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Wednesday, 7 September 2016

Chuaigh an Ceann Comhairle i gceann ar 10 a.m.

Paidir.
Prayer.

Business of Dáil

An Ceann Comhairle: Tá fáilte romhaibh ar ais. On 2 September last, the Taoiseach requested me by letter, under Standing Order 26(1), to summon Dáil Éireann to meet today, 7 September 2016, at 10 a.m. to consider the Government decision to appeal the European Commission’s decision that Ireland provided unlawful state aid to Apple. The business of today’s special meeting is confined to the subject matter set out in the summons and the arrangements relating thereto.

Before we commence with the business of the day, I would like to take this opportunity to update the Members of the House on the progress being made with the replacement of critical aspects of the Dáil Chamber equipment. A business continuity plan was always in place for any possible recall of the Dáil. The project is advancing well. As a result, we meet today using sound components of the new systems. The work on the new systems has been temporarily suspended until this sitting has been completed. However, a major body of work on the new systems still remains to be completed before Tuesday, 27 September, when the Dáil will reconvene. This remaining work includes configuration and testing of the electronic voting system, further installation works, extensive testing of the new systems and full integration of all the new systems. The project team is on target to have all work completed in time for the autumn session, which will commence on 27 September. With that said, I call on the Taoiseach to propose the arrangements in connection with today’s business.

The Taoiseach: Cuirim fáilte ar ais chuig na Teachtaí ar fad. I propose, notwithstanding anything in Standing Orders, that the proceedings on No. 1, motion re Government decision to appeal the European Commission’s decision that Ireland provided unlawful state aid to Apple shall, if not previously concluded, be brought to a conclusion at 8 p.m. tonight and the following arrangements shall apply: the combined time for the speeches of the Minister for Finance and the Taoiseach shall not exceed 35 minutes, followed by the main spokespersons and leaders for Fianna Fáil, Sinn Féin, the Labour Party, AAA-PBP, Independents4Change, the rural Independent group and the Social Democrats-Green Party group, or a Member nominated in their stead, whose combined time for their speeches shall not exceed 35 minutes in each case, and such members may share their time; the speech of each other Member called upon shall not exceed five minutes in each case, and such Members may share their time; a Minister or Minister of State shall be called upon to make a speech in reply which shall not exceed five minutes; and any division demanded shall be taken immediately.
An Ceann Comhairle: There is one proposal to be put to the House. Is the proposal for dealing with No. 1, motion re Government decision to appeal the European Commission’s decision that Ireland provided unlawful state aid to Apple, agreed to?

Deputy Gerry Adams: It is not agreed. I ask the Taoiseach to allow time today or tomorrow to discuss the revelations in last night’s BBC “Spotlight” programme about allegations of illegality within NAMA in the context of the sale of the Northern loan book. Many of us have consistently raised this issue in the Dáil. There seems to be credibility in respect of what we have been asserting. We have asked for a commission of investigation to be established to examine this matter. I think it would be pertinent for the Taoiseach to allow time for this issue to be discussed.

Deputy Brendan Howlin: Could I ask a question about the arrangements for today’s sitting? At the end of a debate such as that which will take place today, there is precedent for allowing questions about issues that may arise during the course of the day to be directed to the relevant Ministers from the Opposition benches. Would it be possible to provide a short period - perhaps half an hour - for questions at the end of the debate?

Deputy Micheál Martin: We could do with a longer period for questions and answers at the end of today’s session. Five minutes is far too short altogether in terms of the contributions that are going to be made. In respect of the matter raised by Deputy Adams about the “Spotlight” programme, I suggest that the Taoiseach convene a meeting of all party leaders in the next while to discuss the best way to deal with Project Eagle because there are significant legal issues there and we need to deal with it in an informed and organised way as opposed to by simple motions.

Deputy Richard Boyd Barrett: While we will debate this in a minute, I want to say that we fundamentally object to the fact that we are having this debate when we do not have the Commission ruling.

Deputy Gerry Adams: Hear, hear.

Deputy Richard Boyd Barrett: It is absolutely unbelievable that we are going to make a decision that has enormous implications for this State, to say “no” to €13 billion, when we have not even got access to the detailed ruling which has decided that the money is rightfully owed to the citizens of this country. This nonsense about confidentiality should go out the window when we are talking about a matter of such importance. It is a sham debate in the first instance. We are having a debate and are expected to make the decision when in fact the Government has made the decision already with the collusion of Fianna Fáil, which is deeply implicated in all of this.

Deputy Billy Kelleher: Deputy Boyd Barrett’s party made a decision too.

Deputy Brendan Howlin: I do not think he is allowed to make a decision.

Deputy Richard Boyd Barrett: It has made the decision, which makes a mockery of this debate. It adds to that mockery that it takes place without our having access to the full information.

Deputy Thomas Pringle: Why are we having the debate after the decision has been made? Would it not have been more sensible to have had the debate before the decision was made?
The Taoiseach see any irony in that?

The Taoiseach: Several requests have been made. I do not object to the request made in respect of 20 minutes for questions and answers at the end.

Deputy Brendan Howlin: Thirty minutes.

The Taoiseach: Is 30 minutes all right? We can agree to that.

In response to Deputy Martin’s point about a meeting of party leaders, as everybody is aware, there is a criminal investigation going on in a different jurisdiction. I will consider that request in the context of whether anything might be possible outside that criminal investigation and will come back to the Deputy.

In regard to the documentation Deputy Boyd Barrett referred to, the document is in the ownership of the European Commission and it is a matter for the Commission to decide when to publish it in whatever form.

Deputy Paul Murphy: It has said it can wait.

Deputy Gerry Adams: The Taoiseach did not respond to my request.

Deputy Pearse Doherty: He answered everybody else’s.

The Taoiseach: The request came from Deputy Martin in respect of-----

Deputy Gerry Adams: That was a different issue. The Taoiseach knows that. He is trying to push this-----

The Taoiseach: Deputy Adams is the leader of Sinn Féin and Deputy Martin is the leader of Fianna Fáil-----

Deputy Gerry Adams: We know that but what about my request?

The Taoiseach: -----but he did make a request that we might have a meeting of the leaders of the parties to consider the issue raised on the “Spotlight” programme. Deputy Adams is well aware of the criminal investigation going on there and we cannot interfere in that investigation in a different jurisdiction. I will consider whether there is anything outside that investigation that we should reflect on as leaders and I will be in touch.

An Ceann Comhairle: Would the Taoiseach refer to Deputy Pringle’s question?

The Taoiseach: What was that one?

An Ceann Comhairle: He is wondering why we are having the debate after the Cabinet has made the decision.

The Taoiseach: The reason we are having the debate is very clear: the Cabinet is the Executive and the Government and it is charged with making decisions collectively and that is what it did. The Cabinet does not come to the Parliament, which is the Oireachtas, the Dáil and the Seanad, and ask for a decision. The Cabinet has made a decision. That is its duty and responsibility. It comes here today to ask for the approval of the House, to agree with that decision, to appeal this to the European judicial system and to ask the Attorney General to prepare the draft appeal over the next two months. The Cabinet makes its decision separately from the Dáil but
it comes here today to the Dáil to ask for its approval after a discussion and a vote to approve that decision to appeal the case.

**Deputy Thomas Pringle:** There is a very important issue here, if the Dáil does not approve it is worth money-----

**An Ceann Comhairle:** Deputy Pringle should resume his seat. The Taoiseach has explained precisely what the factual situation is. We cannot get into any debate on the matter.

Is the proposal for dealing with No. 1, motion regarding the Government’s decision to appeal the European Commission’s decision that Ireland provided unlawful state aid to Apple, agreed to?

**Deputy Brendan Howlin:** As amended.

**An Ceann Comhairle:** As amended.

Question, “That the proposal for dealing with No. 1, motion regarding the Government’s decision to appeal the European Commission’s decision that Ireland provided unlawful state aid to Apple, as amended”, put and declared carried.

**Government Appeal of European Commission Decision on State Aid to Apple: Motion**

**Minister for Finance (Deputy Michael Noonan):** I move:

“That Dáil Éireann:

(i) supports the Government decision to appeal the European Commission’s decision that Ireland provided unlawful State aid to Apple;

(ii) commits itself to the highest international standards in transparency in the taxation of the corporate sector;

(iii) resolves that no company or individual receives preferential tax treatment contrary to the Tax Acts and calls on the Revenue Commissioners to continue to observe this principle; and

(iv) affirms its commitment to the 12.5 per cent Corporation Tax rate, the Research and Development Tax Credit and Knowledge Development Box and affirms its view that taxation is a competence for Member States as set out in the EU Treaties.”

In the motion before the House, the Government is seeking Dáil support for its appeal of the European Commission’s decision that Ireland provided unlawful State aid to Apple. Both the Commission’s decision, and the Government appeal represent landmark moments for Ireland’s tax policy and our place in Europe. It is only right that matters of such importance are debated on the floor of the House.

The motion also includes a commitment to the highest international standards in transparency in the taxation of the corporate sector. Ireland has consistently attained the highest international rating on transparency and has been an early adopter of many new reforms emerging at international level. My pledge today is that we will continue to do so. Importantly, the motion
asks the House to resolve that no company or individual receives preferential tax treatment contrary to the Tax Acts and calls on the Revenue Commissioners to continue to observe this principle. This speaks to core values that have been at the heart of our tax system since the foundation of the State. It is about the impartial rule of law and the fundamental integrity and fairness of our system. Finally, the motion affirms the view that taxation is a competence of member states, as set out in the EU treaties. Together, these core pillars encapsulate the long-term direction for Ireland’s corporation tax policy. That direction involves competing successfully from a position of legitimacy. The motion recognises that aggressive tax practices are neither sustainable from a tax point of view, nor acceptable from a societal point of view. The bringing of appeal proceedings is not in any way an endorsement of aggressive tax planning arrangements, nor is it a defence of the extremely low effective tax rates that can be achieved under the broken international tax system. It is not accurate to characterise international tax reform as a binary choice between growing your economy and doing the right thing. This balance is reflected in the programme for partnership Government commitments to maintaining the 12.5% corporation tax rate and working with our international partners in tackling aggressive international tax planning through the OECD’s base erosion and profit shifting, BEPS, initiative.

The Government decision which led to this debate also affirms a commitment to policy choices that support real jobs and investment. These are legitimate policies that foster and reward innovation and play to Ireland’s strengths. They include the 12.5% corporation tax rate, the research and development tax credit and the knowledge development box. Reputation is not only important to Ireland’s standing in the world and our ability to engage with other countries in a mutually respectful way. Reputation is also a proxy for certainty. By building our tax system around policies and principles that are recognised as best practice internationally, we can provide the stability and certainty that businesses at home and abroad are crying out for. The reaction to the European Commission’s decision has, at times, painted an outdated and unfair caricature of Ireland’s position on tax. This is a caricature that is at odds with the evidence and that overlooks our proven track record in recent years. The facts show our constructive engagement at the international table, with matchless implementation of reforms ahead of many of our partner countries.

Before we debate the Government’s motion in respect of the appeal, I would like to provide some background to the circumstances surrounding the Commission’s decision. I first learned of the impending Commission decision following a phone call from Commissioner Vestager on Tuesday 23 August. In that conversation I was given to understand that the Commission would issue a negative decision early the following week. I was given no confirmation of the date of the decision, no indication of the size of the recovery amount, nor was I provided with any information on the grounds for the Commission’s decision. Until that point, I had been working on the basis of intelligence gathered by my officials that the Commission was likely to issue a decision in September or October but I had no firm indication of the timing or content of the Commission’s decision. Following further contacts with my officials, the Commission indicated that the recovery amount would be large - in billions. It was not until the morning of the decision that the recovery amount and the other details of the Commission’s decision became available to Ireland.

As things stand, the Commission has yet to publish the final decision. Both Ireland and Apple are being given an opportunity to identify material within the decision which is subject to commercial confidentiality and which must therefore be redacted. Ireland is offering every assistance to the Commission under this process. However, it must be noted that the company
also has an opportunity to exercise its rights in the matter. This procedure mirrors that which was used for the cases against the Netherlands, Belgium and Luxembourg, where it took several months for the Commission to make a copy of the decisions publicly available. This approach is also consistent with the process that was followed for the Commission’s opening decision in the Apple case in 2014.

In the circumstances, and to assist Deputies, I asked my Department to make an explanatory memorandum on the case available. This has been circulated to Members of the House. I believe it is important to clarify that no other companies are subject to this decision by the European Commission and there are no impending state aid cases against Ireland. As Commissioner Vestager has stated clearly, this decision does not call into question Ireland’s general tax system or its corporate tax rate.

The Government’s position throughout this process has been that the full amount of tax was paid in this case and no state aid was provided. Ireland did not give favourable tax treatment to Apple. Ireland does not do deals with taxpayers. On Friday, the Government authorised me to appeal the Commission decision to the European courts. This is necessary to defend the integrity of our tax system; to provide tax certainty to business; and to challenge the encroachment of EU state aid rules into the sovereign member state competence of taxation. Given that we are now facing an important court process in which Ireland will articulate a robust challenge to the Commission’s position, I am mindful of the need to avoid cutting across Ireland’s legal case in my contribution here today. That said, I feel it is important that in this debate I outline in high level terms what I believe are the key persuasive arguments for taking an appeal.

First, it is simply untrue that Ireland provided favourable tax treatment to Apple. The chairman of the Revenue Commissioners has stated emphatically that there was no departure from the application of Irish tax law by Revenue; there was no preference shown in applying the law; and the full tax due was paid in accordance with the law. The motion before the House today resolves that preferential treatment has no part to play in the Irish tax system and calls on the Revenue Commissioners to continue to observe this principle. It is very damaging for our reputation to be called into question. This reputational damage can have very real consequences. It affects how Ireland could be treated by other jurisdictions in tax treaties, controlled foreign company rules or listings. Furthermore, it damages Ireland’s credibility in the international tax debate and inhibits Ireland in pressing arguments that serve our national interest. A further concern is that the Commission is undermining the fundamental principle of international tax - that tax should be paid where the value is created. Everyone knows that the iPhone and other well-known Apple products were developed in the United States and not in Ireland.

A central aspect of this case is that the companies concerned were not tax resident in Ireland. Under Irish tax law, non-resident companies are chargeable to Irish corporation tax only on the profits attributable to their Irish branches. This means that profits of such companies that are not generated by their Irish branches cannot be charged with Irish tax under Irish tax law. Examples include profits from technology, design and marketing that are generated outside Ireland. The US Treasury has expressed a concern that in such cases the recovery sum could be creditable against the company’s US tax bill. If so, the company’s US tax liability would be reduced dollar for dollar by these recoveries in the event that its offshore earnings are repatriated or treated as repatriated as part of possible US tax reform. This would effectively constitute a transfer of revenue to the European Union from the United States Government and from its taxpayers. The US treasury has described this outcome as “deeply troubling”.

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The European Commission has stated that the sums to be recovered by Ireland would be reduced if other countries were to require Apple to pay more taxes or if the US authorities were to require Apple to pay larger amounts of money to its US parent company. This points to a clear contradiction at the heart of the European Commission’s decision. While requiring Ireland to recover the tax sums, the Commission is also acknowledging that the sums may in fact be taxable in other jurisdictions. Taxation is a core member state competence. This is enshrined in the EU treaties. This decision encroaches on member states’ sovereignty in the area of tax by extending competition rules into the tax area in an unprecedented and unjustified manner. By doing this, the Commission creates uncertainty for business and investment in the European economy, both in its novel interpretation of long-standing rules and their unfair retroactive application.

Notwithstanding the appeal by Ireland and the separate appeal by Apple, we are required to recover up to €13 billion plus interest from the company. This will be placed in a ring-fenced escrow account pending the outcome of legal proceedings. Some of the public debate on the case has focused on an attitude of “take the money and run”. The Government disagrees with that position. First, the European Commission has stated that the sums to be recovered by Ireland would be reduced if other countries were to require Apple to pay more taxes or if the US authorities were to require Apple to pay larger amounts of money to its US parent company. This means that the final figure is by no means certain and may be the subject of complex, drawn out engagement with other countries for many years to come. It should be clear that the Irish position all along has been that we have no right to this money based on Irish tax law. Therefore, the ultimate entitlement of Ireland to this tax revenue in the face of competing claims from other jurisdictions is highly uncertain. Furthermore, the figures remain subject to legal proceedings by Apple. Regardless of any Irish appeal, were Apple to be successful in its appeal, the full amount would have to be repaid to the company. I can accept that not everyone in the House will agree on the decision to appeal but we should have a debate that acknowledges the reality surrounding this enormous sum of money.

Today’s motion is also an opportunity for a wider debate on our system. It is good practice to undertake periodic reviews of key areas of Government policy. The last review of corporation tax policy took place in 2014. Since then a wide range of new developments have emerged in international taxation, such as the OECD’s Base Erosion and Profit Shifting, BEPS, project. We need to ensure that Ireland’s corporation tax code meets these new standards while remaining competitive as the economy continues to grow. For this reason, the Government has decided that a review of the corporation tax code will be carried out by an independent expert. The review will exclude any possibility of a change in the 12.5% corporation tax rate. My immediate focus at the current time is on the forthcoming budget but I expect to make a decision on the terms of reference for the review and the appointment of an independent expert over the coming weeks with a view to making an announcement around budget time.

Transparency and fairness are also keynotes in Ireland’s corporation tax policy. Ireland has a strong track record in this area and has received the highest ratings for the transparency of our system from the Global Forum on Transparency and Exchange of Information for Tax Purposes. We have also undertaken a spillover analysis on the impact of Ireland’s tax system, including the tax treaty network, on the economies of developing countries. Ireland is a thought leader in this area of research. Only one other country, the Netherlands, has carried out a similar spillover analysis project.

On Friday the Government made a range of further important commitments in the area of
transparency and tax fairness. Ireland will ensure full implementation this year of the so-called DAC Directive, which provides for the sharing of important information between revenue authorities across Europe, including information on tax rulings. We will engage constructively with the EU proposals to amend the Accounting Directive to provide for public country-by-country reporting while critically analysing proposals that may not be in Ireland’s long-term interests. We will ensure full implementation of country-by-country reporting in line with the BEPS Action 13 in a way that ensures co-operation with other jurisdictions, including developing countries. We will help to build developing country capacity to benefit from enhanced global tax transparency. We will convene a high level event, to be hosted by the Department of the Taoiseach, bringing together the Government, senior management from the multinational sector, tax experts and civil society as a multi-stakeholder dialogue to understand the challenges and opportunities around tax and corporate responsibility. We will support the forthcoming European Commission proposals on mandatory disclosure rules for aggressive or abusive tax practices in line with Action 12 of the OECD BEPS project.

In addition to change on the international front, I am also keen to address any concerns regarding our domestic system. A number of issues have been raised recently about the possible use of aggressive tax practices by some section 110 companies to avoid paying tax on property transactions. Yesterday I published draft legislation to amend section 110 of the Taxes Consolidation Act 1997. The draft legislation targets the issues that have been raised and will ensure that the tax base is appropriately protected. Further targeted proposals in relation to the use of funds in the Irish property market are also being considered. As this is draft legislation, for inclusion in the forthcoming Finance Bill, I will evaluate and give consideration to any amendments that are proposed by Deputies. If any further abuses of the section 110 regime are identified, further measures may be brought for my consideration for the Finance Bill. Once enacted this new amending legislation will come into effect from 6 September 2016, which was yesterday.

In addition to action by the Government, the Revenue Commissioners have confirmed that they will make some changes. Revenue will amend the relevant guidance and instructions to provide that tax rulings will not remain valid beyond five years without a full review. To facilitate accountability, the Revenue Commissioners will publish in their annual report the number of opinions issued each year in a way that fully respects taxpayer confidentiality. I very much welcome these moves by the Revenue Commissioners.

This motion seeks the support of the Dáil on an appeal of the European Commission’s decision and other important pillars of our corporation tax system. For the Government, there is a clear and pressing case for taking an appeal. Ireland has done nothing wrong here. We have a proven track record in international tax reform and a matchless commitment to meeting the best international standards. We should not see ourselves through the eyes of our detractors - those who would paint a cartoonish and negative image of Ireland. Ireland is a long-standing and proud member of the European Union. We have helped to shape the European Union as it is today. We are also a founder member of the OECD, the international thought leader in tax reform. It is time to move on from myths and generalisations and to look at what Ireland really stands for on this issue. The Government’s position is clear. The Government motion is seeking Dáil support on a wide range of issues. We certainly compete for foreign direct investment but do so from a position of legitimacy. Our corporation tax code is founded on fairness, transparency, consistency and the rule of law. I look forward to listening to Deputies’ contributions on this important debate and I commend the motion to the House.
The Taoiseach: The Dáil has reconvened to debate the motion before it because it reflects the seriousness the Government attaches to the decision announced last week by the European Commission. The Commission’s conclusion that Ireland granted undue tax benefits of up to €13 billion to Apple in a way that transgressed EU state aid rules is so profoundly wrong and damaging that it demands an immediate, clear and strong response. Governments over the years have made clear, as this Government has, that Ireland did not and does not do deals with corporates, large or small. It is not how we do business. It is not true that Apple was provided with more favourable treatment than others. There was no preference shown. The law was applied fully and appropriately and Apple paid its taxes due in Ireland.

Today, the House has an opportunity to send a strong message that we stand together in challenging the presentation that the Commission has made and that we are all determined that Ireland should continue to be at the forefront in efforts to improve and reform the international tax system. That is the work we have been involved in at the OECD and international level for some time and that is why we have changed legislation to demonstrate our bona fides in this regard.

Ireland, as a country, is naturally blessed in so many ways, from the beauty of our land to our wonderful people, but it has to be acknowledged that we also have disadvantages when compared with some rival economies. Geographically, we are a peripheral island at the edge of a continent and with a large ocean beyond. We have a relatively small population and, therefore, a limited domestic market for what we produce. We are not overly endowed with natural resources. These characteristics have historically stunted deep industrial development. In fact, as we look back at our history as an independent country, especially this year, it is easy to see how our early decades were wasted ones in terms of economic development as we tried and failed to make a go of things on our own. It was when we decided that economic security, and thus true national independence, could be secured only by opening up to the world, by attracting foreign investment and by building up our trading relationships that things began to turn around. This progress was further underpinned by our decision to join the European Economic Community.

Let me be very clear to those who might seek to use this issue to drive a wedge between this country and the European Union. Ireland has benefited, and continues to benefit, enormously from being part of the EU and we will continue to be part of that Union for the years ahead. We share a set of democratic values and a community of law with our EU partners and friends. Our citizens, farmers and businesses all enjoy access to a single market of 500 million people and the freedoms that come with membership. Of course, this does not mean we agree with every decision taken in Brussels - clearly not - and as the EU evolves and expands, we must continually assess and review how to ensure our national interests are best served by our membership.

Ireland’s decision to pursue economic prosperity by turning outwards to face the world was the right one and it has served us well. The figures speak for themselves. Last year saw the highest ever level of employment in IDA client companies with more than 187,000 people directly employed across a range of sectors with every region in Ireland posting net gains. In fact, IDA Ireland estimates that about one in five jobs in the economy are directly or indirectly supported by inward investment. In 2015 alone, the IDA won 213 investments for Ireland, including many globally known companies. Each job represents a lifeline to an individual or family and money to be spent in the local economy supporting domestic jobs and helping to sustain vibrant communities. We make no apology to anyone for seeking to advance the well-being and prosperity of our people. This is our sovereign right as a nation and we object to attempts
to restrict us making policies for our own people in accordance with competencies that are our right under the treaties of the EU.

Competition has never been stronger for mobile investment. All countries, big and small, compete to win their share and nobody takes it more seriously than we do. Yes, we compete and we compete hard but we do so fairly and within the rules. The investment decisions that companies take are rarely simple. There are many complex factors involved. Years of experience have taught us in this country to hone our offer and present the best possible case to decision-makers as they consider where to locate. Yes, our competitive, transparent and consistent tax regime and our rock-solid commitment to our 12.5% corporate tax rate is part of that offer, but it is just one part and it was never the sole one. Businesses choose to locate in this country because we have a proven track record in delivering a good return on investment. They do so because of the availability of a young, talented and hard-working work force. They do so because of the steps we have taken to create a positive business environment, not least through the hundreds of measures put in place under the Action Plan for Jobs. They do so to secure access to European markets and in the wake of the decision of our nearest neighbour, the United Kingdom, to leave the European Union, this may well become a more decisive question for some. They do so because of the quality of our education system and because of proximity to the cutting-edge Irish and international companies based here.

The picture of Ireland painted by the Commission in its decision - as a country prepared to play fast and loose with the law to gain unfair advantage - could not be more damaging or further from the truth. This is not a Commission finding that stands by a small country that has played by the rules. It cannot be allowed to stand. As the Government has made clear, we will appeal it before the European courts with every expectation of success. For that reason, while the Revenue Commissioners will now take the steps necessary to collect the sum involved as required, it will be held in escrow pending the final outcome of the legal proceedings from the European judicial process. We will appeal this decision with the strongest possible assurances from the Revenue Commissioners that there was no departure from applicable Irish law, that there was no preference shown in applying that law, and that the full tax was paid in accordance with the law.

It is important to us that businesses and investors should have confidence and certainty in the rules that apply and in how they will be taxed. Ireland offers that certainty in the way we treat all companies fairly and equally. The Commission’s decision has done great damage to that goal, and not just in Ireland’s case. If the position in Europe is to be that tax rulings can be revisited and set aside by the European Commission even decades after the event, investors will simply not know where they stand when they decide to locate in Europe. Have no doubt about it but that uncertainty will be weighed carefully in the minds of investors and will count against European countries, not just Ireland, when they compete for mobile investment unless this decision is challenged and overturned, with certainty restored. The Commission’s decision is especially unhelpful as it comes at a time when serious work is under way at international level to reform what is widely acknowledged to be a broken system for corporate tax. That deserves an international response.

This consensus has led to unprecedented agreement on 15 OECD base erosion and profit shifting, BEPS, reports, representing a comprehensive global response to the problems identified. Ireland has participated fully and in an up-front manner in all that work. We continue to play a full and active part in that work. We have been an early mover in the BEPS project, both domestically and at EU level. We are a strong supporter of tax transparency and administrative
co-operation as key factors in tackling the global problems of tax avoidance and aggressive tax planning. The core principle underpinning this work is that tax should be paid where economic activity takes place. Within the EU, Ireland supported the decision at the European Council in June and the conclusions on that in the fight against tax fraud, evasion and avoidance, and in regard to money laundering.

We have also been party to key developments in the exchange of information on tax rulings and country-by-country reporting, as well as recent the agreement on the anti-tax avoidance directive and other measures outlined by the Minister for Finance. Real reform, though complex and hard-won, is happening and is delivering as a result of countries working and co-operating together. While we are strongly of the view that this is the best way forward, the Commission’s decision cuts across this delicate work. Of course, there is always scope for further improvement. As such, the Government has decided that a review of Ireland’s corporate tax should be undertaken by an independent expert to be appointed by the Minister for Finance. We have made it clear that the review will exclude any possibility of change to the 12.5% rate.

Before concluding, I will say something about the long, productive and overwhelmingly positive relationship Ireland has enjoyed with Apple. Apple first came here in 1980, which was just three years after it was incorporated in the US, and began manufacturing personal computers in Cork. Within ten years of its arrival, it employed more than 1,000 people. When its latest round of investment is complete, Apple will employ 6,000 people in Ireland. We are delighted that Apple chose Ireland and chose to stick with Ireland. It is a tribute in no small part to the dedication and excellence of the people who have worked with it and for it. We also note the investment of almost €1 billion in a data content storage facility to be located in Athenry. Apple is a welcome and valued part of the community in Ireland, not just the business community, and I look forward to this long remaining the case for many years.

As already stated, Members of this House have an opportunity to stand together today in order to send out a strong, clear message. We do not accept the decision the Commission has made. We are determined to ensure that it does not stand and that is why we will appeal it to the European courts. We do not offer special favours or deals on tax. Everyone is treated equally and according to the law. We are unshakably committed to our 12.5% rate of corporate tax. We are determined to ensure the highest international standards in transparency in tax and we will continue to work with others to advance reform at international level. Commissioner Vestager is a very professional person. Obviously, she has a job to do at the European Commission. I note that she commented in an interview in 2014 that she was brought up with a very strong value that one should always protect the few and the small against those who want to misuse their muscle. The European court system will determine and adjudicate on this decision, which we believe is wrong. I commend the motion to the House.

Deputy Paul Murphy: Is Apple the few and the small now?

Deputy Bernard J. Durkan: Deputy Paul Murphy does not want them here.

Deputy Michael Ring: Deputy Paul Murphy does not want to see anyone working.

Deputy Paul Murphy: That is it, yes.

An Ceann Comhairle: Order for the next speaker, please. Deputy Michael McGrath is next and is sharing time with Deputies Calleary and Martin.
Deputy Michael McGrath: I will take ten minutes, our leader, Deputy Martin, will take 15 minutes and Deputy Calleary will take the final ten minutes in the slot.

An Ceann Comhairle: Is that agreed? Agreed.

Deputy Michael McGrath: Fianna Fáil believes Ireland’s long-standing right as an independent nation to determine its corporation tax policy in all its respects must be vigorously defended. Ireland’s corporation tax policy has been a fundamental pillar of our hugely successful inward investment strategy in recent decades. Taxation is a national competence and we must ensure that it remains so.

The central premise of the European Commission’s case is that Apple got a special deal involving preferential or selective treatment that was not available to any other company operating in Ireland. The case will ultimately be won or lost in the European courts on this key question of selectivity. Ireland’s corporation tax laws in the 1990s or 2000s are not the issue here. The laws applied to every company. The net issue is what the Commission calls “Revenue rulings”, but which were actually advance opinions given by Revenue in 1991 and 2007 in respect of the allocation of profits between the Irish branch and head office of two Apple companies that were not tax resident in Ireland, namely, Apple Operations Europe and, most importantly from a financial perspective, Apple Sales International. Fianna Fáil has not seen the Commission’s report, but we have carefully read all of the available documentation and listened intently to the arguments of Commissioner Vestager. We do not support the Commission’s conclusion that these Revenue rulings amount to illegal State aid to Apple and Fianna Fáil will support the motion tabled by the Government. Failure to appeal the Commission’s finding would be to accept that Ireland had engaged in illegal State aid for the past 25 years.

Deputy Ruth Coppinger: When Fianna Fáil was in power.

Deputy Michael McGrath: This is not backed up by the facts, and the Commission’s decision must be strongly contested. As elected representatives, we should stand behind the Revenue Commissioners as a respected and independent State body. Since its establishment by Government order in 1923, Revenue has served the country well in good times and bad and its integrity is beyond doubt.

In the Apple case, the Revenue Commissioners are adamant that there was no preference shown in applying the law and that the profits that could be taxed in Ireland were taxed here in accordance with the law of the time. Under Irish tax law, non-resident companies are chargeable to Irish corporation tax only on profits attributable to their Irish branches by reference to the facts and circumstances in each case. The Revenue Commissioners have reassured us repeatedly that this is what happened in the case of the Apple companies.

It is not clear how many advance opinions from Revenue relating to other companies were provided by the Commission, but it would seem that some were - perhaps a significant number. It is interesting to note that the Commission has not backed up its claim, at least not in the press release or subsequent commentary, that Apple received selective treatment by contrasting it with how other companies were dealt with by Revenue. How then can the Commission argue that Apple obtained a deal that was not available to any other company in Ireland?

Some €13 billion plus interest is undoubtedly a mouth-watering prospect and much good could be done with it in our country. However, we would be naive to believe that this money would be there for Ireland if only we were willing to collect it. We must look beyond the dra-
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matic headline and examine this issue on its individual merits. Whatever decision the House makes, Apple is appealing the finding to the European courts. The funds in question will be frozen until that process has been completed. We are told that it will take years, perhaps many. So fundamental are the issues at stake for Ireland that we must appeal this decision in our own right.

There are some bizarre elements to the Commission’s decision. The Commission has, on one hand, concluded that Ireland was solely responsible for the collection of corporation tax on some 60% of Apple’s global profits but, on the other, the Commissioner has invited many other countries to make a claim for whatever slice of the €13 billion they believe they may be due. She goes on to say that the amount owed to Ireland would also be reduced if the US authorities were to require Apple to pay larger amounts of money to its US parent company for the period in question to finance research and development efforts. Saying that the €13 billion is State aid from Ireland while other countries may be entitled to this tax is a direct contradiction. These comments introduce an unprecedented level of uncertainty into a ruling by the Commission. We should not be surprised to see many other countries joining the impending legal action to fight what they regard as their interests in this issue.

