I think this Committee has already heard many of the arguments in the course of your deliberations. Our concern instead is the impact of the making of the decision, irrespective of its consequences, on the independence of the Revenue Commissioners and therefore on the reliance that a taxpayer may place on their dealings with the tax office, both in the past and going forward.

No arm of the State can function efficiently if it leaves itself open to being second-guessed by an external authority. It does not seem reasonable that such a vast amount of money should properly accrue to the Irish Exchequer from a single case. A company would need to have made an average profit from the Irish activities of €10 billion per year over the 10 year period in question for such a vast amount of tax to be owing to the Collector General.

Putting forward concerns over sovereignty draws down suggestions that we side with the Government decision to lodge an appeal, or are arguing for the commercial concerns of Apple Inc, or that we support without question the behaviour of the Office of the Revenue Commissioners on all matters. However Irish taxpayers – individuals, domestic companies and multinationals alike, deserve some degree of certainty in dealing with their tax compliance obligations.

Otherwise we are all just making up the rules as we go along.

I look forward to participating in this afternoon's discussion.

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ENDS

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