Deputy Paul Murphy: Is that what-----

Deputy Michael McGrath: The Commission says that the Revenue rulings endorsed a way to establish taxable profits for the two Irish incorporated, but non-resident companies of the Apple group that “did not correspond to economic reality”. This begs the obvious question - where is the economic reality in a finding that requires Apple to pay tax on all of its profits outside of the Americas to Ireland? The truth is that there is no economic logic to this. That is why the Commission has opened the door to other countries to claim their share.

Ireland’s strong economic relationship with the US is also central to this debate and should not be forgotten. US companies directly employ more than 140,000 people in Ireland and a further 100,000 indirectly. In 2015, 80% of all corporation tax in Ireland was paid by the multinational sector. The US is furious at the Commission’s decision, as its Administration believes that these profits would ultimately be subject to US corporation tax upon repatriation.

We must take the long view. We want to live in a country that continues to attract the world’s top companies. Ireland is a world leader in sectors such as ICT, pharma, financial services and life sciences. This was not an easy achievement and it must be protected. We respect IDA Ireland and support it in its work. It has a difficult task to do in a landscape that is becoming more competitive by the day. The headlines in the UK newspapers on the day following the Apple ruling, inviting multinationals to move to the UK, will not have gone unnoticed by IDA Ireland and should not go unnoticed by us. Listening to the chief executive of IDA Ireland, Mr. Martin Shanahan, on “Morning Ireland” on Monday one got a clear sense of the seriousness of this issue for Ireland. We have achieved success in inward investment that makes us the envy of Europe. Let us not forget that. Corporation tax and certainty around it are vital ingredients in that inward investment offering and we should not kid ourselves by thinking otherwise.

Companies operating in Ireland should pay, and do pay, 12.5% corporation tax on profits that are properly taxable in Ireland in accordance with Irish law. We agree that profits should not go untaxed anywhere. Multinationals should pay their fair share of tax. Profits should be taxed where the economic activity that generated the profits took place. This is what lies at the heart of the recent reforms in how multinational profits are taxed internationally. Ireland
should continue to move in tandem with other countries to implement the OECD’s base erosion and profit shifting, BEPS, reforms. We cannot achieve tax justice on our own but we should continue to play our part through these international reforms.

In terms of domestic politics, it is striking that the Commission’s finding on Apple has been seized upon by those who would normally disagree with every word from the Commission. Let us be honest, Ireland’s corporation tax regime has been targeted by Europe on several occasions and in several guises. Powerful member states eyed our corporation tax rate during some of the lowest points of the economic crisis in this country. Ireland was forced to secure binding legal safeguards for its corporation tax rate during treaty negotiations. The European Commission has tried and so far failed to secure agreement in the common consolidated corporate tax base, CCCTB, and will come at it again in the coming months.

I believe the Commission is now encroaching on our national sovereignty in the area of corporation tax through its mandate over competition policy. The Government’s lack of preparedness for this decision deserves criticism and will be criticised in today’s debate but my focus is on the vital issue of the national interests at stake. It must be stated in this debate that Apple’s presence in Ireland is not brass plate in nature. Apple employs almost 6,000 people in Ireland and is continuing to invest here. Apple made the decision to locate in Cork in the dark economic times of 1980, when jobs were being lost hand over fist in our economy and when large companies were not exactly queuing up to invest in Ireland. That investment and ongoing investment by Apple and other companies is welcome.

Recent announcements by Apple include a new facility in Cork which will provide over 1,000 new jobs and an €850 million investment in a data centre in Galway. Since 2012, Apple has invested almost €150 million in Cork, supporting 2,500 additional jobs locally and providing services such as facilities, catering, security, recruitment, printing, fulfilment and maintenance. We welcome Apple’s commitment to Ireland. Long may it continue. If we want to be in a position to win similar investment opportunities in the future, now is not the time to equivocate. There is too much at stake. We must hold firm and defend our right as a sovereign nation to set our own corporation tax policy and to defend the capacity and competence of our independent Revenue Commissioners to apply that policy in a fair and consistent manner.

I look forward to the remainder of the debate and, hopefully, a decisive vote in favour of the motion to repeal the ruling.

Deputy Micheál Martin: Tá muidne i bhFianna Fáil i gcóinne chinneadh an Choimisiúin. Cinneadh dochredite atá ann agus is léir go bhfuil an Coimisiún ag iarraidh rialacha nua a chur i bhfeidhm mairid le cúrsai cánacha. Fostóir tábhachtach is ea Apple sa tir seo agus suas le 6,000 duine ag obair san chomhlacht. Caithfimid dul i gcóinne chinneadh an Choimisiúin. Tá sé riachtanach don tír.

I welcome this debate because it gives all Deputies an opportunity to outline their views on an issue which has deep economic and social importance. Owing to the manner in which the Commission chose to issue its ruling, and the initial shambolic response of the Government, much of the commentary is only now getting beyond empty sloganeering. We continually hear the incorrect claim that what we are talking about is the opportunity to grab a large pot of money for the Irish Exchequer. As we have already heard, there are Deputies determined to sell the idea that vast numbers of problems would be solved if only Ireland refused to appeal the judgment.
This is a complete distortion of a situation which in reality poses a potential threat to the long-term maintenance of employment and funding of public services. It is a clear and present threat to Irish workers in the private sector and the funding they generate for services on which we all rely.

One must take together this judgment, the statements of the European Commission and other leaders, the use of distorted and one-sided evidence and the proposals now being pushed on corporate taxation. When one does so there is no doubt that this judgment is a core part of trying to remove the opportunity for competition between member states in the taxation of companies.

A five-year investigation, including an unprecedented and targeted trawl of Revenue files, has produced an assertion but no evidence. It is regrettable that the full report has not been produced. The Commission should change its practices by ensuring redactions and so forth are in line before reports of this enormity are published. It has not been shown that there was selective treatment for one company. The refusal by the Commission to acknowledge how the company involved is one of our largest employers and taxpayers confirms that this was not a detached judgment.

Given the evidence available and the obvious attempt by the Commission and others to promote a damaging agenda on tax, the Fianna Fáil Party fully supports a robust and comprehensive appeal against this judgment. We also support a more active and assertive diplomatic and media effort to push back against the attempt to falsely accuse Ireland of unfair competition. It is in Ireland’s vital long-term interest to defend a corporate taxation system which has been a highly credible and effective route for creating and sustaining high levels of well-paid employment and funding vital public services. Let us all be clear about one simple fact: there is not one extra cent available to the Government or the Thirty-second Dáil to spend in any budget which will come before us. Irrespective of our participation in an appeal, the legal battle will continue for up to six years. The problems we face as a country remain to be dealt with and there is no golden pot being withheld. In fact, the complete opposite may be the case. Any significant damage to Ireland as a reliable location for inward investment could lead to deep and permanent damage to employment and public services.

While it is clear that a majority of Irish people and of Members reject the attempts to demonise Apple and Ireland, unfortunately there are those here who are actively promoting a false story about multinational investment and tax. Most of these are Deputies who claim to represent the interests of workers but arrogantly dismiss the concerns of hundreds of thousands of workers in multinational firms, many of whom have been making these concerns known over the past week. The attempt to paint Ireland as a rogue nation on tax has been ongoing for decades. It has been in place since well before any of the measures attacked by the Commission existed and before many of our largest firms even existed.

It is wrong on every level to claim that Ireland is competing unfairly. This is a country which believes in helping business to grow, create jobs and innovate and we have done this on the basis of policies which are fair, legal and found elsewhere. The myths about how we in Ireland tax company profits keep growing and need to be nailed. The current uniform 12.5% rate replaced a more complex system which also levied different rates on different types of activity. While it is a low rate, it is by no means the lowest. What distinguishes it from other countries
is that it is transparent and has had long-term political support. In contrast to countries where policy is constantly changing, Ireland has provided a long-term security on which to base major investment decisions.

According to the World Bank, which has studied corporate taxation for many years and applies a uniform methodology to all countries, the effective tax on company profits here is 12.4%, making Ireland one of a small number of countries where the statutory rate and the effective rate are nearly identical. In contrast, the effective rate in 60% of countries is far lower than the headline rate. In France, a 33% official rate is compared with a 7.4% actual rate. The difference between Ireland and France is that Ireland does not have a wide series of extra deductions and does not apply selective treatment in its application of the law.

It is extraordinary that the Commission has yet to investigate whether such major disparities distort competition between firms. The World Bank also rates Ireland as having high compliance with tax law, and as the sixth most efficient in the world in terms of bureaucracy.

Ireland is also distinct from other countries in that it does not add large amounts in extra taxes. The economic impact of our approach to corporate taxation, and that of other small and medium-sized countries, on the European Union as a whole is tiny. It is completely irrelevant to the causes and needed responses to the recent recession at European level. Unfortunately, these inconvenient facts have not stopped others trying to use our approach to corporate taxation as the reason they have failed to secure investment.

At different times I have had the privilege of working with our public servants in seeking major investment from multinational companies. It is sad that the Commission and some countries do not understand how often Ireland has won investment for Europe against Singapore, Puerto Rico, Switzerland, Israel and other countries that were our real competitors. We were not winning investments from other European countries. We were winning them from the countries to which I refer, although they consistently set out to undermine us by saying that Europe would eventually get us on corporation tax. They consistently tried to take investments from us in life sciences and technology companies. Europe has been too inward-looking and behind the curve in terms of the onset of globalisation and new technologies.

The argument that Ireland is providing a tax-free, libertarian haven for multinationals is simply nonsense. There is no doubt that abuses arose, in particular in respect of what were termed “stateless companies”. However, they were far from unique to Ireland and they have been addressed. Moreover, is not now, nor has it ever been, Ireland’s legal or ethical duty to attempt to unilaterally assume the role of the world’s tax collector irrespective of the economic and social impact on the country.

In this debate and over the past week we have heard parties and Deputies claim that an industrial policy, which includes multinationals, has failed and is unsustainable. This model supports hundreds of thousands of jobs and pays for teachers, nurses and pensions in every part of our country. What is more, it has done so for decades. It has directly enabled significant falls in absolute poverty and rising living standards. It has not created a country without problems, but it has done more than any credible alternative industrial policy. One of the amendments before us refers to the failure of industrial policy and how we need to move to a socialist industrial policy. This is a continuation of the election platform put forward by the Right2Change group in February and signed by Sinn Féin and most of our hard-left and left-adjacent Deputies. It is worth taking time to look at exactly what the proposed alternative to current pro-enterprise poli-
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cies actually involves. The policy, formally signed by every Sinn Féin Deputy and the others to whom I refer, calls for an increase in taxes on business of €8 billion per annum. That is no partisan attack – it is the cost they have published. They also demand full employment which, they say, will be based on direct public employment, non-profit corporations, co-operatives and labour-managed firms. All this, but not a single mention of job creation in the private sector other than to radically increase taxes on private employers. Demands for an end to our pro-enterprise policies and to seeking multinational investment advocate a stark reality, namely, that Ireland should try an industrial policy that has failed so often and so catastrophically that even communist-run countries have abandoned it.

Sinn Féin, of course, has two entirely contradictory policies. On one hand, it claims that it wants to take the money and leave everything else untouched but, on the other, it wants to demand higher taxes from employers and put all efforts into a radical left industrial policy. The softer policy is what we get when that party is busy raising money from American corporate executives at the Waldorf Astoria. Then, those involved are all sweetness and light and talk about how much they love America. On every point of substance, domestic and foreign, it is an increasingly ideological left-wing anti-enterprise and anti-private-sector-workers policy. As recently as June, Sinn Féin MEP Matt Carthy angrily denounced his own country in the European Parliament and demanded that Ireland be forced to increase revenues from multinationals. Attacking corporate taxation in Ireland is the one and only area where provisional Sinn Féin has demanded greater action by Europe in the 40 years since that party was founded.

Apple did not come to Ireland because of the supposed sweetheart deal condemned as illegal by the Commission. It has been here for 36 years. It has gone from 60 employees in 1980 to 6,000 employees now. The specific tax rulings involved were made before any of the products which made it the largest company in the world were invented. The tax rulings were made before there was an iPhone, before the App Store was created and when Apple was making a fraction of the profits it makes today.

The available evidence suggests that the Commission is flat-out wrong in claiming that the company paid 0.005% in tax in 2014.

**Deputy Richard Boyd Barrett**: How do we know that?

**Deputy Micheál Martin**: Apple paid over €400 million to our Government alone and it is adamant that it had a worldwide tax rate of over 25%.

**Deputy Richard Boyd Barrett**: It could be making up figures.

**Deputy Micheál Martin**: It is an innovative company, which has been a long-term and committed investor in Ireland from its earliest years and through periods of both consolidation and expansion.

Tax rulings are an absolutely common, reasonable and ethical part of the tax code of nearly every country. This is based on companies seeking clarity on what taxes will be owed under given circumstances. In the case of Ireland, such rulings are made by an entirely independent agency with no official or political involvement whatsoever. The Revenue Commissioners look at the law and apply a fair and consistent interpretation. The implication that our Revenue was acting selectively to favour one company over others is completely unacceptable. That a five-year trawl through Revenue’s files in an effort to find a legal target produced such a slim and tendentious case is striking.
The Commission is seeking to establish a new standard for applying competition law to taxation matters. In effect, it is claiming that any provision that allows for profits generated internationally to pass through a jurisdiction without being taxed is unfair to firms that are not international. By definition, the Commission’s ruling is a selective one targeting multinational companies that invest into Europe. Once again, the Commission is unfortunately seeking to legislate for a world which has long since ceased to exist. For a decade and a half it has sought to beat a European drum against international firms, devoting huge time and resources to railing against the outcome of technological developments. Ten years ago the Commission was focused on the idea that Microsoft had achieved a permanent monopoly on Internet browsers and office software. The absurdity of these claims was obvious even then. Competition authorities also obsessed over the idea that Intel had a monopoly over processing technology for personal computers. Today they have failed to learn the lessons of the technology era and are focused on Apple, Google, Facebook and other technology leaders. They are making Europe a cold house for many innovative companies. The process by which President Junker was chosen was borderline ridiculous, and unfortunately he is supporting a policy that is designed to win headlines rather than strengthen Europe.

Any judgment that defines tax measures that are available generally to companies as selective is a threat to both rates and national competency on the area of corporate taxation. It is a back-door attempt to achieve what has been rejected in a series of treaty negotiations. The risk to Ireland is simply too big to ignore. We must fight this judgment by every means possible, which includes a more urgent, co-ordinated and professional engagement with the issue by the Government. The shambles of last week must not be allowed to happen again.

Deputy Dara Calleary: We need to bring an appeal and support the motion under discussion in order to defend the integrity of our national and sovereign tax system and to defend the integrity of our tax collection agency, the Revenue Commissioners, but also to defend our overall offering as a place for investment and for foreign direct investment. The presentation of the judgment by the Commission last week gave an indication that Ireland was a haven for brass-plate operations and that employment was not provided by the companies that trade here. However, that is so false that it needs to be challenged. To allow it to go unchallenged would do a great disservice to those working for those companies and to those who work in our Civil Service and public service attracting those companies - agencies such as IDA Ireland. It would also do a great disservice to the overall offering for foreign direct investment.

The story of Apple in Ireland reflects that of many companies. It came as a basic manufacturing operation in 1980 with 60 people and today employs nearly 6,000 people because it has evolved as a company, working particularly with the Irish education system with a series of research and development initiatives brought in by Ireland and copied by countries across the world as a way to allow our basic technology industries to evolve to manufacturing excellence for the 21st century.

This appeal will also defend the sovereignty of the Revenue Commissioners. Our Revenue Commissioners have given tax rulings based on Irish tax law. The implications of accepting the judgment without an appeal is to give the European Commission the right to overrule our sovereign Revenue Commissioners - to overrule our sovereign Irish tax law - and to allow the European Commission to use our tax law and our Revenue Commissioners as a Trojan horse in order to attract the offering we make to corporate Ireland.

No proof has been provided that this is specific state aid to Apple as opposed to any other
company. The Commission would do well to look at the remarks of former European Commissioner for Competition, Neelie Kroes, in this context.

The presentation of the Commission’s case, whether intentional or otherwise, gave a completely distorted picture of foreign direct investment in this country. Some 5,000 people work for Apple, with another 1,000 to be employed. They pay taxes, which pay for social services, health and infrastructure in this country. Some 180,000 people work for American-headquartered companies making foreign direct investment in this country. Across the length and breadth of the country, regions have been given access to employment that otherwise might not have had it. People have been given the opportunity to use their education to return to their home communities by companies that came to Ireland - not just to Ireland, but to Europe - in competition with countries from outside Europe. In the presentation of its case, the Commission gave recognition to the integrity of our offering, the complexity of our offering and the skills of the Irish workforce that make that offering and renew that offering on a day-to-day basis.

Apple came here manufacturing the old Apple Mac, and today it is doing cutting-edge stuff in Cork, similar to many other companies that came in the 1970s to do very basic operations but, because of a range of measures, are now doing something different.

An international effort is under way to address the tax-avoidance issues that have been highlighted over many years. It is being led by the OECD through the BEPS process. It is important to recognise that the OECD has commented that Ireland has stayed the course and is making the necessary modifications and adjustments. It is happy to state that Ireland is “a strong and exemplary case of adopting and adapting”. Those are the words of the OECD, which is leading the effort on reform of tax avoidance. Reform on tax avoidance cannot be done by one small country. It needs to be done on an international basis, along with reform of the issues leading to it. The European Commission decision has undermined that international co-operation and will make it harder to get international agreement to close down the loopholes we have spoken about. The Commission must take responsibility for the damage it has done in that regard.

We had one canonisation over the weekend. It is extraordinary to see the powers of infallibility given to the European Commission over the past seven days by people who previously would have ignored it and maybe even burned it at the stake. We were often told that the European Commission would come in and erode our tax sovereignty, but when it does, it is cheered. We have been told the judgment should be published - yes, it should be. However, we have the principles of the judgment which are wrong to us but are being cheered by others.

We are being told that we should take the €13 billion and run, but we are not being told how much of that €13 billion will be acquired by Ireland and how much, in the view of the European Commission, we are supposed to collect on behalf of other countries, including the USA. The European Commission has decided that is our duty to be the revenue collector for other countries. It has invited other countries to come to the party, suggesting that Ireland can collect the money and other countries can put in a claim, with the Revenue Commissioners in Ireland to manage that. That is an extraordinary decision with extraordinary implications and we cannot allow it to go unchallenged.

Certainty for business is key to this appeal. However, certainty was absolutely missing in the Government’s response to this decision last week. It was extraordinary to hear the remarks of the Minister, Deputy Noonan, that he knew a week before the announcement that we were going to have a negative decision. It had been signalled in 2014 that this was going to be a
negative decision. Many of the principles that apply were indicated in 2014. Last week’s pathetic response from the Government has damaged even further our willingness and readiness to appeal this decision. There should have been communication within Government about this decision, but it is clear that this did not happen. The events of the 48 hours immediately after the decision was announced did nothing to enhance this country’s reputation.

We have to support the appeal. We support the appeal on the basis of those who are working in companies across this country. We support the appeal on the basis of those who are in third level education in the hope of staying in this country and working in and even leading these companies, as many Irish people have done. We support the appeal on the basis that the journey to stamp out tax avoidance is to be done on a cross-country basis and not by one country alone. We support the appeal on the basis that Ireland, as a sovereign nation, has rights over its tax laws and the integrity of its tax collection institutions.

**An Ceann Comhairle:** Deputies Gerry Adams and Pearse Doherty are sharing the next slot.

**Deputy Pearse Doherty:** Rachaidh mise i dtús báire. Tógfaidh mé 20 nóiméad.

**An Ceann Comhairle:** Ceart go leor.

**Deputy Pearse Doherty:** Molaim an leasú atá curtha síos ag Sinn Féin. I move amendment No. 1:

To delete all words after “Dáil Éireann:” and substitute the following:

“notes the European Commission decision of 30 August 2016 requiring the State to collect €13 billion plus interest from Apple because it benefited from unlawful state aid;

firmly rejects the Government decision to appeal the decision by the European Commission that Ireland provided unlawful state aid to Apple;

recognises that the ruling has no effect on Ireland’s corporation tax rate or on the sole competency of Ireland in setting that rate;

affirms that our corporation tax regime must be competitive, but also fair and transparent, and that it should remain a core part of our economic policy in relation to foreign direct investment;

strongly supports the ongoing work of the Organisation for Economic Co-operation and Development, OECD, and others to tackle aggressive tax planning and harmful tax practices and in combatting the negative impact of tax avoidance on the global economy and the developing world in particular; and

calls on the Government not to appeal the decision of the European Commission and to immediately take the appropriate actions to recover all payments due to the State as per the European Commission decision.”

The European Commission’s decision to find that this State unlawfully gave Apple an advantage over every other business, big or small, in this State over the course of decades has shocked many people. However, it comes as no shock for people familiar with this area of Irish tax. It sounds right to us because it is right. We know it is right because Apple told the US Senate it was right. The company told the Senate that “since the early 1990s, the Government
of Ireland has calculated Apple’s taxable [profits] in such a way as to produce an effective tax rate in the low single digits”. Its head of tax operations, Mr. Phillip Bullock, told the US Senate hearings in 2013 as part of his sworn testimony and in response to questioning from Senator Levin that income earned by Apple Sales International and Apple Operations Europe had been subject to tax “in accordance with the agreement that we have with Ireland”.

The core of this issue is that Revenue, acting on behalf of this State, sat down with Apple and arranged a deal involving the shifting of profits to a company it knew to be a fiction - a company with no physical presence or staff and no ability to generate profit - so that Apple could avoid the payment of taxes. The Commission has found that a Revenue ruling, which was first made in 1991 and replaced by a similar ruling in 2007, ran contrary to standard tax rules applicable to other businesses. Clear indications of favourable treatment for Apple can be seen in the letter the Commission sent to the Government advising it of its view that its tax rulings with Apple constituted state aid. The letter in question notes that at a meeting between an Apple tax agent and a Revenue official in 1991 at which the profits of the accounts were outlined to the Revenue official, these figures were not taken as the base point from which to begin a debate on how much tax the branch should pay. Instead, Revenue was willing to discuss and negotiate a computation involving “a profit figure for the Irish branch based on a percentage of the actual costs attributable to the Irish branch”. This clearly shows that Revenue did not start the discussions on taxation at the standard starting point - the accounts - as a means of addressing the issue in a manner that would be more favourable to Apple. As we all know, businesses normally pay taxes on their profits as opposed to notional figures.

The Commission has stated that the agreement between Revenue and Apple did not correspond to economic reality because almost all profits that were generated and recorded by the two companies in Ireland were internally attributed to a head office which existed only on paper and could not have generated such profits. Essentially, profits of €104 billion earned between 2003 and 2014 were sent away from Cork into a sort of untaxed Bermuda Triangle. The advantage that was conferred in 2014 was an effective tax rate of 0.005%, or €50 in tax from every €1 million of profit. I suggest this is the very definition of state aid because it involves favouring one company over others with special treatment. The Commission examined 1,000 tax rulings across every EU member state, including hundreds of rulings from Ireland. It asked Revenue and the Department to provide information to show that this approach was not a selective one, but they failed to do so over three years in a manner that would convince the Commission.

One of the tests of state aid is that it costs the state. We must remember this was not a cost-neutral exercise. Taxes of €13 billion that were due to the State, and should have been collected by the State, were not paid over a ten-year period. At a time when Deputy Micheál Martin’s party was in government and was cutting the blind pension, reducing the minimum wage and closing hospital beds, this tax was being avoided and was not being paid to Ireland. The Commission’s assertion is that the Irish branches of Apple Sales International and Apple Operations Europe, both of which are tax resident in Ireland, generated the profits that are being referred to. These branches not only dealt with the sales of Apple products in Ireland, but also organised the manufacturing and distribution of all Apple products throughout the world outside the Americas. This means that all iPhones, iPads and other Apple products sold outside the Americas can be linked back to two Irish incorporated companies, the profits of which were recorded here. Under this agreement, yearly payments are made to Apple in the US to fund research and development efforts conducted on behalf of the Irish companies in the US. They shared the risks and the owned the economic rights to the intellectual properties.
This issue is not news to all concerned, as it came to the fore internationally in May 2013 when the US Senate Permanent Subcommittee on Investigations conducted a hearing into the offshore strategies of Apple. Details of this favourable treatment were disclosed by Apple’s head of tax operations, Mr. Phillip Bullock, when he told the US Senate hearings in response to questions from Senator Levin that income earned by Apple Sales International and Apple Operations Europe has been subject to tax “in accordance with the agreement that we have with Ireland”. He further confirmed during questioning that this agreement with Ireland restricted Apple’s corporate tax rate to a maximum of approximately 2%. The sworn evidence given by Apple’s head of tax operations, and indeed by the CEO of Apple, Mr. Cook, clearly indicates that the Irish tax rulings provided to Apple enabled Apple to pay substantially less tax than other companies. This is illegal under EU state aid rules.

This issue has been coming down the rails for some time. It is embarrassing for us that the Commission had to carry out this investigation and make this ruling because this Parliament failed to carry out the necessary investigations. Those of us who have tried to raise this issue have been shouted down by Ministers merely for mentioning the word “Apple”. When, at my suggestion, the Joint Committee on Finance, Public Expenditure and Reform set up a sub-committee to consider this issue, Fine Gael, Fianna Fáil, the Labour Party and Deputy Donnelly circled the wagons so that no executive from Apple or any other multinational company would be invited before the committee. The fear of discussing this issue was so crippling that questions were not allowed to be asked. When I argued that the State should close down the “double Irish” scheme, which has been in place for many years and was overseen by Deputy Micheál Martin and his party for much of that time, I was told at least three times by the Minister, Deputy Noonan, that it was not Ireland’s problem. Of course, it was eventually ended with a generous phasing-out period. When I first raised the issue of stateless companies exploiting Ireland to avoid tax, I was treated like a nuisance. I was told I was causing the country reputational damage. It is our problem now. It was only after I drafted legislation to remove the practice of facilitating stateless companies that the Government acted. For too long, this State has had its head in the sand when it comes to global moves towards tax transparency and fairness.

The Commission has ruled that this is our money. I would like to deal briefly with the clear attempt at misinformation that is being made by those who argue that this €13 billion in back tax is some type of magic money that is not ours. The figure of €13 billion accrues from profits of €104 billion generated by the Irish branches of Irish-incorporated companies, Apple Sales International and Apple Operations Europe, on sales outside the Americas between 2004 and 2013. To date, these profits have not been taxed anywhere in the world. The suggestion that we cannot be the tax collector of the whole world does not mean anything. If profits are generated and booked here, they should be taxed here. That is how it works.

Let us now look at the straw man argument that Fine Gael and Fianna Fáil have trotted out with a single voice. Every excuse under the sun has been invoked to deflect our responsibility. We are told the EU Commission has overreached, that this is a political power grab by Brussels. Since the 1970s the Commission has been enforcing state aid law. In 2003, for example, as Fintan O’Toole repeatedly points out, it ruled that Ireland’s so-called foreign income scheme was illegal state aid.

One would think listening to Fine Gael that the EU Commission using state aid rules to look at taxation issues was an unprecedented event. Far from it. Only two months ago the Minister for Finance listed three unprecedented event: stamp duty changes, relief on stamp duty for farmers and
tax relief for succession planning for farmers. These are all being inspected in Brussels but no angry pitchfork marches and no passionate defences of sovereignty have ensued. The Minister, and those in opposition who support him, know that his flagship living city initiative was repeatedly delayed and amended significantly before getting EU state aid approval. Eventually, after years, it was brought in with significant changes. The EU has been using state aid to consider tax measures for as long as the state aid rules have existed. The Minister and others here have experience of state aid and how it works. They are trying to mix it up as some new attempt to undermine sovereignty which is a dishonest assertion. It is a cynical lie to suggest there is any new threat to our corporation tax rate in last week’s move. It is a lie and those who are peddling it know it only too well.

The other cobbled together argument is that this is an attack on small nations. Let us look at that. In 2014 Germany was found to have given state aid to the Nuerburgring racetrack and ordered to recoup €1.27 billion, the highest state aid ruling bar the Apple one, and it happened only two years ago to the biggest country of them all. For the record, the Commissioner who made this ruling, supported by Phil Hogan and others, is from Denmark, a country with a population approximately the same size as our own. All this talk of the freedom of small nations is as ridiculous now as it was 100 years ago.

Then we had the scaremongering about jobs and we heard it again today from Deputy Micheál Martin. It may come as news to him that following the EU Commission’s announcement, Apple made a statement committing itself to Ireland and pledging ongoing investment. I warmly welcome that. Why would it not? After all, the loophole that allowed this deal to operate has been closed for some time. This is an issue of the past. It is a legacy issue. The loophole has been closed and all the evidence points to more investment by Apple and more tax being paid, both of which are to be welcomed.

People should not just take my word for it that this will not affect jobs or corporations coming here. The ratings agency, Fitch, has said that “Ireland’s low corporate tax rate, and its high human development and governance indicators should keep the business environment attractive to multinationals, and the costs of relocating would be large”. It also said that the windfall would reduce our debt. It is right of course. There is no economic reason to turn up our noses at the Commission’s ruling that we are entitled to €13 billion in tax back and approximately €6 billion in interest owed to us.

The other red herring is the argument that the EU is wrong to apply this ruling retrospectively. That is nonsense. All state aid investigations and rulings are retrospective. That is how they work. They cannot look into the future, they have to look at the past. It is nonsense being peddled by these two parties which obviously had a couple of focus groups and decided what type of line was best to put out to muddy this issue. Ask any businessman or businesswoman who has ever been audited about the powers of Revenue to act retrospectively. Look, for example, at what the Internal Revenue Service, IRS, the US tax authority, is doing to Coca Cola, looking for $3.3 billion in retrospective taxes despite having given it a clean bill of health some years ago.

All this deflection, all these red herrings, show that Fine Gael and Fianna Fáil do not get it. This is not about the Commission overreaching, it is not some sort of attack on small nations, it is not about jealousy and there is no threat to our jobs but there is clear evidence that Apple got special treatment from this State over decades.
Last Tuesday the EU Commission sent a mighty shock through the Irish establishment. By doing so it has unwittingly unleashed the most unlikely patriots who, remarkably, had hidden their passion for Irish sovereignty throughout their entire careers. Not even when the troika strolled into Dublin dictating brutal cuts to our social system and public services did these brave Irish patriots show their true colours. When the European Central Bank told us not to burn bondholders and instead make the Irish people pay, they kept their nerve, waiting for their moment to strike. When the EU Commission said they must charge the Irish people for water they cunningly went along with it. When the International Monetary Fund demanded that our young teachers and nurses be made pay for events before their time, they waited still. Some thought they were just quislings but it turns out they were instead very deep under cover.

Now, finally, their day has come. The secret patriots of Fine Gael, Fianna Fáil and the Labour Party like the men and women of 1916 “having resolutely waited for the right moment” to reveal themselves have emerged to strike a blow for Irish sovereignty. Perhaps the Proclamation needs a new verse about the right of one multinational to be treated better than everyone else in this so-called republic of ours. Their years of careful preparation have, however, been wasted. Their patriotic fervour is wasted on an issue that is not about sovereignty, it is about fairness and justice. Immense damage has been done to Ireland’s reputation because of this affair and no appeal is going to repair it. The only people who will benefit from an appeal are the lawyers. They stand to gain millions while the Irish people can only lose billions.

The Minister for Finance, Deputy Noonan, in one of his first interviews after this decision, dismissed the idea that there was a moral case to be answered. There certainly is. For almost 20 years Revenue officials were aware that a company which has generated over €100 billion in profit in the last decade alone had no tax residency anywhere in the world, yet nothing was done. Questions need to be asked about how, or if, this was brought to the attention of the political authorities who in the normal course of events would have closed down the loophole. How did that happen? How did the Revenue Commissioners not notify the politicians or did they? What then did the politicians say if they were notified? In the case of a stateless company a blind eye was turned for over two decades. Nobody in this Chamber today would stand up and say that what was happening, whereby Apple could book €100 billion in profit without paying tax anywhere in the world, was right. Many people in this Chamber, however, served in the governments that oversaw that system for over two decades. I want to know if they knew that this was happening because it could easily have been closed down, as it was in 2003 when we found out that it was in fact happening.

Of course we need to see the full EU ruling or at least as much of it as possible as soon as possible. It has been suggested we could be waiting months. That is unacceptable. Will the Government give a clear indication of when we will see the decision, including the advance opinions we are giving to Apple? We need to know where the political responsibility lies for cutting these deals that have cost the Irish people far more than even the €13 billion we might hopefully get back. If the Commission was not limited by a Statute of Limitations it could have come up with a much higher figure. We need to know why the Revenue Commissioners would feel empowered to make a deal with a company that limited its effective tax rate. I reiterate that the scale and cost of this deal to the Irish people is so big that a public inquiry is required. Nobody who supports Ireland’s right to set its own tax rates or its right to compete to win foreign direct investment should have any issue in supporting the amendment in my name.

The amendment rejects the idea that it is in the interest of the Irish people to appeal this ruling. How could it possibly be? Only this week we have heard of hospitals turning away
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patients in need of brain surgery, of the massive requirement for investment in our education system and of Exchequer returns not matching targets. The amount of money owed to us is €13 billion plus interest. It is not a gift, it is not a penalty, it is simply what is owed in unpaid taxes. Some political parties and other commentators can try to justify saying no to €13 billion and can try to justify spending millions of euro to make sure we do not get it. However, my party cannot. We know the reality in our hospitals, in our schools and in our communities. Fundamentally this is a question of equal treatment of all the players in our economy. We all know constituents, small businessmen and businesswomen, who have been chased by Revenue into liquidation for as little as €3,000, yet €13 billion is not worth chasing it seems.

We recognise that Apple is free to appeal and will appeal. For those who argue that we need legal certainty, that will come but we do not need to pay lawyers millions of the people’s money to get that. It is time to move on and to stop fighting yesterday’s battles.

In 2016, let us drop the mock patriotism and focus on playing a part in what is hopefully a more transparent, fair and prosperous international tax system. Our country is crying out for investment and for good employers. We can have both. The idea before us in the Government motion is ultimately that we want to be able to break the rules for some of our friends. That is not good enough. The same motion states it will fight tooth and nail to make sure not one red cent of the money owed to the Irish people is returned to us. Tax is not just for the small man, it is for all - big companies, small companies, workers, farmers and even politicians. Nobody can argue that this deal was justified, knowing what we know. I welcome the decision the Minister took yesterday regarding section 110 companies and the loophole. We will examine the legislation that has been published in draft form and we will comment on it then. I have been raising this issue with the Minister since March of this year. This does not deal with the major vehicle that is being used by international players to buy up property in this State.

Let us hear what Davy states in its advertisement. It states that the qualifying investor alternative investment fund is “the vehicle of choice for private [...] investors who are undertaking large scale investment in real estate”. The Minister knows, and I know, that any international investor who invests in those funds does not pay a penny of tax in this country. Let us look at some examples. Property investment giant Kennedy Wilson Europe Real Estate holds circa €1 billion in assets in Ireland, with €26 million in rental income in the first six months of this year, yet it pays no tax in the State, and the Government’s legislation will not change that. Cedar Real Estate Investments is another qualifying investor alternative investment fund, which is being paid €2.3 million every year by the Central Bank to rent its property. It does not pay a penny in tax here because it is a qualifying investor alternative investment fund. Let us look at what Denis O’Brien did with his Irish Collective Asset-management Vehicle, ICAV, whereby he was able to reduce his tax liability with the loss of €10 million to the Irish Exchequer. That will not change under this legislation. Non-resident investors in IPUT, who got €30 million in profits last year, will not pay a penny in tax on its property-related profits because of this qualifying investor alternative investment fund, which holds assets of over €300 billion. These loopholes, along with what was announced yesterday, need to be closed down in this year’s finance Bill.

Deputy Gerry Adams: Táim buíoch as an deis labhairt ar an rún agus ar na leasuithe tábhachtacha atá os comhair na Dála inniu agus mo thacaíocht a thabhairt do leasú Uimh 1 in ainmnneacha Theachtaí Shinn Féin. We are here to discuss very important issues, but we do so without Teachtaí Dála having access to the full ruling of the Commission. We also do so after the Fine Gael Party and the Independent Alliance, aided and abetted by the Labour Party and the Fianna Fáil Party, have already decided to appeal the Apple ruling. This means that today’s
debate has a predetermined outcome. All of us, including the Independent Alliance, know this. They presented themselves at the last election as independents in opposition to the Fine Gael Party and the Fianna Fáil Party and the Labour Party. They railed against the actions of those parties, but where do they stand today? With those very same parties. On another day their voices would have been raised in anger in this Chamber at the disgraceful decision of the Government, and at the decades of cronyism and corruption on the part of the establishment parties which created this mess, but not today. Today, they seek to defend the indefensible, and they know it.

We are here to debate a decision that the establishment parties and the Independent Alliance have already rubber-stamped, with the Government pretending that it is all about the 12.5% corporation tax rate. So much for the claim that the last election saw the emergence of new politics. Féach ar an Dáil direach roimh shos an tsamhraidh. It was more of the same with the Fianna Fáil Party voting with the Fine Gael Party and against proposals to scrap water charges, provide for rent certainty, provide for banded hours contracts for workers and to deal with the issue of bin charge hikes. New politics, same old story. The issues raised by the Apple deal with successive Governments go to the very core of the Government’s attitude to citizens, to public services, tax justice here and internationally, fairness for our business sector, and to corporate social responsibility. They are issues on which Sinn Féin has taken a stand consistently, only to be castigated by the political establishment of the Fine Gael Party, the Fianna Fáil Party and the Labour Party whenever we raised the issue of tax avoidance by large multinational corporations.

Sinn Féin believes firmly in tax fairness. That means that every person and every company pays their fair share of tax.

**Deputy Brendan Howlin:** Even Slab Murphy.

**Deputy Gerry Adams:** That has been our consistent position. Tax revenues are the means by which public services are funded, by which we pay for social protections, which the Labour Party abandoned decades ago, and from which infrastructure is developed. In Sinn Féin’s view, the record of successive Governments on investing citizens’ taxes to build a fair society is shamefully disastrous, but the principle stands. Taxes are needed to pay for the betterment of citizens’ lives and their services. Ag an am céanna, tá gá ann go mbeadh cáin réasúnta agus cóir. There cannot be one set of rules for some and different rules for others. Small and medium enterprises are the backbone of our economy. We have all worked with small businesses that are under huge threat because of the penalties imposed on them by the Government, and households weighed down by Government tax policies, while one very large company pays less than 1% corporation tax.

The recent finding by the European Commission that the State has facilitated Apple in engaging in just such a practice should surprise no one. The ruling confirms the concerns Sinn Féin has raised regularly in this Chamber and which I have raised consistently with the Taoiseach. Deputy Pearse Doherty has alerted the Dáil on many occasions to the malpractices that favour multinationals. His concerns were dismissed by the Fianna Fáil Party, the Fine Gael Party, the Minister for Finance and the Taoiseach. Thug Airí, agus an Taoiseach san áireamh, neamhaind ar imní Shinn Féin i ngach cáis.

The Fine Gael Party, in cahoots with the Fianna Fáil Party, the Labour Party and the Independent Alliance, have decided not to collect the €13 billion, plus interest, in unpaid taxes owed
to the citizens of this State. What is a few billion among friends? After all, we are the best small country in the world in which to do business. That is what is important, not housing the homeless or minding the elderly, not mol an óige, and not opening up education for all or regenerating disadvantaged urban communities or rural Ireland. That is not the priority. This motion and the Fianna Fáil and Labour parties’ support for it is proof of that. I cannot think of language strong enough for it. It is a mark of the hypocrisy, corruption and duplicity of a political class that hounds citizens who take a stand against water charges, that burdens struggling families with an unjust family home tax and that bowed to the elites of the EU when people’s interests were at stake. Now they tell us they will take a stand against the EU. The Taoiseach tells the Dáil today that we do not offer special favours or deals on tax. The Fianna Fáil Party leader echoes this assertion. It has as much credibility as a heap of horse manure. Seo iad na páirtithe a thug cuireadh don troika agus a chuir dualgas ar na daoine íoc as an gcóras baincéireachta. These are the parties that imposed water charges, introduced a family home tax, cut acute hospital beds, created the crisis in our emergency departments, voted against rent certainty, failed, and continue to fail, to tackle the housing and homelessness crisis, and who imposed austerity on families, on the elderly and on communities which could least afford it. The Taoiseach has consistently refused to stand up to the EU elites. His protestations, like his policies, have no credibility whatsoever.

Sinn Féin has been and is critical of the European Commission, the EU’s institutions and their interference in our domestic affairs. Like all democrats and genuine republicans, Sinn Féin wants a different kind of European Union. We want meaningful reform and restructuring of the EU, the decentralisation of power, the promotion of democracy and real sovereignty, economic and social justice, and the construction of a social Europe. The EU Commission’s judgment is one example of a case where they have ruled in accordance with these objectives and the Government should acknowledge that. Instead, Government Ministers have been scurrying around trying to portray the ruling as a question of tax sovereignty and an attempt to undermine our corporation tax rate. Even their former party and Cabinet colleague, Phil Hogan, rejects this. He says, “This decision has nothing to do with taxation, nothing to do with corporate tax rates, it has to do with state aid rules”.

The Minister for Finance has sought to present himself in Churchillian tones as the defender of the nation who will fight in defence of the State’s tax structures at home, abroad and in the courts. The fact is that the European ruling has nothing to do with either our corporation tax rate or tax sovereignty. The Commission has not sought to change our 12.5% rate of corporation tax. The Government, Fianna Fáil and Labour know this. Any attempt to portray this as an issue of sovereignty is merely a smoke-screen stoked up by those who have actually spent the past 40 years handing over our sovereignty to the European institutions. Now, faced with the chance to actually stand up for Ireland’s interests, they have again decided to act against the welfare and interests of citizens by siding with corporate interests. Imagine an Irish Government which is willing, with the support of the so-called Opposition, to hand €13 billion to a company whose annual revenues are 25% more than the State’s entire GDP. One could not make it up. Flann O’Brien at his most articulate could not have written this story.

Claims by the Government that the Apple ruling will damage our ability to secure foreign direct investment and that it creates tax uncertainty for international companies are equally untrue. Martin Shanahan of IDA Ireland said in recent days, “This does not call into question Ireland’s tax regime and it does not call into question Ireland’s tax rate.” He added, “this process has been going on for three years ... It hasn’t caused investors any concern to date ... The
investors I’ve spoken to over the last week really believe that this isn’t something that’s going to impact on them.” He is the guy on the front line. The Government, in order to try to whip up public support for its quisling position, rejects this view.

Sinn Féin believes in a strong enterprise sector. We want to see a thriving economy, where domestic businesses are supported and encouraged to expand and prosper. We also want to see a vibrant foreign direct investment sector operating across the island, providing employment, contributing to economic growth and paying its fair share of taxes. We want companies like Apple in Ireland. Apple employs thousands of citizens. I welcome the Apple CEO Tim Cook’s comments that the company will continue investing and growing its operations here. The people of Cork in particular, where Apple is one of the biggest employers, appreciate the company’s presence there for over 35 years. This does not mean turning a blind eye to tax evasion or avoidance. It means providing companies with an environment in which they can operate to the best of their ability and potential but it also means ensuring that they robustly fulfil their social responsibilities to the State and its citizens.

This is about tax justice and fairness. Indigenous companies were given no special deals or favours, nor were the self-employed, low-paid workers, pensioners or those struggling to make ends meet. We know from the 2013 hearing in the US Senate that Apple’s head of tax policy, Mr. Phillip Bullock, said there was a tax agreement with Ireland which amounted to a maximum of approximately 2%. When this was put to Mr. Cook at the hearing he said Apple had a tax incentive agreement with Ireland. In 2014, Apple’s tax rate was 0.005%, which is about €50 for every €1 million in profits. There has been no explanation offered by Fine Gael, Labour or Fianna Fáil supporters of how this could be the case. The former Minister - perhaps one of the longest-serving former Ministers here - Deputy Martin, has given no explanation for this. It also happened on his watch. The fact is there was an institutionalised facilitation of tax avoidance. Fine Gael, Fianna Fáil and Labour’s protestations make a mockery of our 12.5% corporation tax rate. Is airgead é seo a bhféadfaí caitheamh ar sheirbhísí poiblí ar nós cúrsaí títhíochta?

The line spun by the Government is that one of the principal reasons it is to appeal the Commission’s ruling is because of concerns that our international reputation will be damaged. Our international reputation has already been damaged. Around the world we are being branded a tax haven for corporations. In 2012, the Taoiseach told the Dáil that he would not face his EU counterparts with “defaulter” stamped on his forehead. It seems he would prefer to face them with “tax evader” stamped across it instead.

Tax avoidance or evasion by multinational companies, aided by governments, is not a victimless crime. Save the Children estimates that $78 billion is lost annually in tax avoidance in the 75 countries in which most of the world’s child and maternal mortality occurs.

**Deputy Brendan Howlin**: Should we solve all that?

**Deputy Gerry Adams**: Some 3 million children die every year from malnutrition and hunger and many more from preventable diseases. Christian Aid estimates that the lives of 350,000 children could be saved each year if corporation tax avoidance was ended. The leader of the Labour Party asks in one of his muted undertones, “Should we solve all that?” We should solve all that. It is our responsibility.

The issue of the Apple billions is about fairness and tax justice in this State and internationally. Does Deputy Howlin remember Connolly? Has he ever heard of him? As Connolly said,
“We only want the earth”. The Commission has made it clear that the Government’s claims that it would legally be required to use all unpaid tax and interest to pay down debt are untrue. However, the €13 billion, or whatever figure turns out to be due to us, will not solve all of our problems. It would be welcome but we have said consistently that what is important is fairness and the construction of a just society based on equality. It is about a Government standing up and saying it is willing to act in the interest of citizens and not in the interests of multinational corporations.

Deputy Gerry Adams: I will begin by saying that I do know James Connolly. He was a good republican unlike Slab Murphy who some describe as a good republican.

The Labour Party will seek to amend the Government motion before the House. I want to be clear that my party supports, in principle, the decision eventually made by the Government to appeal this case. It is clear, from all that has been said by previous speakers and from much of the commentary in the past week, that this has been a very difficult issue with which to grapple. For my party, it was certainly not easy to take a position on it. The prospect of an additional €13 billion plus is certainly hugely attractive. There is no one on any side of this House who could not identify really important social issues on which to spend this money. When I say it is a prospect, that is all it is. We know the case will be appealed by Apple. It will be determined in due course by the European courts, probably many years from now. It is simply nonsensical to suggest that we, as a country, should not be party to the appeal while the reputation of one of the most important agencies of our State is under scrutiny, review and, indeed, challenge. The only way this money would become available to Ireland would be at the end of that judicial process.

12 o’clock

Deputy Gerry Adams: If we ask for it.

Deputy Brendan Howlin: Of course, they know that. They are the same people who talked about mock patriotism and brave Irish patriots but who wanted to send the troika home in 2011 and tell it to “take your money with you”.

Deputy Gerry Adams: Labour’s way.

Deputy Brendan Howlin: They would have broken the country-----

Deputy Pearse Doherty: You want to send the Commission home for giving us money.

Deputy Brendan Howlin: -----and crippled the country in 2011.

I am confident that the Irish people understand the realities behind this decision. I have spoken to many of them in the last week. As I said, the easy thing for my party to do would be to take the populist line but it would not be the right thing and it would not be in the long-term interest of our people. If one looks back over the decades of the existence of my party, more than 100 years, one will see that we have always done right by our country rather than always putting
the interests of our party first, as some consistently do, even if it means prolonging conflict.

It is true that €13 billion, plus interest, is a lot of money but it represents only two years of corporation tax payments or 6% of one year’s GDP. The size of the figure has shaped much of the debate because it is, for all of us, a mind-numbingly large figure but there are bigger issues at stake in this debate. The Labour Party did not play a central part in putting this economy back on an even keel over the last five years to play politics with it now. Apple will argue that it arranged its tax affairs in accordance with rules afforded it by our Revenue Commissioners. Make no mistake about it, there are reputational issues at stake here. As a small open economy, hugely dependent on foreign direct investment, FDI, reputational issues are extremely important. Any of us who has been privileged to have been involved in negotiations to attract companies into this country knows that full well. The House should debate these matters rationally.

The position of the Irish tax authorities is that these are administrative decisions made by independent and competent authorities rather than political decisions. They have told us that no special or selective arrangement was afforded to Apple. Having known and worked with the Irish Revenue Commissioners for three decades, I for one, accept their word on these matters.

On the face of it, aspects of the European Commission’s decision are troubling, as other Deputies have indicated. The Commission seems to want to interpret the law as it is now, as opposed to how it was at the time. There is no obfuscation in terms of saying “that’s the way they operate” in the context of how competition rules will apply. No tax system can work on that basis. We could not go to any citizen and say “by the way, we have changed our minds on the tax position that we determined for you 20 years ago and we want all of that tax back, with interest”. The Commission wants the Revenue Commissioners to collect taxes on moneys that were not earned in this jurisdiction. It has further issued a call, a come-all-ye call, for others who believe they have a legitimate claim on this money to come knocking on Ireland’s door. How can that work for us? How are we supposed to collect or spend money when we do not know the beginning or end of how much of it is actually rightfully ours?

There seems to be a belief that Ireland, a small nation, should carry the reputational hit for correcting what we have all agreed is an issue. We are told that this was an investigation under state aid rules and yet the lion’s share of the commentary since the announcement of the Commission’s decision has been about taxation levels; the same sort of commentary we have heard for many years on corporation tax policy in Ireland. It is a dishonest charge levelled against us by those who seek to do us harm and those who would be complicit in that actually do Ireland harm. They damage our prospects of continuing to successfully attract investment into this country. The mud that sticks is the mud that is thrown often enough.

The truth is that this State collects higher than average revenue from corporation taxes and implements at a national level an effective tax rate which is higher than that of other countries, with bigger systems of reliefs that do not seem to be the focus of the Commission’s overview, a point made effectively by Deputy Micheál Martin with reference to France. As Dan O’Brien and other commentators have pointed out, there is a growing trend in European Commission rulings of finding against smaller countries while ignoring potential breaches elsewhere. That should give every Member of this House pause for thought before automatically rushing to agree with the Commission.

It is interesting that some in this House believe that they are entitled to come with a fixed position but the rest of us are not. They believe that their view is so right that they are entitled to have it but that we are not entitled to our view.
The reality is that Ireland has been an upfront and honest engager in the process established to address the wrongs of excessive international tax practices. I am proud to have been a member of the Government that put an end to the so-called double Irish. Ireland has been uniquely successful in attracting foreign direct investment and our corporate tax levels have been part of that attraction over the last few decades. However, we have moved to compete for FDI on a much broader basis in recent times. FDI, make no mistake about it, remains an important part of our economic and jobs strategies and of the potential well-being of our people.

It is regrettable that the Government has not sought to properly engage with the Opposition on this matter. We have not seen the ruling of the European Commission in all of its detail and yet we are expected to vote on what is one of the most critical matters to come before this House for a very long time. I have sat in this House for quite some time but I cannot recall a situation previously where a Government moved a motion seeking the agreement of the House without at least offering a confidential, detailed briefing to Members. Dropping a physical copy of a briefing note in the post after the close of business yesterday does not amount to proper engagement with the Opposition. There is no excuse for such obfuscation on an issue as important as this. What is more, the Government knows that. This is not a minor procedural matter. Members of this House represent the people of Ireland. If the so-called new politics is to have any meaning, if collective or inclusive decision-making is to be real in any sense, then this side of the House cannot be left without possession of all of the facts that others have received through briefings. Notwithstanding that, as I have said, the Labour Party is proposing an amendment to the motion which is entirely reasonable and should have the support of all Members. In fact, it is so reasonable that the Minister for Finance has acted overnight to give partial effect to one of its proposals.

The first part of our amendment insists on continuing Government support for the BEPs process. In a globalised world - I made this point quietly during Deputy Adams’ contribution - we cannot do this alone. We are not going to achieve international tax justice by ourselves.

Deputy Alan Kelly: Hear, hear.

Deputy Brendan Howlin: That is why we have led the charge on this through the BEPs process. Deputy Adams should talk to our ambassadors who have been involved in that process but that would not give him any credit or political capital. In Government, as I have said, the Labour Party insisted on Ireland’s continuing support for, if not its vanguard lead on, the OECD process and in opposition we will continue to do so.

The second part of our amendment recognises that the work we carried out in ending the double Irish is not complete. We have made progress and some of the loopholes that allowed the creation of stateless corporations have been closed. There is no doubt that this work fed into the increase in the tax take that we have already seen. We saw corporation tax receipts increase from €4.6 billion in 2014 to €6.9 billion in 2015 because of the closing of those loopholes.

I accept it would be foolish to think that we have finished our work. The moral outrage that we have heard over the last week about companies who avoid paying any tax, despite generating huge profits, is completely justified. We cannot expect families or individuals to pay their fair share of tax if companies do not. The Labour Party amendment calls for the ending of all loopholes in the tax code that facilitate aggressive tax avoidance by profitable companies. I welcome the reaction of the Minister who has responded overnight to these concerns and announced significant changes to section 110 of the Taxes Consolidation Act and we will look at
those changes in detail. My colleague no doubt will have something to say on those. The prac-
tices of vulture funds over the last couple of years are completely unacceptable. The dirty deals
which have been done, for example in the Clerys case which cast workers adrift overnight, are
not acceptable-----

**Deputy Gerry Adams:** On your watch.

**Deputy Brendan Howlin:** -----and that is why we changed the law. The difference between
the Labour Party and others is that we actually like to provide solutions not exploit problems.

**Deputy Aengus Ó Snodaigh:** And you create them.

**Deputy Brendan Howlin:** That is why the Labour Party amendment also asks that the
forthcoming budget includes measures to ensure a minimum effective tax rate on all profitable
companies.

**Deputy Richard Boyd Barrett:** We have been calling for that for the past-----

**Deputy Brendan Howlin:** We have a low rate of corporation tax that is part of the offering
made by a small island nation to entice some of the biggest companies in the world-----

**Deputy Richard Boyd Barrett:** It is Saul on the road to Damascus.

**Deputy Brendan Howlin:** -----to come here and create jobs.

**Deputy Michael Noonan:** You would want to sell the yacht.

**Deputy Brendan Howlin:** The bottom line is that we compete-----

**An Leas-Cheann Comhairle:** Deputy Howlin without interruption.

**Deputy Brendan Howlin:** -----with the likes of Singapore and Israel for these jobs. There
are some here who would throw the jobs away and let them go to Singapore rather than ensure
that we thrive in this country. Real leadership is about ensuring that our country thrives. The
problem is that there are those who always like to posit views knowing that there is never a con-
sequence for them. However, government and leadership are about doing something that has
positive consequences for our people. The work done by my colleague, Deputy Joan Burton,
changed the minimum effective tax rate for individuals and we need to do that for companies
as well. Today we are seeking support for the start of this reforming work and agreement by
the representatives of the people that all profitable companies should pay a real rate of tax that
is reasonable.

The final part of the Labour Party’s proposed amendment is perhaps the most important, and
yet in many ways probably regarded as the least exciting. The Government acknowledges the
need to have an overall review of our corporate tax regime. This is in the Government motion.
However, it is making the same mistakes others have made in the past which is to presume that
a one-off review of an ever-changing environment will solve the problem. Issues such as the
abuse of section 110, which were not envisaged when section 110 was enacted, were not created
by design. The abuse of that section, which some corporate law firms have openly advertised
on their websites and which has already been referenced, should be stopped. Whatever changes
we apply to our tax code, there are many people employed to find more loopholes. Based on
our experience it seems odd to suggest that those loopholes will not be found. The Labour
Party proposal is a modest one but, I believe, a truly effective one. We want to create an independent commission sitting on a permanent basis that will continue to examine the loopholes being exploited and suggest ways to plug them. There is no reasonable case that we should not continually examine how to prevent the creation and identification of tax loopholes or aggressive tax avoidance. We stand for levying a fair rate of tax on everyone, companies as well as individuals, and for spending the revenue raised from such measures in a fair and compassionate way. I hope that after all the debate, others will agree that the amendments we are proposing are reasonable and that they can attract the support of the House.

Deputy Joan Burton: As some of the previous speakers were debating I recalled a press conference given by the Northern Ireland Deputy First, Minister Martin McGuinness, MLA, during the course of the recent elections in the North in which he made the case for the North adopting the corporation tax regime of the South. This case has been put forward by Sinn Féin representatives at every North-South meeting that I have attended in recent years, including - I may say to Deputy Adams - in private discussions which took place. When the Deputy First Minister was asked about it and the concerns expressed that this would result in a reduction in services and tax available for services he gave a very specific answer. He said, “I do think it will be affordable”. He said the reason he supported the move was because it would potentially create 37,000 new jobs through new investment. In a nutshell, he made the case for having a competitive tax regime that is just and fair on the whole island of Ireland.

In this context we have just heard an exercise in outrageous cant. In other words, the 37,000 new jobs that might be created according to Deputy Adams’s leader in the North would be very important for the North. Yet, what about the 6,000 jobs in Cork connected with Apple, which have put Ireland at the cutting edge of world technology upon which we all depend in our daily lives, technology that has generated huge profits globally and specifically for the Apple Corporation? Do the 6,000 jobs in Cork, the 6,000 families in Cork, the communities in Cork, Munster and Dublin not matter? By God, the 37,000 jobs matter in the North. What kind of rigmarole approach is that?

In the period since the Commissioner launched a fairly large Exocet in the direction of Ireland and its position in regard to foreign direct investment I have been shocked with the performance of the Government. It has been unfocused and all over the place. I understand there are competing tendencies within the Government just as there are on the left, as we know, but playing out all of the differences all of the time in public sends a message of uncertainty about what this country is about. It amounts to a dereliction of duty. I was sad to see that the Taoiseach and the Minister for Finance, Deputy Noonan - two people for whom I have a lot of respect - were not on top of their game and were not really present in terms of a prompt response on the argument. Ireland is open for business but we also want tax justice.

In a previous Dáil, when I was Opposition spokesperson, I persuaded over a long period of time - about three years of detailed discussion - the then Minister for Finance, Brian Cowen and the subsequent Minister, the late Brian Lenihan, to accept the notion of a minimum effective rate of income tax. Deputies who have been in the Dáil here a long time will remember the reports lodged in the Oireachtas Library, at my request, from the Revenue Commissioners which showed that quite a number of people with annual incomes in excess of €1 million were effectively paying a zero rate of tax because of the huge array of tax breaks that existed. It was obvious that people on ordinary salaries, large and small, would never have access to those breaks. In fairness to the Government at that time, it did adopt the changes I proposed.
When the Labour Party entered government one of the things I persuaded the Minister for Finance, Deputy Noonan to do was to review the tax rate and to raise it further. Now if one looks at the Revenue reports those very high earners - no matter what their tax breaks may be - do pay minimum rates of tax. That is why I recommend the Labour Party’s amendment as has been set out by Deputy Howlin. The proposed changes in the amendment have been thought through to be effective and they will bring tax justice forward in Ireland. I am not saying they are perfect because they are cast in a general sense as to how we would deal with the finance Act and the budget to progress tax reform.

Tax reform is never finished. What the Minister said about section 110 is very welcome and we will look at it closely. We now have very extensive business in tax, accountancy and legal services not just for Ireland but internationally. There are very few people in the world who can keep up with how tax practice keeps changing. It changes on a weekly, national and international basis. Keeping up with that is almost impossible. This is why the Labour Party amendment contains a number of very simple proposals which can be implemented on a continuing basis over a period of years so that we constantly pursue fair and just taxation but which also allow us as an island to keep our competitive advantages, bring the jobs to Ireland and keep them there. As we are talking here today about tax, many people here can decide that jobs do not matter but of course they matter. We would be very foolish to deny that.

We want to support the work of the OECD and the EU through the BEPS process so that we tackle aggressive cross-border tax planning. We cannot do that on our own, we can only do it in a multilateral context and anyone who says differently is either not fully familiar with the facts or is lying. It is not possible do it other than on a multilateral basis.

Second, we need to look at all of the loopholes that emerge or that are contained in the Irish tax structure so that we move to a system of effective corporation tax rates. We have a headline corporation tax rate of 12.5% and headline income tax rates but the headline rate is not what really matters to individuals or businesses with very high incomes or very high taxable profits because people employ accountants and tax lawyers to address that. The key factor is the effective rate. Therefore, our proposal is that the effective rate on taxable profits - revenue less allowable costs of the business - should over a period of time be moved to 12.5% so that we come close to that figure really being 12.5% in terms of revenues less expenses.

Some years ago, the G20 was held in Fermanagh in Northern Ireland - I forget what “G” it was. The then British Prime Minister made developments in tax law and tax justice a key feature of that summit. Not a huge amount was achieved as a result of that except that people’s consciousness, particularly that of younger people, of the need for tax justice is now an accepted fact. It is appropriate that the Dáil would move to acknowledge that.

There was a bit of tittering on my left in respect of Oxfam, international aid and what the developing world was missing. As somebody who spent three years working in developing countries, I can say that Ireland alone is unable to solve all of the problems of developing countries but our €600 million per year in development aid to countries in different parts of Africa and the East is extraordinarily important to the lives of many people. It is wrong for a previous speaker here and Deputy Adams in particular to cheapen the contribution that Irish taxpayers make. Many people in Ireland would identify many uses for €600 million. That €600 million out of our annual income goes to fund education, water and sanitation - basic services - in countries where that is a significant amount of money.
Deputy Ruth Coppinger: There would be no charity if companies paid tax.

Deputy Joan Burton: That shows a fundamental misunderstanding, namely, that anything to do with development is charity. Development is actually mutual assistance and support so that we develop economies, countries, societies and people to ensure they achieve their full potential. Not everybody wants to remain unemployed. People want an active, useful and participative life in which they have a job, just as we want it for our people.

Globalisation and international developments in financial services and tax law have been moving at an incredible pace over the past decade. Specialisation and all the ramifications in tax law are understood by very few people. I have to admit to being hooked on my iPad and mobile telephone. I see other Deputies checking their pocket possibly to see whether their iPhone is in place. These devices are part of our modern world and, inevitably, they will generate very significant profits that need to be appropriately taxed so that the fruit of those inventions is shared by all societies. We must do this on a multilateral basis.

A couple of years ago during the tenure of the previous Government, I, along with the Taoiseach, the former Minister for Public Expenditure and Reform, Deputy Howlin, and other Ministers, went to the OECD and spent a very long period of time with the officials there, particularly tax experts, going through how we can bring tax justice not just into the Irish system but into the global system. Some people here may recall that when Pascal Saint-Amans, who is the OECD expert in this area, visited the Oireachtas committee in this building in 2013, he said that Ireland is not a tax haven. When we came into Government, we took the double Irish and the Dutch sandwich off the menu.

Deputy Paul Murphy: It is still there.

Deputy Joan Burton: We had many discussions with Fine Gael before that was amended but that is the process of politics. Even in the Deputy’s politics, there is probably an amount of discussion. Not everybody automatically agrees on everything. One needs to persuade people about the consequences. In Government, the Labour Party took the double Irish and the Dutch sandwich off the menu and that is a very significant achievement in the global development of a just taxation system. For that reason, Ireland has strongly supported the OECD’s collaboration with countries around the globe in respect of developing fairer tax codes.

I was disappointed when the Minister for Finance spoke. His reference to an independent investigator or tax expert reviewing corporate taxes is rubbish. That is what the Revenue Commissioners do on any day of the week or month. There is no problem in doing it. I or Deputies Michael McGrath or John McGuinness - all of us who have a basic background in taxation - could carry out such a review. I am sure half a dozen Members, if not 50% of the Dáil, could carry out such a review. What we need is a permanent structure, namely, a standing tax commission that would look at all of the changes relating to tax law on a national and global basis and see that we keep abreast and that our system provides for tax justice and fairness. This is why our amendment talks about a standing commission. Expert reviews, which the Revenue Commissioners will carry out any day of the week, are ten a penny. They can be useful in a very limited way and I have called for many of them on different occasions but they are not good enough for what is involved here. It is probably a sop to some of the Independents in government. I recommend to the members of all parties in the Dáil the Labour Party amendment, which creates a basis to work on a rolling programme of developing tax justice in Ireland in a way that will sustain employment in Ireland and create a solid and sustainable basis for tax
With the Apple case we must also consider the broader politics of the European Union. The Commissioner certainly issued a very clear declaration, and there is also a very serious element of over-reach. One of the arguments I could put forward for an appeal, and a reason the Labour Party will support the appeal, is that if we and other countries are party to the appeal, those countries will also throw their hats into the ring and present their take on it. The Commissioner was clearly encouraging other countries to claim some or all of the €13 billion. It is likely there will be a long number of years for an appeal process that could involve all the countries with a strategic interest.

I hope there is a clear outcome in the American elections and I support a particular candidate. There has been no tax reform in America because of the stand-off in American politics. Part of the Apple problem has been caused by the failure of America to reform its tax laws, both as a federal jurisdiction and, in particular, in terms of state jurisdictions. One can look at Delaware, which is probably one of the most effective tax havens on the planet. London is probably the next best and it is followed by places like Luxembourg and Holland.

Deputy Paul Murphy: Dublin is pretty good too.

Deputy Richard Boyd Barrett: It might not fit the official definition.

Deputy Joan Burton: The issue of international tax is probably like many international issues in that it is complicated. If one wishes to reform it, one must work at it in a serious way and bring people along so one can get the desired reform outcomes.

I saw an article in this morning’s The Irish Times by Mr. David Beattie, who I think is a tax lawyer. He drew the distinction between the civil law systems in Ireland, the UK and Malta and the European codes of law. He indicated the differences and therefore the problem with a reference in the Commissioner’s statement that Ireland had been granting undue benefits. As the article indicates, that is very recognisable in European codes of law but it is much more foreign to our common law code. That is something that must be worked on.

Ireland has a tax regime that is attractive to foreign investors and it is the envy of some of our larger neighbours. Let us not be guileless about that. As a small island on the periphery of Europe, this is perfectly legitimate in principle. We are not defending every single aspect of our tax system and we want it to be fair and just. We have a sovereign right to set our tax codes and laws. We were specifically promised that in the Lisbon treaty. The Labour Party will hold out for that. We are not in the business of just being fashionable and saying we should go for this or that without thinking about it, simply disregarding the 250,000 jobs for which foreign direct investment into Ireland is responsible. Not only do we want to maintain those jobs and see those people at work, being financially independent-----

Deputy Richard Boyd Barrett: The Deputy is at least three minutes over her time.

Deputy Joan Burton: We want to see-----

An Leas-Cheann Comhairle: I have been lenient with the Deputy.

Deputy Joan Burton: I will finish on this. We want to see those companies paying their fair share of tax but we want more jobs and investment.
An Leas-Cheann Comhairle: I understand Deputy Paul Murphy is sharing time with Deputies Boyd Barrett and Mick Barry. Is that agreed? Agreed.

Deputy Paul Murphy: We will be moving the amendment on behalf of the Anti-Austerity Alliance-People Before Profit. I also express our solidarity and support for the Dublin Bus workers who go on strike tomorrow. It will be very instructive to watch the difference in how those low-paid workers seeking a modest pay increase are treated compared with how Apple, one of the biggest corporations in the world, is treated by the Government and the media.

A woman called Leona Helmsley coined the phrase, “We don’t pay taxes. Only the little people pay taxes”. She was a multi-millionaire in the United States who, ironically, was later jailed for tax evasion. If she were in Ireland today, she would be a national hero. The Government would be valiantly fighting in Europe for her right not to pay any taxes. The Irish Independent would be screaming about our sovereign right for her not to pay taxes. She would be a national hero because when one boils this down, the Government’s so-called strategy on tax competition means that only the little people pay taxes. Ireland is, by design of the established political parties, a key tax haven for the biggest corporations in the world with the result that they pay practically zero tax.

The Dáil, to its shame today, will pass a motion that could have been drafted by George Orwell in 1984. It will commit itself to the highest international standards in transparency and resolve that no company or individual receives preferential tax treatment. Both of these simply are not true. War is peace, freedom is slavery, ignorance is strength. If it wishes, the Dáil can vote to say black is white and white is black but it will not change the reality. Those who propose the motion know it is not the truth or the reality. It is very hard for the Government to hear the reality, and it is difficult for this country’s reputation, but it is a tax haven. There has been a major campaign of spin over the past week to try to confuse the issue but the reality is very simple.

I will spell it out. The Government, supported by Fianna Fáil and Labour, is waging a fight with public money to defend the right of one of the biggest corporations in the world to pay no tax. It is as simple as that. The same parties, when asked to cut the minimum wage, said “Yes, sir”. When they were told to impose 42% of the European banking crisis on the shoulders of ordinary people, they said, “Yes, of course”. When they elected to burn the Anglo Irish Bank bondholders, they were told they could not do it and they meekly accepted that. Now they propose to fight for the right of small nations but the difference is that a corporation has this time been asked to pay.

One element of the spin over the past few days is the idea that this money is not really owed to Ireland and the Government has become an advocate of tax justice for developing countries around the world. There is no logic in that whatever. The case being taken by the Irish Government will not say that somebody else is owed this money but rather that Apple should keep the money. It is saying that an extra €13 billion to €19 billion should go on top of the €200 billion cash pile that the company already has.

There is the idea that the State got a clean bill of health in terms of other tax arrangements but that is simply not the case. There is the idea that under EU rules, the money could be used only to pay down debt but that is again not the case. It has been confirmed that it could be used, even within restrictive EU rules for capital expenditure, in building homes, schools, hospitals, public investment in green energy and so on.
The central and core big lie that the Government is using is the idea that Ireland is at the forefront of the fight against tax evasion and tax havens. There are experts around the world laughing at this. The Government knows that is not true. The truth is the exact opposite. Ireland has been, is and continues to be at the forefront of a global chain of tax avoidance and tax evasion by big corporations. That is a fact. Mr. Philip Alston of the United Nations has stated that nobody believes that Ireland is not a tax haven and any number of other experts could be cited. Nobody outside the Government backbenchers, perhaps, believes the idea that Ireland is not a tax haven. Huge amounts of spin are being used to seek to get away from that reality. Look at the Apple case: two companies, Apple Operations Europe and Apple Sales International, were running profits of over €100 billion through Ireland while paying practically no tax. That is the operation of a tax haven. The Government’s response has been to use the euphemism that appears in the briefing about a mismatch of tax jurisdictions. It is this idea that somehow Ireland accidentally ended up as a tax haven and that corporations are taking advantage of a mismatch in order to pay no tax. It was written in such a way and rulings were given to Apple explicitly to tell it that it could operate in such a way. The “double Irish” arrangement was not an accident but was designed so that Ireland could be a tax haven. Deputy Micheál Martin made much of our 12.5% rate, but in the same year that Apple Sales International paid a rate of 0.05%, Google Ireland made profits of €9 billion and paid taxes of €22.2 million, a rate of one quarter of 1%. Facebook Ireland, with profits of €1 billion, paid taxes of €3.2 million, which is a rate of one third of 1%. Apple is not alone. Other multinational corporations also availed of the same tax con on ordinary people through the double Irish.

It is not just the operation of the double Irish. The Taoiseach said famously just a while ago that we did not do brass plate operations. He should wander down the road to the IFSC. He should wander down to 70 Sir John Rogerson’s Quay, where he will find 78,000 companies with brass plates registered. He should wander down to 5 Harbormaster Place, where he will find a building that houses 250 companies controlling €2 billion in assets, but will not find any employees. He should look at the fact that Ireland hosts over half of the world’s top 50 banks and half of the top 20 insurance companies. They are not here for the weather. These companies in the IFSC employ relatively few people. They are here because Ireland is a key link in a global chain of tax avoidance and evasion. That continues. The double Irish continues today and it will continue until 2020. The knowledge box - of which the Government has made a great deal, pretending it was something that would get rid of tax haven status - is designed to continue the tax haven status because it became too hot to continue with the double Irish. Read what was said about it. Its purpose was to enhance further the competitiveness of Ireland’s overall corporate tax regime.

This is not a victimless crime. Developing countries lose €100 billion a year as a result of tax avoidance and the operation of tax havens such as Ireland. Up to €1 trillion is lost in the EU through tax avoidance and evasion. In this country, while Apple, Google, Facebook and the rest of them should have been paying tax, we have had the development of a massive crisis in our health service. People on hospital trollies are the victims. In the massive housing crisis, 2,000 children are the victims. In the crisis in education, those who cannot access SNAs are the victims. The double Irish should be dismantled and the knowledge box should not proceed. The appeal should be dropped. We should take the €13 billion and use it to meet people’s needs.

The last point is that the political price of this for the Government will be immense, and deservedly so. Let it try to come now for water charges and let it justify the children who are homeless. Let it stand over the hospital waiting lists. Every time, people will say, correctly
and simply, that it had a choice and that it used public money to fight to add this money to the cash pile Apple already has. This is the Government’s bank bailout moment. It will hang over its head until its hastened departure. It will feel it in the budget. We see it in terms of the role of the Independents. It is broader than that. It is not just about Fine Gael, Fianna Fáil, the Independents and the Labour Party. It proves a fundamental point James Connolly made that Governments in capitalist societies are but committees of the rich to manage the affairs of the capitalist class. It is as simple as that. That is the difference on this issue - a big corporation’s massive profits and cash pile were threatened. That is why the Government is standing up for it. All of the establishment parties represent the rich and the 1%. We need to be rid of this committee of the rich and we do not need it replaced with a reconfigured committee of the rich. We need a Government of the left with socialist policies which will represent the majority.

Deputy Richard Boyd Barrett: This scandal over Apple’s tax affairs and, as we have stressed in our motion, those of a small, select group of multinationals in this country reveals the true schism in Irish politics. We have witnessed it today in the Dáil. Fine Gael, Fianna Fáil and the Labour Party closed ranks to protect the interests of one of the wealthiest multinationals in the world which is engaged in massive tax evasion and was using this country as a base for that tax evasion. In the process, it was robbing the citizens of this country of billions in revenue that they desperately need to resolve a housing and homelessness emergency, a dire crisis in our health service and an incredible deficit in investment in vital infrastructure, whether water, schools or other facilities. The money could create tens of thousands of well-paid jobs for those who need them. However, the establishment has banded together to continue the cover-up, say “No” to the money and protect the tax-dodging activities of Apple and, as we suggest, other multinationals which have also availed of the tax scams the establishment has worked to create and protect. I do not believe the establishment has any intention of truly phasing those out.

The scale of the cover-up and the hypocrisy I have listened to in the House is extraordinary. I was on the finance committee in 2013 when it was not very popular, notwithstanding the fact that we are often accused of being populist, to go against the consensus that we dare not talk about our corporation tax rate. The reality is that it lost us votes because we had the courage to say something was wrong with our corporate tax system and to campaign on that basis. As a result, we forced a sort of examination of the corporation tax system, with the establishment of a sub-committee to carry that out. The first item on the agenda was the establishment closing ranks to ensure that we did not get to the bottom of the scandal that has now exploded. I tabled a motion asking that Apple, Google, Facebook and others be brought before that sub-committee to answer questions in the same way they had been in the US Senate and the British Parliament. Fianna Fáil, Fine Gael, the Labour Party and some Independents closed ranks and voted that motion down. Not only did they do that, they also did something else which has not come out. Before the motion was put to the committee, which chaired by a member of the Labour Party, another motion was tabled that the debate be held in camera by switching off the cameras, so that the public did not get to see even the fact that we were debating the possibility of bringing Apple, Google and Facebook in to answer questions. How much of a cover-up is that? It was absolutely extraordinary. The Labour Party, which says now, incredibly, that it is converted to the idea of an effective tax rate, was not in favour of it when we were pushing it for the last five years, and in fact dismissed it as fantasy economics and an imaginary pot of gold that did not exist. However, it did and does exist, and Europe has exposed what we have been saying as true.

The Government has been caught out, but it continues with the obfuscation, lies and myths
in order to throw people off the scent. The Government claimed we could not spend the €13 billion, but that was quickly shot down by the EU, which said we could spend it. It would fundamentally transform the lives of huge numbers of our citizens, particularly the most vulnerable. It was claimed that it would endanger foreign direct investment and that the multinationals would run out. That was nonsense quickly nailed by Tim Cook. It is not the case that these guys can just run away or even would run away from the billions in profit that they are making. Even if they had to pay the 12.5% rate, they would be paying far less, in reality, than they would pay in most jurisdictions across Europe. That is not good enough for them, however. They want to pay virtually nothing and we facilitated that. That we have closed down the loopholes and that this is a legacy issue is another myth. We have not. Again, this is something we cried foul on, but the double Irish is not gone. It is still available to Apple, Google and Facebook because it will continue until 2020. We do not know and cannot get the figures from the Revenue Commissioners to find out whether the double Irish is still being operated. If it is, we must decide how to calculate Apple’s tax for this year and subsequent years. The answer is approximately €1 billion, €2 billion or more per year in revenue available not from the past, but in the future that would make a major difference to our budget and our capacity to invest in housing and alleviate the hardships that so many of our citizens are suffering.

I wish to address the integrity of our tax system. The laughable suggestion is that we must lodge the appeal in order to defend its integrity. The first of the tax rulings was in 1991, the era of Ansbacher and Charlie Haughey. Via Ansbacher accounts, the Irish rich had been siphoning off money that was onshore but supposedly offshore since 1971. Only political pressure, outrage and exposure, not Revenue, forced the establishment of the McCracken tribunal. It was only in 1999 that Revenue finally decided to start investigating the matter and uncovering the funds. Is our tax system so covered in glory that we would not question its integrity? I am afraid not.

The tax ruling of 2007 is what I really want to discuss. Something was raised at the committee about which we were not allowed to ask questions of Apple and Facebook because the Government side turned off the cameras and voted down the proposal. A paper produced by the Department of Finance, authored by Mr. Seamus Coffey, showed some of the figures. Nobody bothered to read them, as is so often the case, but the truth is in them. I refer our economic and political correspondents to pages 27 and 28 of the Department’s paper on Ireland’s effective corporate tax rates. They show something incredible. The average amount of what are called deductions - parts of companies’ profits that can be written off from their tax liabilities as costs - jumped from an average of approximately €2 billion in 2004 and 2005 to €21 billion in 2011. God knows what they were subsequently, as we do not have the figures and cannot get them from Revenue for four or five years after the fact, which is another scandal. The amount of tax at 12.5% that these companies could write off jumped over four or five years by €19 billion. The greatest jump in that write-off came after the 2007 ruling, when it increased from €6 billion to €19 billion before increasing to €21 billion within a year or two. It may well have increased much more afterwards but we do not have those figures. We need to see them. From 2007, total taxable income in the corporate sector dropped from €56 billion to €37 billion. That nearly €20 billion is almost exactly the same as the deductions allowed. The paper helpfully mentions that this can be explained by patent royalties paid by certain multinationals to their subsidiaries. The ruling gave them certainty that they would be allowed to write their own tax bills indefinitely. The Government colluded to cover this up until now.

The paper that the Government distributed last night and that is also a part of the cover up
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helpfully tells us about a few points. In 1991, a basis proposed by Apple for determining the net profits of Apple Computers Accessories, now the ASI branch, was agreed by Revenue. Apple told Revenue that it had a proposal on how the latter should calculate its profits. It did that again in 2007. Does any other taxpayer get the opportunity to tell Revenue how to calculate his or her tax bill? I do not think so. This is the Government that will deduct unjust property taxes from people’s wages if they do not pay. This is the Government that will send police out against anti-water charges protestors because they are unable or unwilling to pay unjust water charges. This is the Government that inflicts the brutal austerity imposed by the troika to pay off the gambling debts of banks and financial speculators regardless of the hardship suffered by ordinary people. When it comes to Apple, Google and Facebook, however, we protect them and they can make their own tax arrangements. This is what happened. No arm’s length principle, no equality, no tax justice. They tell Revenue how to calculate their tax and Revenue does it.

Please do not tell me that, when the allowable deductions from profits jump by approximately €18 billion or €19 billion in two or three years, the Government and Revenue did not notice or that the Government did not know that these profits were being shifted to companies that had tax residencies nowhere in the world. It did not know that. Come off it. Everybody knew that they were involved in massive tax evasion but we chose to turn a blind eye and, indeed, to put in place the mechanisms that allowed them to do it. We then resisted the calls to close down that loophole. The Government now claims that it has done so but it has given a sunset clause under which the same companies and no other can avail of the double Irish until 2020. In the meantime, the Government has developed a patent box that will allow them to do the same thing in a different way, that is, write off the profits generated from upgrading an iPhone or Apple computer against the cost of new innovations and developing new patents. We are saying, “No”.

Apple is appealing, so we will not be able to spend the money anyway, but how much weaker would Apple’s case be if the Government accepted the ruling because it was true that we had done something wrong? Everyone knows that we gave selective advantage to these corporations. I have just provided the hard evidence contained in Revenue’s tables, which show that Revenue must have known. If it and the Government did not notice this scale of profit shifting, they should be flung out on their ears. Of course they noticed it. If we put up our hands and admit that this was wrong and that, as everyone knows, these companies were evading tax to the tune of billions of euro, Apple’s case against the European Commission would collapse. Maybe Apple would pursue it, maybe it would not, but its case would be significantly weakened if we did the honest and fair thing from the point of view of our citizens.

Let me address the point that we are just critics and exploiters of problems.

1 o’clock

In the context of this motion, and persistently on every single budget, we have said what we believe is the alternative. This proves it was not a fantasy. We must tax the corporations and the super-wealthy that have consistently been protected. The money involved, for which we now actually have figures, although it is the tip of the iceberg when one includes the Facebooks, the Googles, the LinkedIns and all the rest of them, should be used to invest in developing green jobs and our national resources. The Taoiseach said we did not have many national resources; we actually have a hell of a lot of them. That money should be used to build the social and affordable housing we need. It should be used to invest in our health service, our universities and the arts, which are starved of funding. We could create tens of thousands of jobs that would not
be based on facilitating these greedy multinationals whose activities are robbing the European Union and its citizens of €1 trillion a year. These multinationals are the single biggest contributory factor to global inequality, which is rising to obscene levels.

What I have outlined would be an honourable, honest and decent thing to do. However, this Government just wants to maintain the cover-up and waste more taxpayers’ money fighting to defend the interests of the super-rich tax-dodging elites in this country and across the world.

**Deputy Mick Barry:** I am a Deputy for the Cork North-Central constituency. Apple’s Irish operations are based in Hollyhill in Cork North-Central, a little over a mile from where I live. Many of my constituents work at Apple’s Hollyhill campus. If one goes around the houses in Cork North-Central, one will see the Apple logo stuck on many of the porch windows. I am a member of the Anti-Austerity Alliance, a workers’ organisation. For us, every job is precious. The 5,000 jobs in Hollyhill are vital. In my opinion, there would be no threat to the jobs at Hollyhill if the State were to refuse to appeal and, instead, went after this money. Apple will face this tax bill, irrespective of the European Union country in which it is based. Why should the company go elsewhere? Its employees in Cork are providing it with excellent work and fabulous profits.

Our society fails on many fronts. It does so in significant measure because the rich do not contribute what they should in taxes. I will give two examples of this from Cork city itself. Apple is not the only multinational in Cork that attracts workers into the city who then find it impossible to source reasonably priced accommodation or, sometimes, to source accommodation at all. Rents rocket and these workers are fleeced by landlords at a time when the State, if it had the money, could provide public housing at reasonable prices and drive down the rent rates. Apple’s plant is situated on top of a hill on Harbour View Road. There is a magnificent view overlooking the city. From there, one can see Cork University Hospital and Mercy University Hospital. Last night, the Cork Evening Echo reported that, in August alone, 716 people spent time on trolleys in those two hospitals. Does anyone believe that tax avoidance by multinational corporations is a reality separate to and not connected with the sorry state of so many of our hospitals, schools and other public services?

This is a broader debate than the Apple tax question. It is also a debate about this country’s future industrial policy. In 1934, the then newly-elected Taoiseach, Eamon de Valera, said: “No longer shall our children, like our cattle, be brought up for export.” He used the question of mass emigration as a litmus test for the success or otherwise of industrial policy. From 1932 to 1958, the State tried to develop indigenous industries behind tariff walls. By the late 1950s, as the world experienced a post-war boom, Ireland stagnated with 60,000 men and women forced to leave every year for London, Liverpool, Manchester and further afield.

The protectionist policy was then ditched by Lemass and, from 1958 to this day, Ireland has been an open economy with attempts to attract foreign direct investment as a key part of its industrial strategy. Under this policy, Ireland caught the second half of the post-war boom, joined the EEC and began to modernise. However, the 1980s was a decade marked by crisis and stagnation. There was net migration of more than 200,000 of our people out of the country at that time. From 2008 to 2014 we experienced a second crisis, with net migration of more than 140,000. According to figures released by the Central Statistics Office, nearly 500,000 of our people were actually forced to leave during the period in question, although some have returned since. Using the de Valera litmus test, this industrial policy cannot be said to have delivered. Accordingly, neither of the two industrial policies has delivered for our people. Seemingly op-
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posite, both policies have one thing in common, namely, they are based on capitalism and the idea of for-profit economics.

In 1906, Leon Trotsky wrote a socialist masterpiece, *The Permanent Revolution & Results and Prospects* and, in 1910, James Connolly wrote his masterpiece, *Labour in Irish History*. Both publications examined the case of countries where the bourgeoisie, developing late, never carried out a bourgeois revolution, and where the ruling class attempted an industrial policy without ever making an industrial revolution of its own. The capitalist class of countries such as Ireland was not capable of developing the country’s industry or, to use the language of the Government, failed to be competitive. In 2007, gross fixed capital formation in the economy stood at €48.7 billion. By 2014, it stood at €46.2 billion. This is an abysmally low level of productive investment in the economy. The crisis is shown graphically in construction where there has been a massive failure by the private sector to invest for want of greater profit.

To tackle this problem there needs to be a break with the system of capitalism. A left Government, which would break with the profit system, would use a substantial part of the Apple money of €13 billion to €19 billion to invest in well-paid, secure State jobs. The Nevin Economic Research Institute estimates that a €1 billion State stimulus could directly create between 8,000 and 12,000 jobs. At 10,000 jobs for every €1 billion, Apple’s €14 billion would equal 140,000 jobs, while €19 billion would equal 190,000 new jobs. In other words, it would be a greater figure than what currently exists in the entire multinational corporation sector after nearly 60 years of the Lemass-style policy.

A left Government would not merely create new public sector jobs and industries. Capitalism in this country has failed to develop broadband via the telecoms industry or fairness in the insurance industry. The profiteers in the construction industry have effectively gone on strike, failing to invest in the midst of the greatest housing crisis the State has ever known. The bankers made greed their god and crashed the entire economy. In reply to Deputy Martin’s jibes about socialist industrial policy, a left Government would nationalise, under workers’ control and management, telecoms, big construction, insurance, banking and other industries, namely, the decisive sectors of the economy. It would organise a democratic and socialist plan of production to do what capitalism has never done - or will ever do - that is, create for this country a real, genuine industrial base with jobs and a decent future for all of our people.

Deputy Catherine Connolly: While I would like to believe the nausea I am feeling was caused by the early start this morning and a lack of food, it has been caused by the level of debate in this Chamber, particularly on the part of the leaders of Fianna Fáil and the Labour Party. I find it nauseating to be in this Chamber, having been elected in an election at which people asked for something else and wisely refused to give an overall majority to any party in the Dáil. Here we are in an empty Chamber, having been called back to debate an issue on which, as Deputy Pringle pointed out this morning, a decision has already been made. Deputies do not have the benefit of the text of the judgment as it will not be published for another two months and not one member of the Government has clarified when an appeal must be made. A timeframe applies but nobody has indicated how long we have to make an appeal or whether Members will get the full judgment, with appropriate redactions, beforehand to allow them to read it, be treated as adults and have a proper input into the process. Instead, we have heard spin, downright untruths and misinformation.

I have before me a press release from the European Commission and one from the relevant Commissioner. The national Parliament is discussing press releases on an issue of such sub-
stance. This morning, we were finally given some information when the Government provided a briefing document that had been in its possession for a considerable period. I have not read the document, although I have briefly examined it. I presume Fianna Fáil, the Government’s partner in government that is not really in government, also had access to this document. We received it this morning. Does the Leas-Cheann Comhairle stand over this type of new politics in the Dáil?

Every speaker from the Labour Party and the Fine Gael and Fianna Fáil parties has ignored the real issue. I read paragraph 70 of the briefing document, which states the Government is appealing the Commission’s ruling to protect the integrity of our tax system, provide tax certainty and challenge the encroachment into a sovereign state’s power on tax matters. None of these statements is accurate and none of these factors appears in the press release issued by the European Commission. It may be the case that when we receive the 150-page judgment it will address these issues but none of them is challenged in the press statements, the only information I have on the issue. On the contrary, the press releases confirm that no questions arise in respect of Ireland’s tax system and that our sovereignty has not been encroached. They point out that the little arrangement Apple made with Revenue through the then Government meant that the tax treatment in Ireland enabled Apple to avoid taxation on profits generated in Europe. The Commission did not even find fault with this arrangement, which is a separate issue, but found fault with the fact that two companies, both subsidiaries of Apple, were allowed to use an arrangement whereby all of the profits generated in Europe and some of the profits of the two companies in question went into a head office in Dublin with no premises, activities or employees. I have not heard one speaker from the established parties ask whether this is a sustainable way to develop industrial policy or one on which our industrial policy should be based. In a mature Dáil, one would at least expect a debate to feature facts, figures and reasoned arguments, rather than the spin and counter-spin we have heard today.

Paragraph 70 of the Government’s briefing document alludes to a threat to foreign direct investment. No lesser a person than Apple’s Tim Cook has repeatedly reassured us that his company is expanding its operations in Ireland. Apple’s chief financial officer has done likewise. In a somewhat confused message which, if delivered by a woman might have been described as bordering on the hysterical, Mr. Martin Shanahan from IDA Ireland stated that none of the investors to whom he had spoken in the previous week had expressed any concern about Ireland and its future direction.

The Apple judgment relates to a specific issue. While Revenue did everything in accordance with the law, surely it or the Government had a duty to alert the Dáil to the fact that Apple was not paying any tax on vast sums of money. Contrary to the point made by Deputies from the Labour Party, the position worsened over time. In 2003, for example, Apple paid 1% tax on its profits, whereas it paid 0.5% in 2012 and 0.005% in 2014. For the benefit of people listening to this debate - some people listen to Dáil debates - for every €1 million in profit Apple made, the company paid €500 in tax in 2011. In 2014, the figure had declined to €50 per €1 million in profit. As my time has concluded, I will leave it to my colleagues to elaborate.

**An Leas-Cheann Comhairle:** I remind the House that a decision was taken this morning to have questions and answers from 8 p.m. until 8.30 p.m., after which Deputies may vote on the motion. There is no ambiguity in this regard.

**Deputy Thomas Pringle:** All that means is that Deputies will head for the hills a little later than expected. As I stated this morning, this debate is basically an exercise in optics. The
Government has already taken the decision to appeal the European Commission’s tax ruling. It arranged a debate on a motion to appeal the decision to create a facade and suggest the Dáil has a role or input in the decision making process. This morning, I asked the Taoiseach whether, in the event that the Dáil rejected the motion and voted against appealing the Commission’s decision, the appeal would proceed. In such circumstances, the appeal would proceed because the Government had already taken a decision. As such, it does not matter whether the Dáil meets. All we are doing is trying to save face and provide a veneer of cover for the decision taken by the Independent members in government. It also ensures Fianna Fáil and Labour Party Deputies will vote with the Government on the motion. Such backing for the Government gives it some political cover for a decision it has already taken. This is what annoys me most.

Would it have been a problem for the Taoiseach to indicate the Government would consult Parliament before making a decision on whether to appeal the decision? We could then have had a debate and the Government would at least have given a semblance of having listened to different views and made a considered decision on whether to appeal the decision. That would have been a better approach, one that would have gone some way towards making Deputies feel they were part of the process and had some relevance. Many commentators describe the Dáil as irrelevant and that is certainly the case when one considers the way in which the decision on the matter has been arrived at. All that is left for Deputies to do is to place on record their views on the Commission’s decision and the process by which we have arrived at this point.

When one considers the Government’s response to the European Commission’s decision, it is clear we are all expected to don the green jersey and go out and bat for Apple because batting for Apple is batting for Ireland. In this regard, it is worth repeating a view expressed by many previous speakers. Who batted for Irish citizens during the bailout process when the European Union made Ireland carry the can for the bailout of European banks? At that time, no one in government stood up to defend citizens.

The Government’s failure to bat for citizens is brought home even more by the example cited in the Commissioner’s press statement in which she referred to the position that obtained in 2011, which was the point at which the financial crisis in Ireland was deepest. In that year, Apple Ireland and its various entities recorded profits of €16 billion. If these profits had been taxed at the 12.5% corporation tax rate that applies here, the lowest in the developed world, the €2 billion generated for the Exchequer would have resulted in a much smaller Exchequer adjustment in that year. Furthermore, we would have exited the bailout many years earlier than we did. It would also have eased the burden of adjustment on citizens, including those who were dependent on social welfare, the disabled and those young people who had their benefits cut, as well as the lone parents whose rights and entitlements were savaged by the Labour Party in the previous Government. This sum would have made a major difference to the State and its citizens but it would have meant the then Government donning the green jersey to defend its citizens. In looking at this, the EU arrived at the decision that this was state aid. It did not arrive at the decision that our corporation tax rate is wrong or unjust or anything like that. It arrived at the decision that this was state aid granted to Apple by the Irish State.

I am no expert on European law but from what I have read of state aid, it is a simple idea. Basically, under competition rules a government cannot do anything to give a preferential benefit to any corporation or sector of an industry or allow either one or the other to benefit over other companies operating in the same system. That is very simple. The Commission has decided that we granted state aid to Apple.
The only defence that I can see - Deputy McGrath from Fianna Fáil used it - is to maintain that the offer was available to everyone and the fact that everyone did not avail of it is not our fault. Deputy McGrath’s argument is that the offer was available to everyone. In other words, the defence is that we actually are a tax haven and it amounts to the Government coming out and publicly admitting to the world that we are a tax haven and we do deals with corporations to minimise or annihilate their tax burdens in order that we can keep them here. That is fair enough. If that was the case and it was available to everyone and if the Government can show that it was available to everyone, then the European Commission case would not stand up and it would have been unable to make the judgment because every multinational corporation in Ireland could have availed of a 0.005% tax rate. That seems to be the only defence that the Government can use.

The only other defence I can think of is for the State to argue that the Commission was outside its remit in looking at our taxation policy. However, it did not look at taxation policy; it was looking at state aid rules. Therefore, I do not think that is any defence and I do not see how the State is going to defend it. We might actually win the case on some banal technicality under the EU treaties but that would be a technical decision rather than a decision on whether state aid took place. That might be the outcome and it is probably the best outcome the Government can hope for.

It is vital that we keep in mind what the tax forgone could have done for this country. In 1991, when the decision was originally given to Apple, it was a very different company. As I understand it, around that time Apple was in danger of going bankrupt and disappearing as a company altogether. I imagine what probably happened was that Apple went to the Government and the Revenue Commissioners and explained that it was in deep financial trouble and that if it did not get a better deal from the Government and Revenue on taxes then it would be gone. Deputy Barry spoke about the hard political decisions earlier when referring to Apple in Cork. The hard political decisions in 1991, before the Celtic tiger, had to take cognisance of the 2,000 people working in Cork and their families, all of whom were dependent on Apple. If the company went wallop or bust then those jobs would have been gone. That was the political reality of the decision. It was why the Government did the deal and gave it to Apple.

That was probably bad enough because it gave Apple state aid in a deal that was not available to everyone else. However, rolling over the deal in 2007 is difficult to understand because by that point in 2007 Apple was probably the biggest corporation in the world and had hundreds of billions on deposit in the banks. Apple no longer needed that favourable deal. The idea that Apple would leave had it not got that deal in 2007 has been exposed as a lie since Apple invested €1 billion in a data centre in Galway, as was announced last year. Even if Apple had not got that deal in 2007 the company probably would not have left.

More interesting, the Commission said in its press release that the decision only counts prior to 2014. What happened in 2014? Apple changed its structure in Ireland and the loophole no longer applied. The interesting question is why Apple changed its structure in Ireland. Could it have had anything to do with the fact that in June 2014, the Commission wrote to the Government with a preliminary decision indicating that it believed there was a state aid issue and it would make a finding that the Government gave illegal state aid? It has taken the Commission two years to publicly make the decision, but much has happened in those two years. Considerable activity has taken place. Ireland has sought to clean up its corporation tax reputation. We introduced country by country reporting in 2015, which was seen as a revolutionary thing to do, but in the background we had the preliminary judgment of illegal state aid for Apple. Then,
Ireland adopted the European Commission anti-tax-avoidance directive, yet, in the background, we were still waiting for the decision to come out. One might think all that makes us a responsible country but this was only happening because the Government was expecting a negative decision and it was going to be in the wrong in any event.

The Government says we have to appeal to protect our reputation internationally and that we have to fight and defend this decision. In 2013, Washington investigated Microsoft transfer pricing arrangements with Irish subsidiaries, which reduced its tax bill by $2.4 billion. That affected our reputation. The Westminster Public Accounts Committee has looked into Google and how it does deals through Dublin for sales in England. That interferes with its operations there. In Rome, the Italians are investigating tax arrangements in Ireland. The Australian Parliament has focused on the double-Irish taxation structure in its investigations. According to the *Sunday Business Post*, the EU Commission has sought relevant tax agreements from Irish authorities in respect of at least six other multinational companies operating in Ireland.

Our reputation is in the gutter. What we should do is admit that we did something wrong and that we provided illegal state aid. We may have done it for the best of reasons, to maintain a business in Ireland that employed many Irish people. However, we should collect that tax and use it for the benefit of Irish citizens. We should wear the green jersey to benefit Irish citizens rather than multinational corporations.

**An Leas-Cheann Comhairle:** A total of 19 minutes are left in the slot, to be shared by Deputy Joan Collins and Deputy Mick Wallace.

**Deputy Joan Collins:** I fully agree with my colleague who spoke previously of how we are here today in a charade of a debate because a decision has been made and whatever happens today will make no difference to the Government decision to appeal the ruling from the Commission.

Last week on the RTE news the Taoiseach issued a rallying cry in defence of the rights of small nations. He said that bigger nations in the EU were bullying the smaller countries. That is true but no such rallying call came from the leaders of the political establishment when the European Central Bank bullied Ireland, with 1% of the EU population, into accepting 40% of the cost of the EU bank bailout. In the process it effectively bankrupted the country and forced it into a troika bailout. A brutal austerity regime was imposed on those who could least afford it while, disgustingly, unsecured bondholders were paid off.

There was no support from the Taoiseach or the Government for the rights of small nations when the people of Greece were savagely punished for electing a government that pledged an end to the austerity that was destroying their society, far from it. Now, the rights of small nations are to be enjoined with the rights of the world’s richest company to allow it to avoid taxes. The Commissioner has said this company avoided €13 billion in taxes on profits. It paid €500 per €1 million in 2011 and €50 per €1 million in 2014. Now, the Government is going to use taxpayer money, citizens’ money, to appeal this Commission finding. People are gobsmacked when I talk to them in the street about what has happened.

We need to face up to the facts. We are a tax haven for big business. We are a leading player in Europe, along with Luxembourg, Switzerland and Netherlands, in assisting multinational companies in avoiding corporation tax to the tune of €1 trillion per year in the European Union. That is the reality. Internationally, we are a leading player in allowing multinational
corporations to avoid the payment of €100 billion a year in corporation tax to the world’s poorest countries. That is also the reality.

There is a mindset among certain people that asking those with wealth or high incomes to pay tax is somehow sort of left-wing assault, initiative or enterprise, and an infringement of the rights of private property. The fact is that in business paying tax is looked upon as a cost, like any other cost. In business it is deemed legitimate to reduce that cost as much as possible. There is no sense of the common good or social solidarity in this mindset. It is this that lay behind the Ansbacher accounts and the role of the Irish banks in helping people with money to hide it, to establish bogus non-resident offshore accounts. It is a mindset that needs to be challenged rather than encouraged, as has been the case.

There is nothing new about special tax treatment for multinational corporations investing in Ireland. In the past we had export relief, which meant that multinational corporations, engaged in manufacturing and exports, only paid corporation tax on what they sold in Ireland. That was replaced by a special 10% rate after we joined the EEC. Further pressure from Europe saw this discriminatory rate replaced by the general 12.5% rate for all trading companies in the 1990s.

International pressure forced the previous Government not to end, but to phase out the double Irish over a seven-year period and in its place, at the same time, it introduced the knowledge box and relief for research and development. Using both of those research and development claims will mean a corporation tax of below 6%, less than half of the 12.5% rate.

The over-reliance on using tax incentives to attract foreign direct investment has led to an extremely lopsided economy, summed up by the leprechaun economics episode earlier this year when official CSO figures recorded a growth rate in excess of 25%. Adhering to this one-track policy has put us in an insidious position. The jobs of 180,000 workers directly and as many again indirectly are under the implicit threat of, “Play ball on tax, or we are off.” How much of a real threat that is is open to question. Anyway, the game is now up. That the EU is losing an estimated €1 trillion a year due to tax avoidance by multinational companies is unsustainable. There will be a movement to an EU corporation tax policy. There is no doubt about that now.

We talk about the rights of small or weaker nations. As I said earlier, it is estimated that at least €100 billion a year is lost to the world’s poorest countries. This is amoral disgusting bullying of the weak by the powerful and of the poor by the rich, and it has been going on for decades.

The policy of overreliance on FDI has meant a complete failure to develop an indigenous manufacturing base. More than 90% of Irish companies are in the small and medium-sized category, with the majority employing fewer than 50 people. As a country, we need to develop a new economic model to replace what is a system of gombeen capitalism. The State will have to play a key role in developing publicly owned enterprise.

The other consequence of the policies of Fianna Fáil, Fine Gael and the Labour Party of non-taxation of wealth, business and high incomes is the low provision and poor quality of our public services. That no one in the political establishment has even considered how €13 billion might solve the housing and homeless crisis or transform the health service says everything about the establishment mindset.

This issue highlights the need for a clean sweep. One hundred years after 1916, what and who are we? A local activist in my constituency commented that we had gone from a banana
republic to the Apple republic. We now need to build a movement for a new society for the proper establishment of the republic, modern democratic egalitarian where the common good is primary and where tax justice is paramount.

Fianna Fáil, Fine Gael and the Labour Party have ruled for 100 years of abject failure. It is time for them to move aside and make way for the future. I am supporting the amendment tabled by Members of the Independents 4 Change and the Technical Group. The key question is the need for all tax rulings, letters of comfort and advance opinions to be made public.

**Deputy Mick Wallace**: Many people in Ireland would be of the opinion that this place here - the bubble that is Leinster House - is a bit disconnected from the real world. No two recent issues emphasise that as much as the Apple tax issue and the NAMA scandal. Richard Murphy, a professor of practice in international political economy in City University in London, also happens to be a director of the Tax Justice Network in England. After this episode broke and when Apple and the Irish Government decided they would appeal the decision that €13 billion plus interest would have to be paid to the Irish people by Apple, he stated:

Apple will, even if it will not say so explicitly, see itself as the representative of all those multinational corporations that have believed it their duty to arbitrage tax and other regulation to minimise their costs to supposedly maximise shareholder returns and to actually provide the basis for paying astronomical executive bonuses.

They have seen tax haven activity as an integral part of this process. Years of familiarity with the games that tax lawyers play has meant they have ended up thinking there is nothing unusual with headquarters companies that have no staff or apparent trade recording vast amounts of profit and paying no tax on it anywhere...

Ireland’s appeal is different. It is about the right of a political elite to so effectively capture a democracy that a place is not run for the benefit of the people of that jurisdiction but instead for the benefit of a small, wealthy, international elite and the companies that they manage, with which elites’ shoulders those local politicians want to rub. Ireland’s government will in this sense see itself as the representative of all tax havens and of those politicians who have such contempt for their electorates that they can turn down €13 billion of taxes.

What that means is that when these appeals happen, as surely they will, what will really be on trial will be globalisation itself. Globalisation is the market based expression of the ideology of the Washington Consensus. It was always intended to favour a few, increase inequality, buy favour wherever it could find it, capture legislatures for its own purposes when that was necessary and create spaces veiled in secrecy where the rule of law that applied to the little people could be circumvented by the few. This is precisely why tax havens had to exist: they are not an accident in their modern form. They are instead a deliberate part of a design.

How damning that is from a highly respected professor in England who is calling it as it is. There is no smudge or flowery language; just calling it as it is. When, in God’s name, will we wake up and start calling things as they are? How long more will this Government take the people of Ireland for fools? That is what is happening.

The NAMA scandal is more of the same stuff. Last night’s BBC “Spotlight” programme adds further weight to the need for a truly independent commission investigation into NAMA.
What a contrast between the BBC “Spotlight” programme and our own State broadcaster, RTE, which is afraid of its life to go near the subject. What is going on? It is unbelievable. For anybody looking at the video last night, it was mind-boggling to see these bundles of cash passing hands. It was kind of scary. This person takes cash from a developer and prevails on his friend Ronnie, one of his best mates, not to enforce. Given that he had just got to know Miskelly, with how many others had he done deals? Republic of Ireland developers were enforced upon four times more than developers in Northern Ireland. Why does NAMA not tell us why? If he was arranging refinance, he must have known what the NAMA number was for the loan, a number that is supposed to be confidential and commercially sensitive. Who gave him these numbers? NAMA claimed he had no access to any commercially sensitive information. Who, in God’s name, believes that anymore? How could this man be able to command so much money if he had no confidential information? Can anyone explain that to me, because NAMA is not explaining it? It was insinuated in the programme that political pressure could be put on Dublin to reduce the price. I assure the House that the Project Eagle portfolio was probably sold for approximately €500 million too little. The Government was running around in a tizzy as it sought to investigate Pat Hickey and the Rio scandal that involved a couple of hundred thousand euro, but it does not want to know about hundreds of millions of euro in this case. I suggest that when we eventually get to the bare truth of the moneys lost by NAMA as a result of the manner in which it has operated, we will be talking about billions of euro rather than hundreds of millions of euro. Does the Government care? It does not want the €13 billion plus interest that Apple should be paying in tax. It does not want to know about all the money that went missing in NAMA. It does not want to know about any of the issues that have been raised.

While I accept that everybody connected with NAMA is 100% innocent until proven guilty, I suggest that enough questions have been asked and enough information has been brought to the table about what has been going on to require the Government to question its position on this issue. How in God’s name could Fine Gael, which used to boast that it did things right, vote against having an independent commission of investigation into NAMA? How in God’s name could Fianna Fáil, which pretends to be in opposition, pretend that all is well? The Labour Party is not even worth talking about. Nothing surprises me about the members of that party. I do not know why they have not joined Fine Gael. All of this stinks to high heaven. I do not believe for a second that the Minister thinks everything is okay. He is not stupid. The Government knows that everything is not okay. It is pretending that it does not want to know, or does not want to lift the covers. What is it going to do? It has spoken about protecting our international reputation, but I suggest our reputation is muck in Europe at the moment. I have spoken to several people in Europe this week about the Apple episode. They think we are nuts. Not only have we been complicit for many years as a tax haven, but we have also been robbing other jurisdictions of tax. That is what we do. We rob other jurisdictions of tax due to them. We have helped Apple to build up a bundle of more than €200 billion in cash outside the US while wondering why there has been an increase in inequality in the developed world. If those who can best afford to pay choose not to pay, inequality will rise further before the problem is solved.

I believe change is coming and rogue states like Ireland are going to be called to account. I do not think we are going to get away with behaving like this anymore. The Government says it is worried about this country’s international reputation, but I wonder whether it has realised that huge investment funds have invested a great deal of money in property portfolios in Ireland. What will these funds think when they find out that some of the property portfolios that have been put together are the result of ill-gotten gains and malpractice within the NAMA organisa-
tion? What will the Government do when these international investment funds, which like to think they do things cleanly, find out they have got into bed with a crowd of rogues? Will it reduce their tax even further here? I have already written to the European Commission to make the claim and challenge the Government’s real estate investment trust arrangement, which was introduced in the Finance Bill 2013. It is another form of state aid to investment funds that come in here. It is state aid. How in God’s name is it not? They are going to pay no tax here and they have completely distorted the property market. Talking about property and the housing crisis, I remind the House that the Government intends to let NAMA build 20,000 houses at a cost of approximately €320,000 each even though the State, through the local authorities, can provide houses for less than €200,000 each. Does the Government think it makes more sense to let NAMA at it even though its name is dirt?

 Acting Chairman (Deputy Eugene Murphy): The next slot is for the Rural Alliance. Deputy Michael Harty will be followed by Deputies Noel Grealish, Michael Healy-Rae and Mattie McGrath.

 Deputy Michael Harty: I thank the Chair for giving me an opportunity to contribute to this debate. The European Commission has concluded that Ireland granted undue tax benefits of up to €13 billion to Apple. The Commission’s decision is that this is illegal under EU state aid rules because it allows Apple to pay substantially less tax than other businesses. Ireland must now recover this illegal aid. This is the headline statement of the Commission’s decision. We are not aware of many aspects of this ruling because the full documentation relating to this decision has not been made available for the consideration of the Dáil. We have to base our comments on the press release of the competition Commissioner, Margrethe Vestager. This is entirely unsatisfactory for the purposes of this debate. It would lead one to believe that the decision is not black and white, but is mostly grey. We have been told that the information is commercially sensitive and that we may never see the full ruling because it will be heavily censored and redacted when it is eventually published. Therefore, we can only guess if it is correct to appeal this decision on a number of grounds.

 Obviously, Apple will appeal this decision for vastly different reasons, primarily because it is about to lose €13 billion plus interest and penalties to a country that has been deemed to have used its perfectly legal tax system to give Apple preferential treatment. This is something the Commission deems to be illegal under competition law. This decision is based on an assessment of a breach of competition law rather than tax law. It is up to each country to have full control over its tax policy. This judgment does not challenge our independence to control our tax system. The judgment is saying that regardless of the tax system we operate, it must provide an even playing field for all and not confer preferential treatment on one company over another. How can preferential treatment be judged unless all companies are examined to determine if one has preference over another? Should each EU member state not be subject to the same scrutiny of how it treated Apple and other multinational global companies to determine whether preference was conferred? It would appear that for taxation purposes, Apple is not a multinational but a nationless global company. The Commission does not have the power to apply sanction or penalty, but it can demand that tax unpaid by Apple globally be recovered in full with interest and penalties going back over a ten-year period and be allocated to Ireland.

 The Commission’s decision is quite extraordinary. It directs Ireland to collect tax from Apple which was clearly not earned in Ireland, but was earned elsewhere across Europe, Asia and Africa, because Apple does not have taxable structures in those countries. This is an exquisite example of Alice in Wonderland logic. The Government is saying that this is not our money
and we do not want it. The Commission is saying exactly the same thing. The amount of tax recovered by the Irish authorities would be reduced substantially, and probably to zero, if other countries were to recover tax earned on sales and profits generated in those countries. That is why I believe we are entering the world of Lewis Carroll. Interestingly, *Alice in Wonderland* was written by an English mathematician, Charles Lutwidge Dodgson, under the pseudonym of Lewis Carroll. In this book, the world of logic is turned upside down. Alice is inflated and deflated depending on what she eats or drinks. She meets many strange characters who speak in riddles and successfully confuse her. This delightful book of nonsense has been replicated in the Commission’s decision. We could play the game of deciding which characters in *Alice in Wonderland* could be played by the main protagonists in the current controversy. In addition the European Commission challenges logic. The European Commission is sanctioning Ireland by means of a reward, €13 billion plus interest and penalties, funds that are not ours by any stretch of the imagination. Sanctioning by means of reward is a unique concept worthy of *Alice’s Adventures in Wonderland*. It is like pulling a rabbit from a hat. This is quantum taxation: like the electron in quantum mechanics, no one knows for sure where it is at any one point in time. Is it spinning up or down, left or right? Is it a wave or a particle? Look over there: it is in Ireland but when it reaches Ireland it is gone. We cannot catch it to extract tax. That is enough of analogy. There are serious and important points to be made. This ruling diminishes us all and we must learn important lessons from it. The Commission has discovered something inherently wrong but, in a perverse way, it has made the wrong judgment. It has uncovered the murky world of international taxation and Ireland is intimately involved. It has identified a serious tax avoidance process. Irish company structures facilitated Apple in reducing its tax liability in Ireland to 0.005% on much of its global earnings. It would be immoral for Ireland to claim this unpaid tax when we and the Commission know that this tax belongs elsewhere. Apple is not paying its fair share in tax and in not doing so is depriving citizens of resources which are badly needed to provide essential services, proper housing, medical care, education and infrastructure, if not in Ireland then definitely somewhere else. Apple is one of the biggest, most successful, cash-rich companies on the planet, yet it cannot bring itself to pay its fair share of tax. Apple, coming from the land of the free and the home of the brave, is not very patriotic. Whether this is legal is not the point. It is immoral and it is sharp practice. This has nothing to do with our sovereignty but everything to do with our integrity, self-respect and reputation.

**Deputy Noel Grealish:** I fully support the decision to appeal the unjust ruling by the European Commission on Apple’s tax affairs. The future of our country depends on it. It is being claimed in some quarters that the outcome of all this will have no impact on Ireland’s ability to attract foreign direct investment in the future. Does anyone really believe that in the boardrooms of these major international companies they are not discussing the situation? One of the biggest of them all is suddenly facing an unexpected tax bill for billions of dollars. In those conversations about whether they should vigorously contest this ruling, the lasting impression of Ireland will be that it is a country where a company cannot be quite certain about the future of any investment it may be considering making there. That kind of uncertainty will surely be a deciding factor in many cases, where the merits of Ireland as against Poland, Singapore or wherever are being considered in terms of locating new projects. Equally, how many major companies already located in Ireland will have second thoughts about expanding their operations here if we do not clearly show that we stand by our conviction that we have done nothing wrong and indeed they have nothing to fear from their future here? Total employment at overseas companies in Ireland stands at more than 187,000 people, the highest level on record.
A perfect example of the huge importance of foreign direct investment can be found in my home county, where approximately 14,000 people are employed by companies supported by IDA Ireland. Galway is the hub of a globally recognised med-tech cluster that employs one third of the country’s 25,000 medical device employees. Boston Scientific and Medtronic alone employ the best part of 5,000 people. Galway is also home to four of the top five information and communication technology sector companies: IBM, SAP, Oracle and Cisco. These companies are still employing people. I recently met with a few recruitment agencies in Galway and they told me all of these multinational companies are employing. Cisco is looking for between 40 and 50 more employees. These are global leaders in other areas too, including HP. It has always been the case that where the big players go, the other major companies sit up and take notice. They then very often follow suit, on the basis that the area obviously fulfils the requirements of a major concern in terms of having an educated workforce, a good environment and so on. The presence of so many of the major international companies such as the ones I have just mentioned has played no small part in attracting developments, such as the decision by Apple to make an €850 million investment in Athenry, which is only a couple of miles up the road from where I live. I attended the oral hearing and was the only politician who spoke in favour of this project’s getting the go-ahead from An Bord Pleanála. I visited the Apple plant in Cork and was immensely impressed by the number of people employed there, the structure in place and what they think of Ireland. A few of the top Apple executives recently came to visit me in my office in Galway and I was delighted that they assured me they were going ahead with this project immediately. It will be a ten-year construction job involving 1,000 people and over a hundred people will be employed there. I am sure it was among the factors in a recent €51 million investment in Oranmore by the medical devices company Zimmer, creating 250 jobs.

Nothing must stand in the way of continued investments like these if we are to fulfil our hopes of providing decent employment opportunities to give our young people the option to stay at home and give those who have gone to Australia, America and elsewhere the chance to return. There is far more at risk here than the direct employment which these major international companies provide in Ireland. IDA-supported companies spend approximately €4 billion a year on goods and services sourced in Ireland. This means that many, many thousands of people employed in small- and medium-sized companies are busy at work, benefitting from supplying these large concerns. Who knows what is around the next corner if the European Commission gets its way in relation to Apple and its decision that the company received what amounted to illegal state aid here? How many more of the companies this country depends on for its future growth and stability will face similar outrageous treatment? Will it end up creating instability in the future and putting a spoke in the wheel of Ireland’s continuing recovery from the awful economic situation it found itself in over the past decade? This is not just scaremongering. The European Commission is trying to take new rules that it introduced in recent years and apply them to years before that. How many companies are going to risk coming into this country in the coming years if there is a risk that, a decade or more further on in the future, the Commission will decide to shake things up again and apply more new rules retrospectively? Even now, damage has been done to Ireland’s reputation and integrity by the actions of the Commission.

I compliment the Minister, who has done an excellent job on this, batting for Ireland. I saw him on Bloomberg, the US television station, recently and thought he did an excellent job promoting Ireland and explaining the situation. I know the Department of Finance and the Minister are saying that the decision should not be a cause for concern for companies investing
in Ireland and that no other companies are covered by the Commission’s decision. I think, however, that the first part of that statement at least might be wishful thinking. We are told it will be several years before all of this is finally decided and adjudicated on. My fear is that until, there is a final outcome, some US and other international companies might just put on ice any plans they may have had, but that are not yet announced, either to locate in Ireland for the first time or to expand existing operations. It is important that the message go out loud and clear from this House today that we are here to support them and that we will welcome them and support them in every way we can.

The American Government, meanwhile, is among those supporting Ireland’s position in this case, which it says is undermining the international tax system. The US Treasury Secretary Mr. Jacob Lew has contended that the Commission should not seek backdated recoveries of tax in respect of the years before it decided on its new approach. In a white paper published the week before last, he said that attempts by the Commission to recover tax retroactively would “undermine the G20’s efforts to improve tax certainty and set an undesirable precedent for tax authorities in other countries”.

2 o’clock

We would also have to retain some suspicion, despite the Commission’s protestations, of some of the motivation behind this investigation and whether it is in any way connected with the persistent efforts made in recent years to force Ireland to increase its corporate tax rate. Ultimately, even if Apple is forced to pay the €13 billion, hardly any of the sum will accrue to Ireland. All of the talk about the fantastic benefits to our health and social welfare systems, etc., is just pie in the sky and an attempt to mislead people into thinking we are looking a gift horse in the mouth by appealing this ruling. It is vital that we stand by our contention that we have done nothing wrong and that we send out a clear signal that Ireland is a reliable location to invest in by fighting this ruling in the strongest way possible.

Deputy Michael Healy-Rae: I am grateful for the opportunity to contribute to this very important debate. I welcome the opportunity to acknowledge what I consider a good decision by the Taoiseach and the Minister for Finance to recall the Dáil to have a thorough debate and allow all Members make contributions on behalf of their constituents and the people of Ireland. This is an extremely important issue for us to debate properly and on which to reach a proper and decisive outcome.

I am a bit worried about a couple of things. I have read and studied in detail the reasons we are not in possession of the 150-page ruling of the Commission. Obviously, anyone involved in making a decision or in debating an issue wants to be in possession of all the facts. I am mindful of what others are saying - and I have to bow to what they are telling us - to the effect that the information contained in the report is perceived to be commercially sensitive and that is why it is being withheld. We have a briefing document. However, to put it in context, there are fewer than 25 pages in this document, whereas the proper ruling in its entirety is more than 150 pages long. That is a matter of concern.

When we speak about an employer such as Apple and others that have come to Ireland, I want to say how grateful and thankful I am on behalf of the Irish people that Apple decided to come here. It chose Ireland and our excellent workforce. Our great young people and middle-aged people are working with that firm, and we appreciate the jobs. That is the one thing about Irish people. Whether working in Ireland or going abroad to seek employment, Irishmen and
Irishwomen always appreciated an honest day’s work and receiving an honest day’s pay for it. I wish to place on the record of the House my acknowledgement of Apple’s massive contribution, the fact it plays such a pivotal role in giving gainful direct and indirect employment, and that its being here has a massive spin-off for the country.

On the other hand, I have to temper this in that when I am out meeting people every day, they tell me they pay tax on all their money and at a certain rate. We have to pay our taxes. There are only two things that are sure in life: death and taxes. Having said that, I deal with farmers who are struggling with poor milk prices. I deal with those who tell me the universal charge was brought in as a temporary measure but that it now appears to make up part of our tax base and tax take and there does not seem to be any promise on the horizon of it even being reduced never mind abolished. These are major issues of concern for people. From my dealings every day with people - I want to say this on their behalf - I must acknowledge that they have concerns when it comes to issues such as this. They want to ensure that the Government is fair and equitable when it is dealing with those working in this country and making profit.

There are small business people, contractors and businessmen on the side of the road struggling to make a bit of profit every year and to keep the doors open. They struggle to keep the show on the road. If they are giving employment to their neighbours, they want to ensure they can continue to do so. However, the one thing they have to do at all times is pay their tax and it has to be paid at a certain rate. No special arrangement is made. At the same time, I have always been and remain committed to the 12.5% rate of tax to ensure we attract overseas investors into the country. It is of terrible and great importance. I acknowledge, for instance, Liebherr Container Cranes Limited in our own county of Kerry. Liebherr came here many years ago and provides massive employment in Killarney and the surrounding areas. People go in and out of work every day there, including subcontractors. If Liebherr had not come to Ireland or to Kerry, Kerry and Killarney would have been far poorer places. Not only did Liebherr bring the crane business, it also built hotels. The latter has been a massive boost to County Kerry.

I acknowledge the great companies that have come here. I want to see them continue to invest in this country. However, given these uncertain times and taking into account the Brexit issue and the fact that no one can really yet measure or account for what it will mean for us in Ireland, we need to be cautious and prudent. We have to make the right decisions at all times to ensure, as Deputy Grealish stated, that people know Ireland is open for business, welcoming to business and investment and a sure, sound, solid country to come to, work in and make money in.

**Acting Chairman (Deputy Eamon Scanlon):** The final speaker for the Rural Alliance is Deputy Mattie McGrath who has almost 14 minutes.

**Deputy Mattie McGrath:** Ar an gcéad dul síos, ba mhaith liom mo chomhghairdeachas a dhéanamh le foireann Tiobraid Árann. Bhí an bua againn sa chluiche ar an Domhnach. The House will forgive me that when discussing such a serious issue but I could not let the opportunity pass-----

**Acting Chairman (Deputy Eamon Scanlon):** We did not forget about that.

**Deputy Mattie McGrath:** ------and I hope the EU will not decide to bring an appeal about the style and the manner of the hurling.

I also wish to preface my remarks by saying that I fully support the 12.5% corporation tax.
I salute the many companies that have established operations throughout Ireland, but especially those in my county and in and around Clonmel. There are almost 4,000 jobs there, some with Merck Sharp & Dohme for the past 40 years. Others are with Boston Scientific and other industries there, out the road in Dungarvan and all over. I welcome that and support it.

Having said that, however, there must be fairness and a level playing field. This is why I am deeply suspicious. We do not have the decision to read it, although I accept that neither I nor many other people would the 150 pages because there will be a lot of fudging and legal speak in it. I certainly believe that the decision is very suspect. Political and media commentary on last week’s Apple decision has, in the main, been alarmingly off the mark. Official Ireland has colluded to mislead its citizens - this would not be the first time it has done so - and the international community about the real issue involved in the decision. As stated, it would not be the first time something like this has happened. I came up here and voted for the bank guarantee after being bullied by Europe and being told by lies, literally, at the time, but sin scéal eile.

What is the Apple decision about? It is a focused decision concerning alleged illegal state aid bestowed by Ireland on Apple. What is the decision not about? It is very important that we peruse this and study it. The decision is not an approach through the backdoor to try to influence tax policy through competition law. The Minister, Deputy Noonan, is at pains to say that it is, but it is not an attack on our tax regime. I address that to the Minister of State who is here as the Minister, Deputy Noonan, is not. The EU has done many things and there have been many instances of bullying. I have grown to dislike it a great deal. We have our Commissioner; he is one of Fine Gael’s own. What will Fine Gael do with him? He had a bad day on Sunday, certainly, and a bad weekend. I have no love for him, God knows.

(Interruptions).

Deputy Mattie McGrath: I am sticking to Apple but there are a few bad apples always in every pack. Deputy Grealish might know that.

This is about the corporate tax rates. We said it is not about tax avoidance. It clearly is not. It is not about tax evasion. It is not about the justness of our tax system. Ostensibly, it is not even about tax. It is about illegal state aid, full stop. The Minister, Deputy Noonan, also stated that the full amount of tax was paid in this case and that no state aid was provided. He has become highly expert in what happens in companies now. It quite simply is not true and Irish citizens must not be treated as simpletons. Please respect the electorate that gave the Government its mandate and which chastised it so severely in the last election. It is true the decision has given rise to robust debate about Ireland facilitating global corporations to avoid paying tax, about Ireland’s corporate tax rate and about the European Union trying to influence Ireland’s future taxation strategy by moving to take away Ireland’s sovereign right to set our own tax rates and policies. We cannot allow the European Union to interfere in this regard. While all these issues will require much debate in the weeks, months and years ahead, they all are strangers to the current illegal state aid decision. I honestly believe that in my heart, as I believe do many Members on the other side of the House.

Competition law has been a key component of European law since the signing of the 1957 Treaty of Rome. While the rules on state aid have been a central plank of competition law policy for nearly 60 years, I firmly believe our politicians and media are feigning an ignorance of the law and appear intent on obscuring the picture while denying that Ireland has done any wrong in its dealings with Apple.
What are the facts behind this Apple decision? I believe the facts are that Ireland and Apple were running two horses in the same race. One was fully legitimate and paid its taxes in Ireland. However, the second was anything but in its aims and objectives. It was a structure that facilitated Apple in laundering its global profits through Ireland - our little Éire we are commemorating in 2016 - at a tax rate of close to zero by facilitating a tax haven status for Apple through, *inter alia*, the double Irish. There used to be talk of double whiskeys and double brandies but a double Irish now has a funny name as well. Ireland effectively became a tax haven. However, no law was broken and these tax avoidance schemes were legal. They may be perceived as being unjust or immoral, depending on one’s position on the argument. If long-standing European Union competition law has been breached in the manner in which the scheme was put together and executed, that then is a different matter. The European Commission suspected this might be the case and began an investigation that culminated in last week’s decision. I remind the Minister of State, through the Chair, that state aid law is not rocket science. The tax structures facilitated by Ireland clearly amounted to state aid. That was the whole idea behind it. It can be described as state aid because that is what it was. The question is whether the state aid in this case was discriminatory or selective. I believe it was totally discriminatory and selective. Did the state aid distort or threaten to distort competition by favouring certain undertakings? Clearly, the scheme distorts favourable treatment in respect of Apple. It is as clear as night follows day that it bestowed favourable treatment on Apple by reducing Apple’s tax liabilities and, therefore, granted Apple a competitive advantage over other corporations that could not avail of it.

Never mind the other corporations - what about the PAYE workers to whom my colleague, Deputy Michael Healy-Rae, and many other speakers have referred? What about the small business people, whether farmers, shopkeepers, undertakers, hairdressers or whatever? What about Paddy the plasterer and all the men who went to the wall during the recession? They were followed and persecuted to the last drop of blood by the Revenue. Sheriffs came pounding in the door on behalf of the Revenue and no matter what other debts they had, regardless of whether it was to feed their children or whatever else, the Revenue had to get its money. One could not talk to the sheriff or to Revenue. I salute the Revenue Commissioners in many cases but they were heavy handed and wanted the last drop of blood in this regard. However, what is going on in this case with two standards and the riding of two, three or who knows how many horses? The misery that has been visited on the people with the amount of penalties imposed because of austerity is shameful. We were going to burn the bondholders but we did not. We could not do anything against Europe but all of a sudden, we have taken a major gripe against Europe. I have no love for Europe and have no love for the way in which we thought they would listen to what Britain did after Brexit. I even suspect they want us to leave as well and to be rid of us. I suspect they want us not to be a nuisance to them past Britain, here off the west coast, and to just get rid of us. Perhaps we have served them well and perhaps they have got enough from us. However, the ordinary people must be looked after. There must be justice for all and there is no point in having people out there paying everything with punitive, scandalous interest. Every so often, one sees cases highlighted in or leaked to the media about the number of penalties and court cases. Moreover, the number of penalties they have added on is both disgusting and immoral but not for these people. They can have cosy arrangements.

Another question is whether the arrangement was exclusive to Apple and the answer is probably not. Although we do not know it for sure, it is believed that a number of global corporations availed of similar arrangements through Ireland. However, it is incontrovertible that the structure was not available to other companies and competitors, especially our own small
and medium-sized enterprises, SMEs, our indigenous businesses and people here. In general, for example, an Irish competitor or would-be competitor, which are very important if we are trying to have a recovery in the economy - and people are watching this - would not have global profits to launder and so such would be obliged to pay standard corporation tax of 12.5%. This compares to what was suggested or alleged in the case of Apple, namely, a rate of 0.005%. That is the difference and is why we want our educated young entrepreneurs to be able to have confidence, to have fairness and parity of esteem and to be supported; not to be blindfolded with their hands tied behind their backs in favour of these big guys. My understanding is that it is believed Ireland did not seek clearance from the Directorate General for Competition in Europe prior to implementing the controversial Apple tax structure. That is very important. If this is true, and sin an ceist, it is quite telling in its own right that Ireland preferred to keep such dodgy tax arrangements a secret. We have many dark secrets in Ireland and this will be one that may end up being exposed and I believe that if it is, it will be to our shame. It is my estimation that the European Union decision at this point, much as I dislike the European Union, is the correct one, namely, that Apple was in receipt of illegal state aid. Are EU laws clear as to what happens next? This is important and I refer to my previous remarks about pursuing people literally to the grave. The State must recover the illegal aid in full from the recipient. There is no latitude in this regard and I refer to the argument that is creeping in at present about it being retrospective. I state from the bottom of my heart that the only retrospective issue involved with illegal state aid is the full requirement to recoup retrospectively all this illegal aid.

I am familiar with a wonderful small company in my native county. Those involved had a sick mother of the house, who has died subsequently, and were operating for years in an agribusiness. They were honest people who had their C2 certificates and their certificates of taxation clearly from Revenue, on the understanding they were charging 12.5% as a service industry. The company was doing that and providing a service to the farmers that was vital. I fought this case with the Revenue but got no satisfaction. After five or six years of trading, even though the company had tax clearance from Revenue for the entire time, Revenue decided the company was trading illegally and should have been charging a rate of 21% or 23% as it is at present. I called for an independent investigation into the Waterford tax office. Those involved were persecuted, despite that woman being on her death-bed. She was a young woman in her 30s with two small children and she died in the middle of it. The manner in which Revenue treated them was merciless and here we are now with Revenue having questions to answer. Why did Revenue not see this sooner? Why is everyone paying their PAYE and all the different levies and taxes with which they have been hit with the recession? We must pay and it does not sit well with me when Members in this House who owe taxes themselves have stated on different radio programmes that they failed to so do, that they disclosed wrongly to and misled Revenue. This is not acceptable to anyone and I reiterate that we must work with Revenue. However, there cannot be double standards and one cannot issue a tax clearance certificate for three, four or five years and then decide the people were operating incorrectly. Where are the level playing field and the fairness then because they were an ordinary, small company and not a conglomerate?

We have many conglomerates here too and I salute them, that is, the American direct investment jobs, which we badly need. However, we cannot have this image being portrayed of us that we are shady, that we have the double Irish or that we have two or five horses in the same race. We must be straight and direct and we must support our own indigenous firms. We must see the way in which they are being pursued relentlessly at present. Are we now going to pay the costs in this regard? I understand that half a million already has been expended in fighting
this case. Let Apple appeal it. It has plenty of resources with which to appeal it and it will appeal the decision anyway. We should sit back, discuss our business here and try to get our house in order and let it pay for the appeal. Why should the taxpayers make more fat-cat lawyers fatter and richer, as they have done in supporting NAMA and all the skulduggery that is going on in that agency to which Deputies here already have referred? We have a lot of washing to wash out here and I note we have good dry days at present with sunshine for drying as well. There is much dirty linen to be washed and it is disgraceful that we are being watched by the world. We must support what we have but we must steady the ship. We must hold our heads up high as a proud country, not one that is shady and open to secret sweetheart deals. As I stated, I am in favour of keeping the foreign direct investment here. I am not saying that we should get rid of them all and we will be happy. We need them, we need the jobs and the service industries that support them. They all pay their taxes, including the self-employed people who support Merck, Sharp and Dohme. They give great employment, as well as service industry employment, together with all the other big industries in Galway to which Deputy Grealish referred in the context of future investment.

It is now autumn when apples fall from the trees. They are picked and brought to Bulmers to make good cider. It is time we sorted the good apples from the bad. We should get rid of the bad ones because they are culls which we do not want or need. We must go after that money and get it back for our hospitals, roads and the education of our young people. We must have a perception of being fair, honest, straight and open for business. We are not suspect or into shady deals. The Minister may shake his head all he likes but I believe I am telling the truth. I can be proven wrong on this when it comes to it, but I have no intention of supporting the appeal. Let Apple make its own appeal. It has the resources and we can see what happens there.

We can call back our EU commissioner who does not have the moral standing to resign, like anyone else would if they felt they were in support of our country or wore the green flag. I know his jersey was disappointed on Sunday, but the green flag is meant to be worn by our commissioner and it is time he started wearing it.

**Acting Chairman (Deputy Eugene Murphy):** The Deputy is certainly firing on all cylinders today. It must be the double win for Tipperary last Sunday.

**Deputy Mattie McGrath:** Of course it was.

**Acting Chairman (Deputy Eugene Murphy):** The next slot is allocated to the Social Democrat Deputies Catherine Murphy and Róisín Shortall, as well as Deputy Eamon Ryan of the Green Party and Deputy Stephen Donnelly. They have 35 minutes and I presume they have agreed their time allocations. I call on Deputy Catherine Murphy.

**Deputy Catherine Murphy:** I will be taking seven minutes. In 2012, US Senator Carl Leven, who was the chairperson of the permanent sub-committee of investigations in the US, began to speak about Apple’s tax affairs in Ireland. He did not mince his words. He asked one simple question: why Ireland? It was his belief that Apple had had a privately negotiated agreement with our Government since 1991, and by 2003 the result was that Apple’s corporate tax rate was less than 2% and sliding.

In 2012, Mr. Michael Collins, the Irish Ambassador to Washington, was quick to use the opportunity to point out the obvious - that 2% was a far cry from our already generous 12.5% corporate tax rate. We believe the corporate tax rate should remain at 12.5%, but it should be paid.
Last week, on the *Today with Sean O’Rourke* radio programme, Mr. Donal O’Donovan, the former IMF director asked if, when these rulings were issued in 1991 and 2007, the Revenue had checked with Brussels as to whether they constituted, or would constitute, illegal State aid. He pointed out that if we went ahead with such agreements without recourse to Brussels then we can hardly now complain that Brussels, when it finds out about these rulings, finds them to be illegal.

The Minister for Finance, Deputy Noonan, has to answer that question today. Did the Government or Revenue inform Brussels about that aspect of this deal?

Over the past week, the European Commission issued its ruling to which nobody on this side of the House has been privy. Within hours, however, the Government announced its decision to enter into an extremely lengthy and exceptionally costly battle to repudiate the Commission’s ruling that we were owed €13 billion.

Nobody seems to have given much consideration to the fact that the European Court of Justice has a particularly strong track record in upholding the rulings of the European Commission. This appeal kicks an expensive can down the road and in doing so it creates a vacuum of uncertainty, which commentators on all sides have described as dangerous.

The IDA boss, Mr. Martin Shanahan, speaking on *Morning Ireland* yesterday, agreed that uncertainty makes his job and that of the IDA much more difficult. Interestingly, Mr. Shanahan agreed that there is little or no evidence from any credible, independent sources that the ruling will have any likelihood of impacting on our ability to attract or keep multinational corporations here. Multinational jobs are valuable, as are indigenous ones.

The ratings agency Fitch has publicly said that there is no issue here. It is interesting to note that when the same ratings agency has nice things to say about us - things the Government wants to hear - we are bombarded with the good school report. In this case, however, the Government has been noticeably silent on the opinion from Fitch. The ratings agency went on to say that any potential risk of us accepting €13 billion was limited. Fitch highlighted the already attractive 12.5% corporate tax rate and our high human development as promoting an attractive business environment for multinationals.

Professor Joseph Stiglitz, the Nobel prize-winning economist, has repeatedly said it is wrong to appeal. He described the Minister, Deputy Bruton’s comments as “utter balderdash”.

If we look at the employment multipliers it is clear to see that, valuable as FDI is, it is not always the job engine it is perceived to be. That is yet another reason we should place as much emphasis on indigenous small and medium businesses, which employ seven out of every ten people in this country. Such companies have often struggled to meet their tax liabilities, particularly in the last seven or eight years.

The Government’s decision to appeal is made in the context of a negative interest rate environment, with some corporates recently starting to charge negative interest on corporate bonds. Presumably, the NTMA will hold this €13 billion in an escrow account, but what about any interest accruing? Even at a rate of 3%, at the end of three years we would have an interest yield of €1.1 billion. The question as to what might happen with that has not been addressed, but that issue needs to be addressed today.

I would like the Minister to clarify what steps are being taken to ensure the escrow account
is run for the maximisation of return in the event that Ireland loses this appeal. I would also like the Minister to clarify who ultimately signed off on this deal in 1991, and where it originated. Did Apple approach the government or vice versa? Was the IDA involved and, just as importantly, what role did Revenue have at that point? Where does Revenue stand on this? Those questions need to be answered here today.

Put simply, this deal was not made available to other entities because it could not be. By its very nature it has to be a bespoke deal and therefore it can be construed as having distorted competition in the sector. The real question is, under whose watch was this bespoke deal done, tailored and delivered to Apple?

Perhaps most importantly of all, what has to be considered is the impact of the decision on our GDP. The recent controversial 26% rise in GDP might have been impacted by deals such as the onshoring of intellectual capital, maybe by Apple but certainly by companies or the aircraft leasing industry. Given that our GDP is ongoing and will have an impact on our economic relationship with Europe, it is vital that we consider the ramifications of the decision concerning the Apple ruling. The more that GDP is inflated, the more we will have to pay in hard cash.

The former IMF director, Mr. Donal O’Donovan, said this is not just a technical issue, it is also a political and moral one. On all three counts I absolutely believe that to be the case.

Deputy Róisín Shortall: Given that we are dealing with a figure of such enormous magnitude, it is not surprising that much of the focus of the discussion since the Commission’s ruling has been on the actual amount owed. However, the amount itself has served as something of a convenient distraction. This is far from surprising because distraction and obfuscation have been the hallmarks of the Government’s response to the Commission’s findings. Since the ruling was released there has been a persistent attempt to frame it as everything from an attack on our sovereignty to an attack on our 12.5% corporation tax rate, and an attempt to make Ireland the tax collector of Europe. It is none of the above. Fundamentally, this is a legal matter and what has been missing from the countless statements from Government is any convincing evidence at all that there is a clear legal basis on which to make an appeal. We know there is a specified legal period in which an appeal must be lodged, but surely it would have been prudent at the very least to use this period to reflect on what is in the national interest and carefully consider all the ramifications of a possible appeal. Yet, in the immediate aftermath of the Commission’s announcement, the Minister for Finance declared his intention to rush headlong into defending a practice that may very well be indefensible without addressing the question at hand. That question is whether Apple was facilitated with a selective arrangement. Whether or not we refer to the 1991 arrangement as a deal is irrelevant. The fact is that a tax liability was negotiated between Revenue and representatives of Apple. While we do not have access to the full ruling of the Commission, we know the reasons it decided to initiate the investigation. Its stated reasons provide a deeply worrying insight into the origins of this deal and raise a number of questions that have yet to be addressed substantively by the Government.

Fundamentally, we need to know how the 1991 agreement was negotiated, who negotiated it, under what authority it was negotiated and whether anyone at all checked with Europe. Can the rationale for this deal be substantiated in any way, or was it a case of deciding on a figure and working back from there? All the indications are that this was the approach. If that is the case, it is scandalous. Did somebody in Revenue agree a figure and work back from there? Was any report produced by Revenue to support the calculation of Apple’s taxable profits and if so, why was that not provided to the Commission in 2014? Why was the 1991 agreement applied
for 15 years without revision and why was it agreed with an open-ended duration? It is the same in regard to the 2007 agreement. Why was no documentary evidence provided to explain how the figures were derived? Surely if the Government is to mount an appeal against the accusation of selectivity, it must be in a position to support the terms of the deal with evidence and produce evidence of comparable treatment of other companies. Can the Minister confirm such documentation exists and if so, was that made available to the Commission?

It seems from the documents supplied to the Commission that the facilitation of tax avoidance was an intentional strategy adopted in 1991 and updated in 2007. Without the full report of the Commission, we cannot make a determination on whether this is actually the case and whether the deal was applied selectively or was reached as a result of a codified methodology. The Government has denied that Apple was the only company to avail of such an arrangement. We must, therefore, ask how many other companies were facilitated in this way and what the terms of their arrangements were. According to a very interesting 2014 RTE interview, the former CEO of Apple, John Sculley, advised Apple to seek such a deal based on his experience of a similar arrangement Revenue had with Pepsi. Did one have to be in the know, then, to avail of this deal? We have seen from recent Commission rulings in Spain, in respect of Santander, that the principle of selectivity does not require only one company to avail of a scheme. A scheme benefiting a select group of companies can also be deemed to be anti-competitive. Was it the case that only a very small group of companies were able to negotiate such beneficial deals? Are there more Apples? If it was generally available, as seems to be the claim by Government now, can the Minister explain how many companies were informed of the scheme’s existence? Did the IDA play a role? Did the Government? Could it be the case that there are many more Apples and that the actual scale of tax avoidance over recent years in this country is on an even greater scale than has been unearthed so far?

With so many questions outstanding, the one that remains is whether the Minister can, with the full benefit of hindsight, stand over the manner in which these deals were made and the resulting arrangements and vouch for their full compliance with EU competition law. We know multinational investment in Ireland is critical to our economy and our national interest. As a peripheral country in European terms, an important part of our industrial policy must be to attract multinational jobs. However, that strategy must be in compliance with EU law on competition. Multinationals must pay their fair share of tax and that policy must be a sustainable one. In the Apple case, there is no evidence to suggest that is the case on this occasion. That is the problem with this: there is no basis for an appeal.

Deputy Eamon Ryan: It is a terrible pity we do not have the final judgment from the European Commission and that we only got the Department of Finance’s arguments late last night. However, I think we know enough to call it here between right and wrong and to make the call in terms of whether we should appeal or how we should appeal. The Minister for Finance, Deputy Michael Noonan, set out in his speech, as best I could understand it, the Government’s argument that it was necessary for us to appeal “to defend the integrity of our tax system; to provide tax certainty to business; and to challenge the encroachment of EU state aid rules into the sovereign member state competence of taxation.” On each of those grounds, I do not believe the right thing to do is to make the appeal.

Central to my argument is the need to defend the integrity of our tax system. We are not a haven for crooks. Our system is by and large straight. However, anyone outside this country looking in, and anyone making a fair assessment here, would have to admit we became a tax haven for corporations hiding offshore profits from tax. We are not a crook haven, but a tax
The sooner we admit that and acknowledge it, the sooner we can move on from it. We are starting to move on and we are starting to adjust our laws. However, by defending the indefensible, this Government is doing more than anyone else to confirm that international perspective. It is damaging our reputation. As a test of this, I was looking this morning at what the Fine Gael MEPs are saying in Brussels. Brian Hayes is fighting, but he would wake up in the morning and fight his own shadow, as we know. Mairead McGuinness has not said a word, as far as I can see from following her Twitter feed. She is talking about just about everything else, but not a word about this issue, because she knows that if she did it would seriously damage her reputation within the European Parliament. The same goes for Seán Kelly and Deirdre Clune. Why are they not speaking the truth this Government seems to believe in the European Parliament? They know that if they did, it would damage our reputation. No one in the European Parliament, as a representative body of the rest of our Union, thinks what is being said here today. They would be aghast at what was heard here today. It is just one test that shows why the argument that this is about standing up for our integrity does not make sense.

The second argument is about providing tax certainty to business. I do not believe that engaging in a legal quagmire for the next five years is going to provide certainty for anyone. If anything, the world is moving on from its acceptance of the tax system that applied not only here but in other countries. The business community is starting to wake up to the fact that it is no longer acceptable. As the Taoiseach and the Minister for Finance said, the system was broken. Why are we standing up for a broken system? That creates uncertainty in the business mind because actually what we need to do is just to be clear. To give two messages, as the Government did last week, saying it was going to lead the case for tax justice and at the same time coming out fighting for the old system, which was not just, is not good for developing business confidence in this country.

Finally, the Minister said we have to do this to challenge the encroachment of EU state aid rules into the sovereign member states’ competence in taxation. That is not logical. The Minister for Public Expenditure and Reform, Deputy Paschal Donohoe, knows this. In all working life as a Minister one is dealing with state aid issues all the time. It is as common as anything in terms of how a Government works. There have been 400 Irish state aid cases since 2000, so this is no new encroachment. There were 225 EU tax state aid cases in the same period across Europe. There is an argument that this is unique and terrible and an attitude of “How dare they take a state aid case when they are commonplace and how dare it be on the issue of tax when that is also commonplace?” However, similar matters have arisen in very recent times. One could argue that France and Germany are not getting hit as hard. That is a tough political argument to prove. The sophistry we have heard about sovereignty and what state aids are and are not is damaging to the reputation of this country and it should stop.

The Minister for Finance goes on to say - this is a common thing one hears - that there was no departure from Irish law, that no preference was shown in applying the law and that full tax was paid in accordance with the law. We have already admitted that the law was wrong. We rescinded it in 2014 when it became apparent what was happening so why are we defending a law that was not right? Everyone accepts that we have to protect and defend the independence of the Revenue Commissioners but this approach is coming from the political system. What we are hearing today is a continuation of the defence in respect of what went on. The political system is actually in the dock today and it does not even know it. The system is failing us. The image I have is one that can often be seen late at night whereby some mad fellow hears a remark and thinks someone insulted him. He takes off the jacket, pulls up the sleeves, and says, “Hold
me back”. What happens? Fianna Fáil says, “Oh, no, I will fight better.” Labour is even bigger again. It says, “Hold on a second, the fighting Irish are coming out.” The approach being taken is not clever. It is not winning the argument to my mind. The approach in question is certainly not winning the argument internationally but it may win it at home because it is striking all the right patriotic chords. In other words, we are putting it up to those Europeans. However, the approach is not clever.

Why this sophistry? What are we hiding from? Why are we confusing the picture? The reason I say that we know enough is because we have the original decision made by the European Commission and published in June 2014. That was over two years ago so there has been plenty of time to read it. The decision is quite detailed. In the first line, it gets to the heart of the matter and its decision. It says, “This decision concerns tax rulings which validate transfer pricing arrangements, also known as advanced pricing arrangements (“APAs”).” At the core of this is not just a tax issue; it is the whole globalised model in which we and all our companies are involved and the question of how one actually applies transfer pricing. For example, how much of the €500 that the young Hans, Claude or Franz Josef from Germany pays for his mobile phone resides in Germany and how much in Ireland? How much resides in the Irish tax haven, in this Tir na nÓg land in the middle of the Atlantic - we should call it the Rockall scheme - which is actually where we put most of the profits? We were party to that. The Americans were also party to it. The American Government turned a blind eye and there are questions to ask about what they were doing, what they will do in response to the revelations and what Tim Cook said last week about where their real costs and profits lie. We were the other part of the equation and we should acknowledge that if we are to be honest, clear things up and move on.

I am not a judge. Perhaps the judges have to decide. One could read every line, but throughout its argument, the Commission has already set out - we can all read this - that it is fairly clear that the Irish Revenue accepted the calculation of profit attributable to Apple Operations Europe on the basis of actual costs without this choice being reasoned in any way. That is point 58 in the Commission’s initial decision. We have a problem. I do not think we will win. This is another reason why we have been slow to take the case. More importantly, we need to answer questions here. If the questions cannot be answered in a 30 minute slot in this Chamber, we should call a special meeting of either the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach or the Committee on Budgetary Scrutiny because this matter needs to be debated in some detail and at length. The questions that have recently been asked need to be answered and not in two or three weeks’ time. Why not have them answered in the next two weeks at one of our committees where this could be done without any great difficulty?

It is interesting that point 77 of the Department of Finance’s statement of affairs indicates that the particular issue it is concerned about is the entirely unprecedented aspect of the state aid decision. The statement reads, “the concept that Ireland would not be judged to have granted illegal State aid if another jurisdiction had exercised taxing rights over the profits concerned is difficult to understand.” In other words, it concerns the issue of where the transfer pricing really should take place. The Government and Ministers need to outline the position. Have they had any discussions with their European colleagues about whether they intend reviewing what their tax or transfer pricing arrangements will be in a way that we would not get that full €13 billion? That is where the real fight will be on this. There has been sophistry on the Opposition side today on the part of those who believe that the €13 billion is a guarantee. That is nonsense. Focus groups will say that will go down well but it may not be true. We have to get an answer to the question of whether the judgment of the Commission, which the Italian Government ac-
cepted, in which Apple Italy had to pay a €318 million fine last year was a sign of what we will see in other countries as a result of what happens in this jurisdiction and whether the allocation of €13 billion will change. We need to ask the American Administration what it is planning. To my mind, it is probably more likely that the taxes will end up accruing in the States. They have been giving out. They see this as Europeans trying to grab the money. Will they try to grab it back? If we lose, how much of the €13 billion would we get? We need to know what discussions and communications have occurred with the Irish Government. I cannot imagine that it has not talked to the US Administration in this regard. If it did not it was a dereliction of duty. We need to talk to them straight away now and find out what its view is in a civil way. We get on well with these countries. This is just cleaning up an old system that we all agree was wrong. That is not something that one wants to pull up one’s sleeves over and start fighting people. We will just move on by cleaning it up and changing the system.

My main point-----

Acting Chairman (Deputy Eugene Murphy): I do not wish to stop the Deputy but I believe he is sharing time with Deputy Donnelly.

Deputy Eamon Ryan: Deputy Donnelly is taking seven minutes so I have two minutes left.

Acting Chairman (Deputy Eugene Murphy): I want to give equal time to Deputy Donnelly.

Deputy Eamon Ryan: What the Taoiseach said today was similar to what Deputy Barry said. That is a rarity. The Taoiseach argued that we are not good at developing our own business. Deputy Barry said something similar for some Trotskyist reason I do not quite understand. He indicated that our capitalist system in this country is not working. I understood the Taoiseach when he said that Ireland as a country is naturally blessed in so many ways from the beauty of its land to its wonderful people but it must also be acknowledged that we have disadvantages when compared to some rival economies. The Taoiseach went on to say that we are peripheral and small with a large ocean behind us and that we have a small population and domestic markets. It is all true. He said we were not overly endowed with natural resources and that these characteristics have historically stunted deep industrial development. That is all true in some ways. We are not short of natural resources. I fear that behind all this is a fundamental lack of confidence that we have the ability to make the next step that we need to make, not only going from a closed economy to an open one which we did in the late 1950s and early 1960s which has benefited our country tremendously. We want these companies here. We want Apple in Cork. There are good people in those companies and we can and should work with them. We are also at a stage where we can start standing on our own two feet and having our own enterprise and being good at it without having to employ the sort of tax breaks that we gave to attract this foreign direct investment here in the first instance. It is not just Apple. The question is where they exclusive? They were not because the double Irish is probably similar. They were probably caught in the hook because there seems to be only one or two other companies. If there are other companies the Minister for Finance needs to tell us what other companies availed of this stateless tax provision from Revenue.

We need to start developing our own business and work with multinationals as part of a global change to the tax system. If we do not do that we are on the wrong side of history. There is a growing realisation that the form of globalisation that has existed for the last 20 or 30 years where multinationals got too easy a ride and did not pay their fair share has to come to an end.
The issue for today relates to where we place ourselves in that. What we have from Fine Gael, Labour, Fianna Fáil and some other Deputies is a deeply retrograde, mistaken strategic decision about how we present our country and how we view this case. We can move on from this but we will not move on from it by aiming all our guns at Brussels or the rest of Europe and pretending we are as white as the driven snow.

Deputy Stephen S. Donnelly: As today’s debate concerns tax avoidance that should never have been facilitated by the Irish State, I will first address yesterday’s announcement regarding tax avoidance by vulture funds. Yesterday’s ruling is a welcome first step. I acknowledge the fine journalistic efforts that contributed to this, including by Mark Paul, Dearbhail McDonald, Joe Brennan, Jack Horgan-Jones and RTE’s “Prime Time” team. I would also like to acknowledge the work of Deputies across the House in getting this first step agreed, including Deputies Pearse Doherty, Michael McGrath, the Minister, Deputy Katherine Zappone, the Minister for Transport, Tourism and Sport, Deputy Ross, and the Minister for Finance, Deputy Noonan. It is, however, a very small first step. Already this morning Ireland’s tax experts are sharing bulletins on how this amendment can be dealt with. One expert with whom I spoke this morning believes that they can get around about 90% of this. In other words, of the current tax avoidance that is going on that this amendment seeks to stop, the best guess is that approximately 90% can continue, based on the current amendment. For example, the amendment allows vulture funds to avoid considerable capital gains tax by marking their assets to today’s market prices rather than the purchase prices. The amendment still allows very high interest costs to be deducted from taxable revenues or profits with arms-length loans. The amendment considers only real estate transactions when it should consider all assets generating economic activity in Ireland. In particular, it must consider profits from unsecured loans and rental income. The whole area of real estate investment trusts, REITs, must be looked at in the same vein. Finally, the amendment provides for no retrospective consideration of taxes. If that is legally permissible, it is something we should certainly consider.

I note the commitment from the Minister for Finance to changing his proposal based on further debate in this House. Based on the initial responses today from some of Ireland’s leading tax houses and from lawyers and accountants, significant further debate and changes will be required to what was proposed by the Minister yesterday. To help inform this debate, I ask the Ministers for Finance and Public Expenditure and Reform to seek opinion from several sources on the draft amendment, specifically addressing two questions. First, using a test case such as Mars Capital, to which I have referred in the Chamber previously, the Government must show how this proposed amendment shuts down all of the tax avoidance and how it will ensure that every euro generated in Ireland is taxed. Second, the Government should seek opinion on how the current proposed amendment can be worked around, because that is exactly what a bunch of very clever lawyers and accountants have been doing from very early this morning. I ask that the Government seek opinion not just from the Department of Finance but also from the Revenue Commissioners and from some of the firms that specialise in tax rules. I look forward to significant further debate on this topic.

On the Apple ruling, it is clear that Ireland’s tax laws have facilitated very large and unwelcome tax avoidance. It is also likely, however, that Ireland would receive a very small portion of the €13 billion, plus interest, that is on the table. Apple already pays corporation taxes here on its Irish activities, so if the €13 billion plus interest were to be divvied up according to where the economic activity occurred that led to those profits - an accepted principle all round - it is very hard to see where our claim on that would be. On top of that, as we know, the European
Commission is already encouraging other EU member states to look for a slice of the apple.

While the argument that there is €13 billion on the table for Ireland to take is weak, so too are most of the reasons being put forward for an appeal. First, nobody is suggesting that the Revenue Commissioners have done anything wrong or illegal. They enforce law passed by this House. That is their job and that is all they have done. Second, it is very hard to see how foreign direct investment would be affected by the absence of an appeal. The Commission’s ruling applies to one company, retrospectively, and to a loophole that no longer exists. Apple continues to invest in Ireland and Ireland is fully signed up, as it should be, to the OECD’s BEPS process. We certainly need clarity for foreign investors. However, Marian Harkin, MEP, has pointed out that the Government could seek such clarity from the European Court of Justice without an appeal and get such clarity in less time and with less expense than an appeal would take.

The third reason being offered is that not lodging an appeal could harm Irish-US diplomatic relations. Again, it is very hard to see how that stacks up. If the Commission’s ruling applies to Apple’s profits that have been taxed nowhere, it is not as though the US is losing out on that. Apple has tried to pay taxes nowhere on those profits. If it came to it, obviously the decision is not Ireland’s; it is a European Commission decision. The fourth reason put forward is that not lodging an appeal could threaten our corporation tax position, be it our rate or our regime. This deserves very serious consideration but it also demands a very high level of proof, much higher than that which has been provided so far. The Government has a letter from the European Commission from 1997 stating that our corporation tax rate falls absolutely outside EU competition law. It would appear that there is no threat in that regard because it would require a unanimous vote or decision of all EU member states to bring our 12.5% rate within a different competency, and that is not something that is going to happen. What of the risks to our corporation tax regime? Rulings and investigations such as this have been going on all the time. There have been 400 state aid cases involving Ireland since 2000 and 225 cases involving tax advantage across the EU. Many of the Irish cases involved situations where a tax advantage was given to a particular sector. In spite of all of this, there has been no suggestion that these investigations have threatened our tax regime.

Is Ireland’s corporation tax rate or regime being threatened? We do not know. Are we setting a dangerous legal precedent? We do not know. Are we looking for €100 million or €13 billion? We do not know. Are we likely to get it? When are we likely to get it? How likely is an appeal to succeed? We do not know. We are being asked to discuss very complex issues involving large amounts of money as well as international relations without the information we need. The Belgian Government took two months before it launched an appeal in a similar situation. We have two months left before we need to lodge an appeal. There is no need for us to proceed right now. We have two months to discuss this in detail and that is what we should do. On that basis I will be abstaining from the vote tonight.

Minister for Public Expenditure and Reform (Deputy Paschal Donohoe): I listened to the contribution of Deputy Eamon Ryan, who alleged that this decision by the Government was motivated by a lack of confidence. He correctly described the many changes that have taken place in the environment in which our country operates and the economic policies of our country. We moved from being a closed economy to one that became open and deeply embedded in a globalised, if not hyper-globalised, world. However, far from being reflective of a lack of confidence in the context of our national interest, I would contend that this decision by the Government is the very opposite. This is a Government that is confident in a Dáil and Oireacht-
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tas that is confident about the long-term interests of our country, politically, economically and legally, and I hope we will see that in the vote later today. It is motivated not by fear or a desire to stand up on behalf of one company. It is not motivated by a fear of the possibility of even greater challenges than the ones we have just come through. It is driven by an awareness and confidence - not a lack of confidence - regarding what it believes to be in the long-term interests of our State. We believe that appealing the decision of the European Commission is the right thing to do for the long-term economic interests of our State, our ability to retain the jobs we currently have and our ability to create more jobs in the future in a global environment that is changing and is more volatile and disruptive than has been the case in the past. I would suggest to Deputy Ryan that to accuse those of us who have these beliefs of sophistry is to belittle his own judgment, case and argument on this.

I also listened to what Deputy Donnelly had to say and will certainly pass on to the Minister for Finance and the Revenue Commissioners his two proposals regarding the decision that was made yesterday. The Deputy made the point, as I understood it, that nobody is alleging that the Revenue Commissioners did anything wrong-----

**Deputy Stephen S. Donnelly:** Illegal.

**Deputy Paschal Donohoe:** Illegal, or broke Irish law. One of the reasons why it is so important that the Government and the State appeals the ruling is to make crystal clear our belief that an independent institution of our State at all times acted in a way that was consistent with the law of this House, creating the certainty and the credibility that has led to the creation of jobs. It is right to challenge such a finding because the alternative would put us in a very different place. Apple is a global company but Ireland cannot be a global tax collector. We have to be cognisant of what our legal obligations were and what the law was in the past. In acknowledging Deputy Ryan’s comments pertaining to the different consensus and views in the matter, nowhere in his contribution did the Deputy acknowledge what the Government has done in recent years; the abolition of the ‘double Irish’, the participation around opinion sharing between tax authorities in different countries and the actions we have taken to implement our part of the agenda through the OECD. Actions have also been taken, some recently, in recognition of the environment issues to which the Deputy has referred.

With regard to the process that led to this point - and I heard some Fianna Fáil Members describe the recent process as being “pathetic” - the days are gone when an incorporeal Cabinet meeting can rubber stamp vital and massive decisions of the State. In the past week we have seen independent Members of Government tease out and debate with other colleagues in Government and in Fine Gael what might be the right outcome. That took time and because of the time that was taken I believe that we have reached a better decision on behalf of the State, one which is correct to put to this House for debate. That is the right and politically sustainable approach. Another key element, which was acknowledged by some Members, including in Deputy Ryan’s contribution, pertains to what the right economically sustainable decision is. Many people have said, and critics argue the case, that we should not spend money that we do not have. However, now the same Opposition critics who have made that point have argued that Ireland should spend money that we cannot currently access. I conclude on that point. It is one of the reasons why we must appeal the ruling. We cannot suggest to the Irish people that there is a magic pot at the end of this rainbow. It is particularly striking to hear those who have suggested the existence of such a pot are now wrapping themselves in the flag of the very European Union that they have spent years -----
Deputy Pat The Cope Gallagher: Time, please. I am being lenient now.

Deputy Paschal Donohoe: ---castigating and attacking. It is for that and other reasons that I believe an appeal on the European Commission’s decision is the right thing to do. I ask for the support of the House.

Deputy Seán Haughey: Firstly I shall respond to the Minister. Last week the Government acted in a less than sure footed manner in response to this issue. The Minister for Finance announced that the Government would be appealing the Commission’s decision and yet no Cabinet meeting took place. Obviously a political crisis ensued from that stance. It did not play out well across the globe with regard to the Apple situation.

On 30 August 2016 the European Commission announced its decision that Ireland had breached EU state aid rules by granting undue tax benefits to Irish subsidiaries of the US-based multinational corporation Apple Inc. The state aid rules of the European Union represent a key aspect of competition policy which constitutes a competence of the EU Commission and not member states. The objective of state aid policy is to ensure fair and undistorted competition between firms within the single market. However, a crucial condition for a matter being classified as illegal state aid - and this would appear to be of primary importance in the case of Apple’s tax arrangements in Ireland - is that the this aid must confer an advantage to the recipients that competitors cannot avail of. There has to be evidence of preferential treatment to a particular firm. This has been a long standing principle of EU case law for several decades and has been cited in a number of Commission precedents. It is not clear at this stage whether the crucial condition of preferential treatment was present in the case of Apple. It may have been the case that Apple was simply availing of arrangements that were available to any other multinational corporation at the time. In such an instance there is no illegal state aid because the advantage conferred is not selective. This point has been made by the Treasury Department of the United States in a White Paper on the recent EU state aid investigations. The Treasury has asserted:

Recent decisions appear to deviate from established case law and its past practice ... The Commission’s position that individual transfer pricing rulings are selective when given to a particular multinational company, even when other multinational companies could have obtained them, constitutes a new approach that has not previously been applied.

The Treasury went on to state in rather stark terms:

This shift in approach appears to expand the role of the Commission’s Directorate-General for Competition beyond enforcement of competition and state aid law under the Treaty on the Functioning of the EU into that of a supra-national tax authority that reviews Member State transfer price determinations. The cases cited by the Commission do not give taxpayers prior notice that the Commission would interpret its powers in this way or that selectivity would no longer be a meaningful precondition to a finding of state aid ... In the state aid cases, there is no evidence (and the Commission has not argued) that other multinational companies could not have obtained the same rulings as the companies now under investigation.

This approach to analysing such tax rulings under state aid law appears to represent a break from standard practice and therefore it is perhaps unsurprising that it has been viewed by many as an undue encroachment on the part of the Commission into the sovereign tax affairs of a member state. The former EU Commissioner for Competition, Neelie Kroes, writing in the
Guardian newspaper last week said that state aid rules represent:

A tool to address instances where a member state has made an exception to its own rules and given a specific company an advantage ... EU member states have a sovereign right to determine their own tax laws. State aid cannot be used to rewrite those rules. However, the current state aid investigations into tax rulings appear to do exactly that.

This retrospective enforcement of what appears to be an entirely new approach to the matter of state aid policy, if allowed to go unchallenged, risks undermining the tax certainty upon which businesses depend in making their employment and investment decisions. An appeal is the only course of action that can be countenanced given the potentially negative implications of this ruling on the integrity of Ireland’s taxation system and our overall strategy for economic development which has been based to a considerable degree on creating an attractive environment for foreign direct investment since the late 1950s and early 1960s.

There is no evidence to suggest that the rulings granted to Apple by the Irish Revenue Commissioners were not given in good faith or in a manner that was inconsistent with Irish tax law and therefore could have been available to any other multinational corporation that was located here. It is important to stress that the allocation of profits on sales which physically occurred in Ireland were consistently subject to Irish taxation. Those sales which occurred elsewhere were not taxed in Ireland or anywhere else as they were attributed to the head offices of the Irish subsidiaries which in reality had no physical location or staff. That multinationals could structure their tax affairs in this way reflects shortcomings in existing international transfer pricing arrangements and not any misconduct on the part of the Irish Revenue Commissioners. It would seem unreasonable that Ireland could be expected to be the tax collector for up to 60% of Apple’s global profits, particularly when the vast majority of these profits related to sales and other activities which occurred outside Ireland.

**Deputy Pat The Cope Gallagher:** The Deputy has exceed his five minutes.

**Deputy Seán Haughey:** I thank the Leas-Cheann Comhairle for his indulgence and I do commend the motion to the House.

**Deputy David Cullinane:** The advantage of coming into a debate midway through is that one would have had a flavour of the opinions from Members of the Government, Fianna Fáil and all the parties and Independents who have spoken so far. It is quite spectacular to hear an awful lot of the red herrings that have been peddled by Government Ministers and Fianna Fáil here today.

I want to make something very clear to the Ministers who sit across from me and Fianna Fáil which sits opposite me. My party and I are in favour of foreign direct investment. I am in favour of multinational companies coming to Ireland, creating jobs and employing as many people as possible. I am in favour of attracting more foreign direct investment and making sure we do our best to be competitive. This is why I support Ireland’s 12.5% corporation tax rate. None of that is in question and none of that can be challenged by the Ministers or Fianna Fáil.

I am against having a two-tier tax structure that forces small and medium-sized businesses to operate within the rules as they should; asks ordinary PAYE workers to operate within the rules, as they do; and then treats one multinational company differently from all the other multinational companies, small and medium-sized businesses and working people across this State. For the record, 808 multinational companies operate in this State. Between them, they employ
180,000 people. All of them, quite rightly, are involved in real economic activity. They create jobs, pay their taxes and provide a service to the State and the communities in which they are based. We all celebrate that.

However, a mechanism was created to allow Apple to avoid paying taxes elsewhere and to allow over €100 billion of profits to become stateless and not taxed anywhere through what the European Commission believes to be a special arrangement and deal struck between the Irish State and that company. The Minister will also be aware of US Senate hearings on this issue. When Tim Cook, the CEO of Apple, appeared before the Senate hearing, he made it clear that there was a special arrangement between his company and Ireland and that there was a tax arrangement between his company and Ireland. The head of tax affairs at Apple went further when he was pressed and said that the arrangement meant that Apple paid no more than 2% tax in Ireland. Those were his words at that Senate hearing, not mine or those of Sinn Féin or anyone else in this Chamber. When representatives from Apple were under oath at that Senate hearing, they had no choice but to come clean and accept that there was a special arrangement and that Apple was not paying the proper taxes. The European Commission has found that illegal state aid was given.

The Government also attempted to say that this is not about state aid because it concerns tax. Other people have made the point that they are intertwined and the Minister should know this. Nobody is asking Ireland to become a global tax collector. That is another red herring the Government is peddling here today. I do not believe that Ireland should be a global tax collector but I do not believe this State should facilitate global tax avoidance. That is the question here. That is why the State is in the dock and why the spotlight has been put on this State.

The Minister mentioned a risk to jobs. The only people talking about a risk to jobs are the Fine Gael Ministers sitting across from me and the Fianna Fáil Deputies sitting over here. IDA Ireland is not saying there is any risk to jobs. The multinational companies that are here are not saying there is any risk to jobs. We in Sinn Féin are not saying there is any risk to jobs. I have not heard one CEO of any of the other multinational companies based here say there is a risk to jobs. In fact, the CEO of the company that is in the dock has said that all Apple jobs in Ireland are safe, so the Minister should stop using red herrings.

**Deputy Billy Kelleher:** Why does Deputy Cullinane believe Apple on that one and not on other issues?

**Deputy David Cullinane:** Deputy Kelleher will have his say and I hope it will be uninterrupted. I understand the pressure Fianna Fáil is under on this issue but it has, again, chosen to side with the multinationals which are not paying their taxes and major tax avoidance instead of standing with the Irish people. Nobody outside Ireland will buy the nonsense that this Government and Fianna Fáil are standing up to the EU to defend Irish tax sovereignty. They will see it for the collective red herring it is. The biggest threat to jobs is the fact that we have dodgy deals. If one looks at what is happening at the moment - the headline figures around the world, distorted GDP figures, leprechaun economics, special deals and dodgy deals relating to multinationals - one can see that this is what is doing the damage. That is not the responsibility of the European Commission, Sinn Féin or anybody else in this Chamber. It is the responsibility of Fine Gael and Fianna Fáil. It is no wonder that they are colluding here today to deprive citizens of taxes that are due to them.

**Deputy Alan Kelly:** I listened intently to the debate over the past few hours and wish to
make a few points and ask a few questions given the short period of time I have. The Labour Party will, obviously, do the right thing. We will support the motion but we will also put forward our amendment, as has been outlined by my colleagues. We will not take the populist line but will do what is right for the country.

However, we cannot deny that this is a very difficult topic to explain to the ordinary man or woman in the street and many business people, be they in Tipperary, Cork or elsewhere. I was very taken by a comment by Richard Jacob of the Idaho Café in Cork who claimed that last year, he paid more tax than Starbucks. The detail is one thing but the fact that it was symbolic to many people showed how the public is thinking about this.

With some exceptions, the response from the Government was slow. It was not prepared. I say that as a former Minister who sat beside a number of Ministers who are sitting opposite. We were talking about this for a number of years while I was sitting at Cabinet. It was incredible that nobody appeared until nearly 6 p.m. on the day. We are shooting in the dark today because we do not have the detail, which we need to discuss. We need to publish this with redacted areas. We must be responsible in respect of Ireland’s reputation; the foreign direct investment that is so critical, be it in my county, the pharmaceutical industry in Clonmel or FINTEC in Nenagh; and the role of the Revenue Commissioners and what they did without fear or favour down through the years. We must ensure this is protected. We must also ensure that everyone is treated in the same way from a taxation perspective.

The Directorate General for Competition has done European citizens much service in respect of Open Skies policies and fines relating to cartels but I believe there is a change in policy within the Commission, a point on which I will focus. I believe politics in the European system must be based around the European Parliament, of which I was a Member, and the European Council. The issue now is that it is coming very much from the Commission. This is a major issue for the future of the EU because it will have a huge impact on its future, particularly in light of the way it treats small countries, which is becoming a story. We must call this for what it is. This is an effort to go after our country and our corporation tax rate through the back door. We must ensure that we fight this and protect what has been a very significant and successful policy. This is not really about state aid. This is a methodology for trying to get at our corporation tax rate. I raised this with the Commission when I was an MEP. It assured me that when there were proposals for a common consolidated corporate tax base, CCCTB, the treaties, including the Lisbon treaty, protected us; that the Council would make the decision; that if the CCCTB was introduced, companies could choose, where certain requirements were fulfilled, between national rules and the CCCTB; and that it would operate in parallel with subsidiarity and local corporate tax rates. Unfortunately, in the recent past, this has changed. Anyone who wants to see how the Commission responded to me can look up its answer to me on 22 March 2010. I raised it on numerous occasions.

This must be a wake-up call to this Government and this country. I welcome the fact that the Minister for Finance intends to close the loophole relating to section 110 but the issue here is the need to guarantee that it will work so we will not know until the Minister publishes the detail. We need a minimum effective tax rate when it comes to all taxes, particularly corporation tax. I also support the idea of setting up a standing independent commission in order that we can continuously deal with this issue because it is one that changes all the time so it is very important that we deal with the anomalies.

I will conclude by asking a number of questions that I hope the Ministers opposite will
bring to the Minister responsible. Has Commissioner Vestager repeatedly made it clear in correspondence to the Government that this decision has nothing to do with the 12.5% rate of corporation tax? Has that been put in writing? Was the Department well aware of the potential for an adverse fiscal state aid ruling against Ireland when it was decided to intervene in the case of Banco Santander and Autogrill that is currently before the European Court of Justice? The recent opinion of the advocate general in these cases supports the Commission and is negative to the view espoused by Ireland. The judgment in these cases, due around the end of this year, will have a decisive influence on the outcome of an appeal in the Apple case. I would very much appreciate it if the Ministers could ask the Minister for Finance to comment on those issues. The details are critical to this debate.

**Deputy Bríd Smith:** I will quote from the speech this morning of the Minister for Finance, Deputy Noonan. He stated: “We should not see ourselves through the eyes of our detractors - those who would paint a cartoonish and negative image of Ireland.” I have repeatedly stated in this House that I object to Ireland being referred to as one big homogeneous and happy family; we are not. There are very many competing interests in this country that indicate a different kind of Ireland for many different people. The previous speaker and others throughout the day spoke about how we must “look after our own” and how people are going after this country, but they should think about the language being used. They do not speak for me or my constituency and they are certainly not speaking for tens of thousands of people in this country who have been impoverished, made homeless, had their pay slashed, are lying on trolleys tonight or who will have to suffer all the consequences of austerity, inequality and division in this country. Others say we are all in this together but we are not. This ruling and the Government’s reaction to it demonstrates precisely how and why we are not in this together.

One can go out today and ask any man or woman on the street if they think it is a good idea that the Irish State - the people of Ireland - should take what is owed to them in taxes, which is at least €13 billion and possibly €19 billion when one adds the interest. We can think about what may be owed to us in taxes this year, next year and the following year by corporations paying one of the lowest rates of corporation tax in Europe. This is about having paid zilch in taxes for years under a sweetheart deal made with none other than “Mr. Charvet shirts”, Charlie Haughey, in the bad old days. What happened in the bad old days was perpetuated and maintained by the current and previous Governments. Everybody turned a blind eye to it and everybody says that was because of jobs.

I will give some figures relating to jobs. A sum of €1 billion would create 10,000 jobs on a decent wage, allowing for €100,000 per job. That allows for what the employer and worker must pay. Imagine the number of nurses, teachers, physiotherapists and any amount of people helping with speech therapy, social issues and working with Travellers or special education. Imagine the social good that could do, and it is just €1 billion. With the €13 billion owed by Apple and not minding the interest, 89,000 houses could be built. There is much use for this money in a country with dire need. There is a very right-wing policy choice being made to defend Apple on the premise of lies, lies and lies that we are looking after jobs. The Government is not doing so. It is looking after the rich at the expense of everybody else.

In case people have not noticed, this is not just particular to Ireland. The recent Panama papers indicated there are $23 trillion currently invested offshore without a single penny being paid in tax. That is why 20% of the world will go to bed hungry tonight and more than 30% of children in the world do not have access to clean water or proper medication for very basic illnesses. If one thinks Ireland is not contributing to this, one should think again. We are
leading the way by defending Apple in this case, perpetuating a world of gross and disgusting inequality.

Did the Minister for Finance, Deputy Noonan, and the Taoiseach have many meetings with representatives of the vulture funds to inform them of the section 110 benefits, whereby they could make gains by not paying tax in this country? That would attract them to invest here. There were at least eight meetings attended by the Minister, Deputy Noonan, with 60-odd involving the Department of Finance. Were those funds advised to come to the country in order to take advantage of the section 110 measures, and if not, why not? If there was no such advice but the funds took advantage of section 110, how was that not noticed? The magnanimous act by the Government to cancel the section 110 loophole is really a case of trying to quickly cover a mistake while perpetuating other mistakes. They are lying in saying they are not constantly, with every ounce of energy, inviting multinationals and global corporations on a free holiday in this country. It goes on all the time. The question of the meetings involving the Minister, Deputy Noonan, the Taoiseach and the vulture funds to invite them to take advantage of section 110 must be queried.

We must ask many questions about it. It indicates that this is not a question of poor old Ireland being attacked by the European Union, EU. The EU is really bullying the people but when it comes to bullying the rich, the Government does not take it. It let the EU bully us about water charges and austerity but it will not take it when the EU is trying to bully the rich. That is really what is going on.

**Deputy Clare Daly:** I agree with the points made by Deputy Connolly earlier when she said she felt a little sick listening to the debate. Never more has the disconnect between this House and the real lives of Irish citizens been more apparent - to me anyway - than today. We listened to the Taoiseach waffling on about our great small nation, our people and valiantly setting our shoulder to the wind. He spoke with words like sovereignty and independence but that is an insult to the people who led the way in trying to strive for Irish independence and equality.

I do not know if Members know but today is the 33rd anniversary of the passing of the eighth amendment. The Government has repeatedly told us there is no rush in dealing with the damage from that decision but meanwhile the British National Health Service does the job of our health service; “Spotlight” does the job of our State broadcaster in unearthing waste, political interference and corruption in industry; and the EU does the job of our Revenue Commissioners. That happens while the Government speaks about independence and sovereignty. It has some neck.

The Taoiseach told us this morning that we do not offer special favours or deals on tax; yes, we do. He said everyone is treated equally; no, they are not. There were people in my area who mistakenly filled out property tax returns when they had pyrite problems and had the Revenue Commissioners coming after them through no mistake of their own. There were single parents who did not declare PAYE and were hunted. They do not see the resources of the Government rowing into their defence to challenge the decision. Nevertheless, the limited resources needed by our people are seen as fit to squander in supporting one of the biggest multinationals on the planet.

It may be the case that the arrangement was legal and it was not exclusive to Apple. Is that not worse and should that not be the start rather than the end of the matter? If that is the defence, the logic is that our laws are not just, economically or socially. Irish people have a right
to know how many other companies have benefited from those arrangements and at what cost to hard-pressed Irish taxpayers. I can guarantee there is not a single small or medium-sized business that benefited from this arrangement. There is no benefit to a single small shopkeeper in my constituency in a property portfolio bought and sold to the likes of Cerberus, now being squeezed for every last drop of rent while those who bought the property do not pay any tax in this country. They had no global profits to filter or launder and, as such, I guarantee that they did not benefit from these deals. By making the argument the Government does and defending what it is trying to do is to say that it is okay for corporations to pay negligible amounts of tax. It is not okay.

The debate has been a false one for much of today and in terms of what has gone on in the media over the last while. To appeal or not to appeal is actually not the question at all. Whether we should keep the windfall or will get some jobs out of it is really a bit of a red herring. What is at the heart of this debate is that Ireland has been shown to facilitate the transfer of wealth and the subsidisation of Apple shareholders with other people’s money in return for a few coppers and a few pieces of silver. It is an insultingly small amount. Is it any wonder that Apple has cash reserves of over €230 billion when we facilitated a situation where it was not resident anywhere? Whether the money is claimed by Germany, the United States of America, France or somewhere else is not something I care about. It is the principle that multinationals should pay fair levels of taxation that must be fought for. The Government has some neck to go on about sovereignty when it is negotiating and facilitating a TTIP agreement and a CETA agreement and rolls over when the EU says we have to charge for water, saying “Okay, EU, we agree with you on that.” Suddenly it is interested in sovereignty, when it could not care less about the sovereignty of the other EU states that set the taxation rates the Government facilitated Apple in avoiding. The Taoiseach is wrong when he says that the Government is determined to have the highest international standards of tax transparency. It is not prepared to do that. If it was, it would move to support the measures in our motion. They are not waffle. They are concrete on country-by-country reporting and full transparency. Of course, the Government is not going to do that, but will continue to facilitate very wealthy people at the expense of taxpayers, not just in Ireland but internationally.

**Minister for Children and Youth Affairs (Deputy Katherine Zappone):** Before I address the motion specifically, I thank the House for spending some time installing a sound system in the Dáil. As someone with profound hearing loss and as a user of hearing aids, I can now hear due to the fact that we have a loop system. I have been at an extreme disadvantage over the last number of months, but today I can hear and am grateful for that.

I welcome today’s Dáil debate as an important opportunity to bring clarity to the events of last week and to put the facts and the truth before the Irish people. In particular, we must today clear up some of the misinformation about the €13 billion pot of gold. After consulting independent experts from the worlds of academia and economics and, indeed, those who campaign on the issue of tax justice, I assure the House that such a windfall does not exist. As the Minister for Children and Youth Affairs, I wish it did. There are plenty of areas where I would love to invest to secure the future of our children, young people and nation. However, the €13 billion does not belong to Ireland. The European Commission, the Attorney General and independent experts all agree that this money is from avoidance of tax in multiple jurisdictions, each one of which should be entitled to a slice. In addition, as Apple is appealing, no moneys will be available until the conclusion of the action. I am also assured by those who know the law that any attempt to access such cash now would be open to legal challenge. As a Government and as
public representatives, we owe it to the people to be honest and factual in what we say and not mislead them with false hope of a sudden windfall.

The House will be aware through media reports over the past week that the decision to support the appeal of the European Commission’s finding was a difficult one for me. I have made it clear that I agree with much of what the European Commission says and am of the firm view that while the dealings with Apple may be legal, they are certainly not ethical. My support is based on reasons that are different from those of some of my Cabinet colleagues and, I suggest, some of those in opposition. Our response to the European Commission decision and its fallout must have a strong tax justice foundation. Many Members will be aware that the concept of tax justice is centred on fairness, equality and transparency. It has many other aspects, but my time is limited today. By proceeding with the appeal we are acting fairly, but we are also acting in the interests of equality, as the process will allow those countries that feel robbed or cheated by the past actions of Ireland and Apple to make their cases, including developing countries. I hope they can get the taxes they lost out on. We are also ensuring transparency, as the appeal will be an open process whereby we can publicly examine whether the European Commission in fact acted beyond its powers, look in detail at Apple’s actions, lift the lid on its tax affairs in an open and transparent setting and consider also the actions undertaken by the authorities here in the past. We must also act about the future, which is why I am glad to confirm to the House that the Government has accepted a number of my proposals that bring a tax justice focus to Ireland’s future policy. We have agreed a review of our corporation tax code by an independent expert. We have also agreed to transpose EU directives by the end of the year, which is very significant, to ensure the exchange of information on taxation and greater co-operation between countries. We will take a lead on tax justice by hosting a high-level meeting before the end of the year to include international speakers, multinational corporations, civil society and governments. We will have greater openness on tax rulings, with time limits of five years and greater oversight for the Committee of Public Accounts.

Earlier this week, Sean O’Rourke on RTE asked me about donning the green jersey in terms of getting multinationals into Ireland. Let us be clear that to end Ireland’s reputation for being a place of stateless, unethical tax deals is to don the green jersey. Those firms that do business fairly and above board agree. The view that firms queue up to come here to avoid tax has little basis and that fact is supported by research. If we want to continue to attract business and jobs, we should focus on priorities other than the taxation system per se. As the research identifies, we provide an access point to Europe with an English-speaking population as well as a corporation tax rate of 12.5%.

Deputy Jim O’Callaghan: While I welcome the opportunity to speak on this important issue, we need to be clear as to where responsibility for it rests. The decision on whether Ireland should seek a review of the Commission’s decision by invoking Article 263 of the European treaty is one to be made by the Cabinet. There are certain responsibilities that are for the Houses of the Oireachtas and there are others that are for the Executive. Since the last general election, fortunately, the House has regained some of its powers. No longer can a Cabinet Government dictate what legislation should be passed by a rubber-stamping process here. However, the fact that the Oireachtas has regained its powers should not result in a weak Government that shies away from its own responsibilities and powers. A decision as to whether Ireland should invoke the Article 263 procedure is in many respects similar to a decision as to whether the State should appeal a decision to the Supreme Court. That is the nature of the decision being made. We should not have a situation whereby the Government runs to get the protection of the Oireachtas
because a decision is unpopular or difficult to make. Unfortunately, the Government’s attitude to this matter last week was hesitant, weak and uncertain. While I am happy for this debate to take place and while the Dáil should have an opportunity to conduct it, the reason it is taking place is that certain members of the Cabinet were nervous about making what they viewed as an unpopular decision. They wanted the Dáil recalled so that they would have its protection in respect of that unpopular decision.

While this is a decision to be made by the Government, the decision that has been made is the correct one. There are three reasons it is right to seek to review this decision. First, the Commission states that its ruling “does not call into question Ireland’s general tax system or its corporate tax rate”. However, it seeks to present the Revenue Commissioners not as an independent body but as another arm of Government that is prepared to facilitate Government policy by giving a decision in favour of certain taxpayers. The Revenue Commissioners do not operate in such a fashion. In many respects, they are like the leaving certificate - not susceptible to interference. Nonetheless, the ruling presents Revenue as an agency of the Executive that is not independent. For this reason, we should get a ruling on the matter from the European court.

Second, the Commission claims that this is not about Ireland’s corporate tax rate, yet when the Vice President of the Commission, Mr. Joaquín Almunia, launched the three investigations in June 2014 in respect of three multinational companies in Luxembourg, the Netherlands and Ireland, his first statement was: “In the current context of tight public budgets, it is particularly important that large multinationals pay their fair share of taxes.” Every Deputy agrees with that, but he cannot seek to use the EU’s competition directorate and state aid rules as a battering ram to get into an area where the Commission does not have jurisdiction, namely, corporate tax.

Let us think about this. Ireland is being presented abroad as being in some respect a tax haven for multinationals that only avail of Ireland for the purpose of having a plate on a wall. That is an insult to the 180,000 people who work for multinationals and ignores the fact that 80% of our corporation taxes are paid by multinationals and the fact that 50% of our PAYE and VAT comes from multinationals.

Third, the ruling presents the country as having been involved in illegal state aid for the past 30 years. Let that be reviewed by the European court. It is instructive to note that the Netherlands and Luxembourg have invoked Article 263 to go to the European Court of Justice. I do not know whether they have seen such excited responses in their countries, but one is perfectly entitled to use provisions within the treaty if one wants to test certain rulings.

We must consider the consequences of not seeking to review the ruling. We would be accepting that the Revenue Commissioners had entered into an unlawful arrangement with Apple and Ireland had acted unlawfully for 30 years, acknowledging that certain multinationals got special treatment, informing potential future employers that this was an economy that did not operate a level playing field, allowing the Commission to state before the European court that Ireland had accepted all of its findings, and telling Apple something after saying something else to it for 30 years. Finally - and this is a matter for lawyers - the Commission’s ruling is not consistent with the body of European Court of Justice case law. The Commission may win or lose, but there is an arguable case for having the ruling reviewed. We must not allow a case to go before the European Court of Justice that involves Apple and the European Commission, and at the heart of which is the integrity and honesty of the Irish tax system, without our being present. That is not tenable.
Minister for Education and Skills (Deputy Richard Bruton): I am delighted to support the motion. There is much at stake in the debate, as Deputy O’Callaghan mentioned. Not just multinational enterprises, but every enterprise in the State depends on the certainty provided by tax law, the Revenue rulings underpinning it and the Revenue procedures that apply. Multinationals, which employ 350,000 people directly and indirectly, and every Irish business depend on the integrity of the Revenue Commissioners in the way that they apply the law.

In the ruling, Revenue stands accused of knowingly and unlawfully colluding to give one company an unfair advantage. This is false and unsustainable. The chairman of the Revenue Commissioners has stated emphatically that there was no departure from the application of Irish law by Revenue, no preference was shown in that application and the full tax due was paid in accordance with law. That is correct. At the time, Revenue’s standard practice was to tax based on activities conducted in Ireland. This was the standard approach taken by every revenue authority in the world. It now stands accused by the Commission of not applying rules in respect of transfer pricing, for example, which are not even agreed now, never mind being in operation in 1991 or 2007. The Commission takes a similar view in respect of the way that companies and their various subsidiaries might be treated.

It is all very well and right to say that we should have a better tax regime to prevent overaggressive tax planning, but we must do that through the procedure established by the G20 and the OECD, namely, the BEPS procedure. Ireland has been a leading player in that regard and we are applying changes in our tax code each year to ensure that it is robust, that people are not aggressively exploiting it and that tax is related to substance in the country. This is the principle that the OECD has adopted.

The Commission’s principles are different from the OECD’s. It is taking the view that tax should be based on worldwide activity, and that tax officials in Ireland should become global policemen for all of the tax liabilities of a company. That was untenable in 1991 and 2007 and it remains untenable now. The staggering nature of this decision underlines why it must be appealed. The idea not only that Revenue should be the tax policeman for the whole world, but that taxes should be collected retrospectively based on what the Commission now feels ought to have been the laws and conventions at the time instead of what they actually were, is staggering in its implications for companies that invested in our country in good faith on the basis of our tax laws, the Revenue rulings on which they have made those investments and the tax law underpinning them. That is what we are doing by appealing.

The Revenue Commissioners have always defended their independence. They apply rules independently, a fact that has always been respected by the political process. Revenue is under attack and there are profound implications for companies that expect certainty concerning the tax regime. Some of them are investing €1 billion in plants. They expect that the Revenue rulings on which they have made those investments can be relied upon and that the Irish State will stand over those independent rulings and the tax law underpinning them. That is what we are doing by appealing.

The Commission has made a decision in which it has set itself up as the prosecutor, judge and executioner. Under European law, member states and individual companies such as Apple have a clear right to dispute such rulings. Many of the Commission’s rulings of this nature have been overturned because they were without foundation in fact or in the applicable legislation. For companies, and, in particular, the IDA, which promotes Ireland as a location where there is tax certainty and a good business environment, the implications of not contesting this decision would be profound. I strongly support the decision to appeal.
The world is changing and we need to move our tax code, as we have been doing, to address instances in which companies can aggressively play Irish tax law against other countries’ tax laws. While this issue needs to be addressed, it should not be dealt with by the Commission by targeting individual companies with unsustainable retrospective tax claims or going after individual countries. It must be done collaboratively, with countries working together through the OECD’s agreed structures. This is what Ireland intends to do and we will continue to uphold strong standards in our Revenue Commissioners.

Minister for Communications, Climate Action and Environment (Deputy Denis Naughten): I welcome the opportunity to contribute on this motion. No one was surprised by the Commission’s announcement last week. Given the preceding announcements concerning Belgium, the Netherlands and Luxembourg, it was likely that a similar announcement was going to be made last week. Many of us were surprised by the scale of the figures involved, though.

It is important to remember that, in 2011 after the previous Dáil was formed, we needed to establish a special committee to examine the common consolidated corporate tax issue that the Commission was pushing. It wanted a common tax rate for corporations across Europe. That agenda is still there. When the announcement was made, it did not come as a surprise to many. In fairness, during the discussions for the programme for Government, the issue of the tax liabilities of multinational companies came up. The programme stated under the heading, Tax Reforms to Keep Ireland Competitive:

We will maintain Ireland’s 12.5% corporation tax, and engage constructively with any measures to work towards international tax reform while critically analysing proposals that may not be in Ireland’s long term interests. We will work with our international partners in tackling aggressive international tax planning through the OECD’s base erosion and profit shifting, BEPS, initiative.

That is a clear commitment from the Government to ensure everyone pays their fair share of tax, whether a multinational corporation, an Irish business or an individual taxpayer.

What was surprising about the Commission’s decision was that it claimed Ireland acted illegally. In that regard, it is important to point out that tax law is decided by Dáil Éireann, effectively by the people through the Dáil, not by the European Commission. I was surprised by the Commission’s announcement to retrospectively apply today’s rules, to go back over the past 25 years, claiming it was state aid. What I found bizarre was that while the Commission claimed this was state aid provided to Apple, it then stated the money should be put into a separate account so that other EU member states and the United States could lay claim to that money. If it was state aid from Ireland, why then have other EU countries the opportunity to access it? Why then must we put it in abeyance in a separate bank account on which they can make a claim?

The day after the Commission’s announcement, a Commission official stated that not only could we use the money straight away, but that we could break the EU agreement in place and, instead of actually using the money to pay off our national debt, we could use it for other purposes. The Commission has given several contradictory statements both in its official communication and side briefing.

The only way to clarify this is to have a clear court ruling. No one argues with the fact that multinational companies should pay their fair share of tax and we should close off any anoma-
lies in this regard. However, there are those who argue we should spend this €13 billion. Many
of them are opposed, or at least lukewarm, to the 12.5% corporate tax rate. It is important to
remember this is not our money. We have collected all taxes due from this particular company
and other multinationals based here. That was acknowledged by the Commission when it said
there are other countries which could make that claim. Essentially, it is like finding a wallet
with €1,000 in it on O’Connell Street in Dublin and phoning the contact number in it. The
owner says they are at Dublin Airport and will be out of the country for two weeks and they ask
us to hold on to it until then as the money is to pay the ESB and telephone bills, as well as the
mortgage. However, we go and spend it all in Arnotts instead. That is effectively what we are
being asked to do by those who want to spend the Apple money. We cannot spend money that
is not ours.

However, if the money is paid over, there is an opportunity to lodge it in an account and use
the interest off it. Like with the Dormant Account Fund, it could be used to target communities
across the country which have seen a devastating impact from the recession. These commu-
nities could be supported by one-off grants from using that particular asset while it is on deposit.

**Deputy Billy Kelleher:** I welcome the opportunity to speak on this motion regarding an
appeal of the Commission decision stating that Ireland acted unlawfully with regard to state aid
due to its tax rules and dealings with Apple. Some of the amendments to the motion from some
Opposition parties look more like a philosophical debate at a political summer school, what
with socialist republics and everything else they want to establish. In the meantime, we have
an obligation, first and foremost, to protect the integrity of the Revenue Commissioners and the
industrial policy pursued by the country for the past 40 years in attracting multinationals and
foreign direct investment.

That policy has been a success story. However, according to some in this debate, it is taken
for granted that all multinationals would locate in Ireland just because they felt it was a nice
place. This investment is actually won by IDA Ireland’s diligence, the proper open and trans-
parent corporate taxation system, the political consensus around the 12.5% corporate tax rate
and, by and large, the political stability Ireland has enjoyed for many years. These factors are
coupled with other areas of importance such as the fact we are English-speaking, we have his-
torical connections with the United States and many chief executive officers in America come
from Irish descent. While the latter might be seen just as an issue of historical importance, at
the same time it allows us access to corporate boardrooms across the globe. There is significant
competition in attracting multinationals, not just in the European Union but across the globe
with the Singapores and Puerto Ricos which are consistently selling their countries as places for
multinational and foreign direct investment. Ireland has been the success story in this regard
both in the European Union and globally. That in itself must be protected.

I have an interest in this issue because Apple is located in the Cork North Central constitu-
cy. Everyone watching the Commission’s investigation into this issue expected some form of
an adverse finding. Obviously, the scale of the revenues the Commission said we should collect
from Apple is enormous and took us by surprise. However, the Government should not have
been surprised by the adverse finding. I was taken by surprise by the Government’s sixes and
sevens approach several days after the finding. It seemed to be incapable of coming out with a
unified voice standing up for Ireland and the integrity of the nation, the Revenue Commission-
ers and our industrial policy. It seemed for a while that we were apologetic that we have had
such success with foreign direct investment over the past 40 years. That undermined the integ-
rity and perception of Ireland globally. It also gave an opportunity to our detractors who would
love to see Apple and other multinationals located in their countries. For the Government to be lacklustre and incompetent in its initial reply was unacceptable, particularly due to the fact it was forewarned since 2014 that there would be an adverse finding in the Commission’s investigation into state aid rules.

The European Commission has overstepped the mark. It is using competition law and state aid rules to get the common consolidated corporate tax base, CCCTB, on the agenda through the back door. There is no doubt that there is a political bureaucratic agenda in Brussels to bring about a common rate in the CCCTB. That in itself will benefit other countries because it will undermine our capacity. We have challenges as a peripheral nation with a small population. One of our strengths has been our ability to offer certainty with the corporation tax rate, quality English-speaking graduates, a good environment and our historical connections with the United States and Europe. However, there can be no illusion that our corporation tax rate itself is of significant importance in competing for foreign direct investment on the international stage. It must also be borne in mind that there are other countries which have lower corporation tax rates and are actively attracting multinationals.

It beggars belief that some of the amendments to the motion dismiss the success of foreign direct investment in this country. Sinn Féin, the Socialist Party and People Before Profit are all of the view that somehow multinationals would just come to Ireland anyway. That is not a credible position to hold if one has any knowledge of how the corporate world works and the international competition in attracting foreign direct investment.

4 o’clock

First and foremost among the reasons we must appeal the Commission’s decision is the need to protect the integrity of the Revenue Commissioners in dealings with all entities under Irish tax law, whether they are individuals or multinational companies. It is extremely important that companies and individuals have certainty that they will be dealt with by the Revenue Commissioners on the basis of tax law. Cé mhéad nóiméad atá fágtha agam?

Acting Chairman (Deputy Bernard J. Durkan): Tá an t-am go léir imithe.

Deputy Billy Kelleher: I hope the House can revisit this issue because a broader political debate is required. To respond to some of the comments made in this debate, Deputies should not be under any illusions; foreign direct investment has helped the economy and generated a large number of embryonic spin-off companies which service and learn from multinational companies. Software technology is one area which has developed because Intel and other companies have been located here for many years.

Deputy John Brady: It appears that Leona Helmsley, an American business woman, has been exonerated for saying of rich people that they do not pay taxes because only the little people pay tax.

Deputy Billy Kelleher: Slab Murphy.

Deputy John Brady: Fine Gael and Fianna Fáil appear to share Helmsley’s ideology.

(Interruptions).

Deputy John Brady: I have obviously raised a touchy point but I would like to speak without interruption.
Acting Chairman (Deputy Bernard J. Durkan): The Deputy should not provoke the audience.

Deputy John Brady: Why would multinational companies choose anywhere other than Ireland when one such company which made €16 billion in 2011 paid only €50 million in tax, which amounts to a tax rate of 0.5%? In 2014, the same company paid tax of 0.005% on all of its profits. One sector which pays correct taxes year on year is the small and medium enterprise sector, SMEs. Could SMEs suit themselves and pay, for example, 1% tax in one year, 0.5% in another year and perhaps 0.005% the following year? Absolutely not. Are such practices acceptable only in respect of the likes of Apple? We are aware of the Apple case but other cases involving multinational companies may still come to light. While these companies have sweetheart deals, small businesses are left to struggle and in many cases were forced to close because of increased costs and taxes.

There are 237,753 small and medium enterprises active in Ireland, with figures from the Central Statistics Office showing that some 919,985 people are employed by these businesses. In 2011, at the height of the recession, five companies closed down every day. Imagine how the owners of small and medium enterprises must feel. They struggle to pay their taxes and do so because they have no choice as paying a tax rate of 0.005% is simply not an option for them.

Fianna Fáil, Fine Gael, the Labour Party and a number of Independents are busy standing up to Europe against a decision requiring the second wealthiest corporation in the world to pay unpaid taxes. What are they doing for ordinary men and women who own small businesses, specifically those which managed to remain open without any help throughout the period when the Government was pursuing its austerity agenda? The revelation regarding Apple must stick in the throats of the owners of small business who are struggling to pay taxes and charges but still do so down to the last cent. We are told Ireland simply does not want the €13 billion Apple owes Irish people in unpaid taxes. This is a great country in which to do business if one is a multinational company.

In 1989, Leona Helmsley received 16 years in prison for a wide variety of tax offences which resulted in several million dollars being owed. In this case, the sums involved are billions rather than millions. We need a tax regime that is transparent and fair for all.

Deputy Martin Kenny: All day, I have heard that we must defend the 12.5% corporation tax rate. While that is true, the only one on the pitch attacking the 12.5% rate is Apple, the largest corporation in the world, which did not pay its taxes in Ireland. The reputation of the country is the other major talking point of the day. For Ireland to appeal the European Commission’s finding on Apple would be even more damaging to its reputation because it would involve defending tax evasion.

At the root of this issue is the fact that Apple sales outside of North America and South America were all done through two companies incorporated in Ireland. The companies, both of which were located in Cork, established another company known as head office. Sales from all over the world were recorded in the two offices. In its two rulings, the Revenue Commissioners agreed to allow all revenues accruing to the two companies to be routed to the head office to avoid paying taxes on them. That is the nub of the issue.

Irish people have been done out of the tax revenue that would have been paid on profits of €104 billion if the corporation tax rate of 12.5% had been applied. The 12.5% rate must be
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defended, which means that all tax on the €104 billion sum must be paid. If it is to be collected, it must be paid to Ireland where the company in question was incorporated. VAT and other sales taxes were collected in the countries where the sales in question were made. However, Apple brought the profits from these sales to Ireland and established the company in question for this purpose. To suggest that this money somehow does not exist or belongs to other countries is absolute nonsense. The money exists - it is to be placed in a bank account - and should be available to Irish people. People are lying on hospital trolleys and waiting for operations, yet the Government intends to turn its back on a sum of €13 billion. It is not good enough to walk away. The Government’s decision to appeal the Commission’s ruling is a statement that it believes tax evasion is correct. That is a terrible thing to put on Irish people.

Minister of State at the Department of the Taoiseach (Deputy Regina Doherty): In the past 20 years, the Taoiseach of the day has asked the Office of the Ceann Comhairle to recall the Dáil on only a handful of occasions, namely, to discuss the attacks on 9 September 2001, the war in Iraq in 2003 and the nationalisation of Anglo Irish Bank in 2009. The decision of the European Commission last week is as important to the country’s future as any of these issues. I thank the Ceann Comhairle and his office and staff for facilitating this debate. In particular, I thank the staff of the Office of Public Works who, in a short time, transformed the Chamber from a building site to what we have today.

The Taoiseach’s request to the Ceann Comhairle to recall the Dáil from recess highlights the importance to the State of the European Commission’s decision that Ireland provided unlawful state aid to Apple. In making its decision, the Commission has decided to ignore the detailed case made by Ireland and disregard the steps being taken at international level by countries, including Ireland, in the area of global tax reform. It has alleged that Ireland and our tax authorities did something that was wrong and contrary to European Union competition rules in our dealings with Apple. The allegations are unsupported by any evidence of substance. The ruling is contrary to the EU treaties and a clear trespass into an area that is the responsibility of the member states, rather than the European Commission. The decision is unlikely to survive scrutiny in any court of law and must be challenged for this reason.

The Commission has instructed Ireland to recover €13 billion plus interest from Apple. This would mean that the worldwide profits for the Apple sales companies concerned, including intellectual property developed in the United States, would be taxed in Ireland. This is a serious departure from normal international best practice on taxation policies. The Commission also stated that the sum to be recovered by Ireland could be reduced if other countries were to require Apple to pay more tax or if the US authorities required Apple to pay larger sums to their US parent company. The result of this is that while the Revenue Commissioners may be tasked with collecting the money, even if the Commission’s decision were to survive an appeal, it is highly likely that a number of countries would seek to recover their fair share.

The Commission’s decision ignores the EU treaty provisions which confirm that taxation is a matter for each member state. The move calls into question the Commission’s attitude towards the sovereignty of member states, especially smaller member states. In doing so, it is playing into the hands of those who cheered the Brexit result. The action of the Commission in this case will no doubt be used by those who want to undermine and destroy the EU. They will claim it is an example of an EU power grab at the expense of nation states. Protecting the core principle of the treaties that govern the European Union is alone a valid reason to appeal the decision.
The Commission’s decision has used competition rules to target our Revenue Commissioners and taxation policy, including our 12.5% corporation tax rate. There is no doubt that in some offices in Europe there is resentment towards the success of our small country in attracting foreign direct investment. The 12.5% corporation tax rate has been the bedrock of our policy in this area and has been a target for a number of years by those who begrudge our success. The Netherlands, Belgium and Luxembourg have all appealed Commission decisions under state aid rules on tax issues. Like these other small countries, Ireland must make this appeal to protect the way the IDA Ireland attracts foreign direct investment, to secure our 12.5% corporation tax rate and to provide tax certainty for our potential future and existing investors.

The Commission has ignored the impact the decision could have on the wider Irish economy. As a country, we are slowly recovering from an economic crisis that included widespread job losses and unacceptably high levels of unemployment. Thanks to initiatives such as the Action Plan for Jobs we have seen unemployment fall significantly recent years. Failure to appeal this decision could create uncertainty that would have a negative impact on our businesses and investments in the economy in future.

Today we can see the political divide more clearly than we have ever seen it in this Parliament before. Some Members would like to think this is a lotto win that we can spend on any number of things that we should be spending money on. Indeed, we are spending money on these things but it is not a lotto win. Like the description of fool’s gold, it is not there for us to spend. The position of the poisoned chalice the Commission has handed down to us could hamper the fragile recovery we are going through at the moment as well as the ambitions we have for our future.

I am asking the House to support the motion today because I believe it makes a clear statement to the European Commission and the wider audience that taxation matters are for member states under existing EU treaties and that we intend to exercise our power by protecting our 12.5% corporation tax, our research and development tax credit and our knowledge box development arrangements. Ireland may be a small member state of the EU but it is a full member state of the EU and, as such, the country is entitled to protect our rights under the EU treaties and develop taxation policies that help economic growth and job creation. That is the fundamental task we are going to face.

Deputy Michael Moynihan: I welcome the opportunity to speak in the debate. Over the course of the morning and early afternoon, we have heard diverse opinion on the ruling by the European Commission. There are three strands to it. Since the 1970s all aspects of the State have been actively seeking foreign direct investment into this country. To be fair, they have marketed themselves well and have competed well with other countries to get large corporations into this country. They have been constantly looking at ways of getting them in. This has not only been done through corporation tax. They are coming in because of our education system, employees and so on. We have benefitted remarkably from it.

Let us consider the ruling last week from the European Commission. We have been looking to Europe since we joined the Common Market in 1973 as well as at the benefits that have come from being part of the Single Market. The Commission has made different rulings. It has made this ruling but it is at variance with what I believe Europe should be. Europe is supposed to be a collective, doing the best for each member state. The Commission has made a ruling which has challenged the integrity of our taxation system and the integrity of the way we have operated a taxation system over the decades. We have to challenge it strongly and cohesively. The
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ECSC was set up after the Second World War. The idea was to bring Europe together, protect member states and give everyone a fair chance. We have ponied up to that. We have marketed ourselves within Europe in this regard.

We have challenged this ruling by the Commission but what is the rationale behind Europe challenging us? Is there a political dimension to it? I know some people in Europe have said that they have interpreted the law as it is but is there a political dimension to it? Is there a greater issue along the lines of Europe versus the USA?

Fundamentally, Ireland has bought into each treaty. It has bought into Europe in a major way to ensure we have a better understanding and quality of life for our citizens. By and large, it has worked. However, there comes a point when we have to challenge all the rulings. Rulings have been handed down by the European Commission in other aspects of life and we should challenge those as well. As a society, we should be looking at how they have come about and how the Commission has been given the space to make a ruling like this.

The operation of Apple in Ireland has been of enormous benefit to Cork. One of the major regrets I have is that back in early 1980s Apple came to both Cork city and to Millstreet in north Cork but then it ceased the operation in Millstreet and moved the lot to Deputy Kelleher’s constituency of Cork North-Central. It has grown and has 6,000 employees.

Let us consider the others corporations throughout the country. We have been challenging other countries. We have been challenging the best of them and we have come out on top.

I believe this decision is fundamentally wrong. We have collected the taxes due to the Irish nation based on the activities within Ireland. How can they undermine our taxation system? As our spokesperson, Deputy Michael McGrath, so eloquently put it this morning, it has stood the test of time in good times and bad times since 1923. We have to be sincere about standing up for our rights as the Irish nation. We have to be sincere about showing that we have done our business, as have the Revenue Commissioners. Of course it would be easy to take €13 billion and spend it on any number of necessary projects but it is not as simple as that. As a society we need to ensure that we challenge Europe. We must ensure that we do not take diktats from faceless bureaucrats on a raft of issues that affect ordinary citizens in this country.

I support the motion to appeal this decision because I believe it is the right thing to do. We should be clear that we have corporation tax, a system and a fantastic workforce. We should continue to attract the best companies into the country because not alone do the best companies directly employ people but there are spin-offs throughout the country as well. Anyone in areas where there is foreign direct investment can see the spin-offs. We have to stand by our State, whether in the guise of the Department of Jobs, Enterprise and Innovation or IDA Ireland or any other agency of state. They are working in the international market fighting for Ireland. We have to do that but we also have to make clear to the European Commission that there is no sense in what it did last week.

Deputy Tony McLoughlin: Thank you, Acting Chairman, for the opportunity to speak on this important motion. I wish to place on the record my deep disappointment and concern that the decision to appeal this ruling took so long to be agreed on by the Government. It should not have required a media circus and a number of days of political turmoil to make a decision that is in the best interests of the country.

I will be supporting the Government’s motion to appeal the European Commission decision.
I do so as I believe that the Government needs to defend the integrity of the Revenue. Revenue did nothing wrong and did not break any laws. I also believe that as a sovereign nation we need to ensure the European Commission does not begin to try to interfere in taxation policies of any EU member state.

Quite simply, I believe that the European Commission’s finding was wrong. As the records show, the full amount of tax which Apple owed to Ireland was paid in full and no state aid was provided. Ireland did not give favourable tax treatment to Apple and we did not do any deals with taxpayers. Judging by the contradictions on the day of the ruling, the European Commission seems to want Ireland to police international taxation while also collecting tax that may be subsequently obtained from Ireland by other EU member states at a later date. This is simply not acceptable and it sets a dangerous precedent. We must fight this finding in the European courts in order to protect Ireland’s international reputation as a place in which to invest. While there is a bigger debate ongoing about international tax avoidance, I believe that the day of big corporations getting away with tax avoidance in the EU is gone.

I say this because, Ireland, as a founder member of the OECD, has been at the forefront of international tax reform. Ireland has been an early mover in implementing the OECD’s base erosion and profit shifting, BEPS, project and we have participated fully in important reforms at EU level through the recent anti-tax avoidance directive. These changes in taxation are widely recognised as being of the highest international standards. In fact, these changes have already resulted in Ireland taking in more corporation tax in 2014 and 2015 than in any previous years.

Ireland is also a strong supporter of tax transparency and administrative co-operation, which are key to tackling the global problems of tax avoidance and aggressive tax planning. While I have no problem saying that Apple may owe this €16 billion in taxes to some other countries, it certainly does not owe it to us. To say otherwise is ridiculous.

In the wake of the European Commission ruling on Apple, there has been much talk about Ireland’s corporate tax and how the European Union may be targeting our 12.5% rate in the long term. I want to be very clear on this issue; our 12.5% rate is not up for negotiation and the European Commission needs to realise this. Ireland’s 12.5% corporate tax rate is essential for jobs in this country.

For example, in my constituency of Sligo-Leitrim it has enabled major inward investment from world leading companies such as Abbott, AbbVie, Masonite, GlaxoSmithKline, Vistamed, Pfizer, and many other large multinational companies which employ thousands of people. I do not think people employed in these industries in Sligo or Leitrim would welcome the counter-motion offered by Sinn Féin today, which would put their jobs in real danger. As long as Fine Gael or any party that supports job creation in this country is in government, this 12.5% rate will remain in place and we will ensure that Ireland remains attractive for foreign direct investment.

We need to appeal this decision, as we need to defend the integrity of our revenue system. We need to restore our international reputation which has been damaged by this ruling. We need to ensure the EU does not begin to have any say in any member state’s taxation policies or laws and we need to be able to continue to attract FDI into Ireland.

**Deputy Marc MacSharry:** I am glad to have the opportunity to make a few points. This is the most serious challenge to face Ireland’s attractiveness for foreign direct investment since
the time of Lemass. The European Commission has been remarkably political in how it made this announcement. At the initial press conference the relevant Commissioner said this was the most important day politically for President Junker. To use an analogy with which we are familiar in this House, to do what the Commission did would have been as if we had released the report of the banking inquiry before it was legally proofed by all those mentioned in it.

It seemed to have much more to do with facilitating the media spin the EU wished to achieve internationally in its relentless and aggressive pursuit of the Irish effectiveness in marketing itself as a location for foreign direct investment since the time of Lemass. The relentless pursuit of portraying Ireland as a Bermuda - somewhere that flouts law to its own benefit at the expense of others - is fundamentally wrong. It is an appalling abuse on the part of the EU Commissioner involved and on the part of the Commission collectively for agreeing to go along with it.

To juxtapose the state aid rules in Article 107 and 108 of the Treaty on the Functioning of the European Union and in some way to use that to determine the tax laws of an individual country is fundamentally wrong. Articles 107 and 108 clearly state that any state measure that grants a selective advantage that distorts competition and affects trade between member states is, in effect, illegal and is state aid which is disallowed. The European Commission claims that Apple’s Irish subsidiary received an advantage that was not open to other Irish companies. This is simply not the case and I believe our appeal will clearly show this.

Against the backdrop of much spin in the media and by certain politicians, it is a matter of great concern that in the first instance the Taoiseach did not book time with the national broadcaster to explain to the people why this money is not owed to Ireland. If it was, of course, we would all want it. It simply is not ours and the Taoiseach should have done that, and still should do it. He should go on an international onslaught to counteract the damage that has been done by European authorities in the way they have manipulated the international agenda against Ireland in this regard and show that we have been far from flouting tax law. Speaking of the changes we have made over the years, the Secretary General of the OECD stated: “Ireland has been staying the course and it is making the necessary modification and the adjustments and I’m very happy, very proud to say Ireland has been a strong and very exemplary case…”

There has been no mention of the US tax code and how it permits the deferral of the repatriation of profits. One need only go back to the United States JOBS Act of 2013 and 2014 which, in an effort to fund the measures President Obama had put forward at the time, encouraged multinationals resident in the US to repatriate profits to fund those systems, which did, in fact, occur. As other Members have mentioned, €13 billion or some billions may well be owed and may well be owed to the American Exchequer in line with their roots, but they are not owed to us.

What the European Commission has done in this instance is simply reprehensible and it has been highly selective in its application of its own rules. There was a national example of this in the past 24 hours. Where is the European Commission on Volkswagen’s breaches? One is bound to say that Volkswagen, which is resident in Germany, does not seem to have had the necessary scrutiny. In this country yesterday, the legal representatives of Volkswagen walked out of a court, wishing not to acknowledge the authority of a court in this country. The Germans have form on this, going back to the London debt agreement in 1953, where it decided to cut the bill in half. Then in 1989 following the reunification of Germany, it decided not to pay any interest either. There was no issue with that.
The reality is that there is frustration with the success of the Irish model of taxation and in creating a template that is attractive to foreign companies. The European Commission has now used state aid law to try to manipulate an interpretation of tax.

The Taoiseach needs to go on an international offensive in this regard. We should not be afraid to unilaterally condemn the action of the European Commission which is operating way outside its remit at this stage. While we in Fianna Fáil, like so many others, are totally committed to the European project, against the backdrop of what we have seen in this instance and in Brexit, it may well be necessary for the EU to take a couple of steps back in order for us to identify the correct steps forward.

Deputy Michael Fitzmaurice: I appreciate the opportunity to speak on the motion. A few years ago when there were referendums on treaties and leaflets were coming in the door, it was interesting to see the suggestion that we were going to be at the heart of Europe. We wanted to be in the kitchen because Europe was so good for us. It is interesting to see - it is actually great to see - that many of these people right across the House have finally decided to come around to my thinking when I questioned everything about Europe. They are now becoming eurosceptics because of one ruling.

I do not believe Europe should have any say whatsoever in our tax affairs. I do not believe that someone such as Jean Claude Junker should even be commenting. It is time for the Irish people to stand up. It is interesting to hear the Taoiseach talking about Ireland’s sovereignty. However, unfortunately when bank bailouts and deal-breakers were being done, we were not so fond of putting on the Irish jersey.

I would like to mention a fact about this ruling that applies regardless of whether it is appealed. The position at the moment is that it will be appealed. I have been looking at a case that is under appeal. It has been on the go for 12 years. The whole thing about getting an answer is a way of fobbing us off because this will be kicked down the road. That is the reality. The proceedings of the European Court of Justice go on and on. We will not get a decisive answer in the near future. It will cost a great deal of money for our nation to appeal this judgment. We know that Apple is appealing it. If I go to court here as an Irish business person, will the Government offer to help me? No, it will not. It has never done that. It has acted in an unusual manner in this case.

I firmly believe that sweetheart deals were made. At the moment, Europe is trying to use the side door to attack our tax policy. We should not entertain that, end of story. We should tell Europe that we will run our affairs as we see fit. We should then sit down with the likes of Apple to sort out how much tax they are paying and how much money they owe us in reality. We cannot bring anyone back to 1991. I firmly believe money is owed. It galls me that I have seen Revenue bringing small and medium-sized companies to court and basically putting them out of business, while other companies have been getting favourable rates. That has been especially evident since the recession hit. The Irish companies to which I refer employ people throughout the country. Every one of us knows that multinationals are important to this country, but we cannot allow them to pay just €50 in tax on every €1 million they make in profit. That cannot be tolerated at a time when Irish companies that employ many people are not getting the breaks they should get.

We need to cut to the chase in this country. We have to be competitive with France and other countries. If we have to bring the tax rate back to a real rate of 6%, that is fine and we should
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do that. What is good for the goose is good for the gander. Irish companies should be treated the same as any of the multinationals that come in. Irish companies around this country employ more than 1 million people. These small and medium-sized enterprises have not been given the favouritism that has been given to some multinationals. I fear that this is the tip of the iceberg when it comes to looking at things. We are setting a legal precedent by letting Europe look at something belonging to us - we are going to appeal in this case - while maintaining at the same time that we have our own autonomy over that matter.

I want to make it clear that this is not about state aid. Europe is going in the side door to take on our tax regime. Michael O’Leary was right when he said we should tell Europe where to go. I think there is money owed. We have to sit down with the likes of Apple to sort out a deal. At the moment, ordinary people are paying tax of between 40% and 50%. Companies are paying tax of 12.5%. Over the last week, I have heard references to the possibility of inward investment in companies in Ireland being affected even though no one is questioning our 12.5% tax rate. If we do not make sure that someone who sets up a company in Donegal or Kerry and creates two or three jobs is entitled to the same benefits and sweetheart deals as anybody else, we will not encourage entrepreneurship in our country. The Government needs to get it into its head that if every company in Ireland were told it could pay just €50 on every €1 million in profit, it would have no reason not to employ many more people. That is what any of us would do in such circumstances. The Government needs to wake up to that reality.

Minister for Transport, Tourism and Sport (Deputy Shane Ross): I thank the Ceann Comhairle for the opportunity to speak as part of this extraordinarily important debate. It is a watershed debate in the history of this Dáil and maybe in the last decade. I take issue with those who have said there was political turmoil in the Government during the last week. I suggest that the opposite has been the case. It is true that the suddenness of this decision, in the middle of the summer recess, took some of us by surprise. I will explain what happened thereafter. The Taoiseach called a Cabinet meeting. The Cabinet, which contains people of different points of view, met and had a very mature discussion before deciding, not unreasonably, that it was reasonable to adjourn our deliberations for 48 hours on any historic decision we might make because there were differing points of view which needed to be accommodated. Such an adjournment was agreed without any rancour or difficulty. There was no suggestion from those involved that the survival of the Government was in any danger. In fact, all sides were determined to accommodate one another. I take my hat off to my Fine Gael colleagues because they were prepared to accommodate us. We were also prepared to accommodate them. The suggestion that the agreement to take an additional 48 hours to consider such an important decision was a sign of some sort of political turmoil is absurd. Today, as a result of our deliberations, the Dáil has been recalled in the middle of the summer recess for an important and very good debate. We see divisions and unity in Irish political life which we have not seen for many years.

This is so important because the history of multinationals in this country is one which has been full of ambivalence and difficulty for all parties and all people. On the one hand, when multinationals first came into this country they were not terribly welcome in emotional terms, partly because many of them would not accept trade unions in their midst and partly because they did other cultural things which were difficult for us to accept in the early days. On the other hand, there were jobs and they became gradually accepted in this country. I suggest they were grudgingly accepted because of their foreign nature and their attitude to trade unions.

In addition, there was rightly and understandably a difficulty about what were seen as the tax rates they were paying. I agree with Deputy Fitzmaurice that the people of this country need to
have confidence that multinationals, just like small businesses, are paying their fair share of tax. The unease that has existed about decisions on tax that were made in favour of multinationals is certainly manifest here today. It is right and it is understandable. We have been able to express two conflicting emotions in the motion we will vote on tonight. I refer to the compelling nature of our determination not to sacrifice a single one of the jobs brought to Ireland by multinationals, and also to the need to satisfy other people and other businesses that multinationals are paying their fair share. I believe that what the Government has done fulfils that ambition. We have recalled the Dáil, which is the place where such a historic decision should be supported, if not decided. We have also done something mature, non-aggressive and non-threatening in establishing a review to look into the amounts of tax being paid by corporations in this country. Up to today, that was a taboo subject. It was an area where people feared to tread. This review is not being established to threaten anyone. It is being done to reassure people that their fears in this regard, which were legitimate in the past, will no longer be tolerated and to reassure multinationals that the jobs they have brought here are invaluable and are appreciated and that we will not in any way threaten their existence in this country. Multinationals are welcome and it is hoped that they keep coming. At the same time, we need to ensure the people of this country see them as paying fair tax rates.

Deputy Carol Nolan: We need to be very clear about one thing - this Government and its predecessors were elected to serve the citizens and not to bend over backwards to help corporations like Apple. It is wrong that citizens in this country are left struggling, householders are paying unfair taxes such as property tax and small and medium enterprises, SMEs, which create 70% of the employment in the country, are left to struggle. If an SME owes a small sum of money it is chased by the Revenue Commissioners to the point of harassment. That is morally wrong. We need to be very clear on this tonight. Self-employed people have never received any assistance from any government. Here we are trying to safeguard a big corporation which could easily afford to pay more than 0.005% in tax. It is very wrong. We need to be accountable and we need to stand up.

Over the past few weeks I have heard a lot about the need to defend our corporation tax rate. Our low corporation tax rate is essential to attract foreign direct investment and create jobs and I agree totally with that. We must defend our right to set our own tax laws as a matter for a sovereign state. I agree that we, as a small island on the periphery of Europe, must be competitive, but let us be clear: our corporate tax rate is not the only attraction we have for foreign direct investment. We have many good points. Our young, skilled, English-speaking workforce is just as critical to our foreign direct investment strategy as our corporate tax rate.

It appears to me that the Government is willing to risk the reputation and integrity of our State to appease multinationals. Yet that same Government, cheered on by Fianna Fáil, is content to let the education system that provides us with the skilled and educated workforce that we need fall to rack and ruin, if we consider what is happening in the third level sector and in schools. Our growing student and graduate population is the envy of our competitors and represents a huge opportunity for our State in terms of attracting foreign direct investment. Successive governments, however, have stood idly by as a funding crisis emerged in our higher education system, while 2,000 staff were taken out of the sector, core funding per student dropped by 20% and college fees rose to a staggering €3,000, one of the highest rates in the EU. Our citizens were told that there were no resources available to provide much-needed investment and that our students would have to make do with overcrowded libraries, laboratories and lecture halls for the foreseeable future. All this time, however, it appears that successive governments
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have stood over a grubby little deal that allows a billion-dollar company like Apple to pay a tax rate as low as 0.005% on profits. That is wrong. It cannot continue; it is unacceptable. It is high time the multinationals and large corporations, which benefit hugely from our people and our resources, pay their fair share. That is all we ask them to do: pay their fair share. A fraction of the €13 billion owed by Apple would address the funding crisis in third level education and lay the foundations for our universities and colleges to compete strongly on the international stage. This is not a question of our sovereignty as a nation or our tax rate, and it is certainly not a question of our ability to attract investment and create jobs. The European Commission has made that very clear. Once again our Government is siding with the corporate elite, which comes as no surprise to any of us, at the expense of our citizens, whom it should serve, and the best interests of the people of this State. I am proud to say that neither I nor my party, Sinn Féin, will support the Government in this pathetic decision to appeal.

Deputy Colm Brophy: I welcome the opportunity to contribute to this debate. I cannot figure out whether I find it amusing or appalling and sickening when I listen to lectures coming from Sinn Féin on this situation, on tax avoidance and the State losing money. I remind some of the Sinn Féin Deputies that the criminality of various people cost the State millions and maybe if Apple had been laundering a few iPads their objections might not have been quite so strong.

This issue boils down to jobs and the fact that this country has a pro-jobs policy, an inward investment policy that it can be absolutely proud of. The IDA, successive governments and the will of the Irish people have brought the best of international companies into our country. We have done that legally. We have done it right.

As someone who is pro-Europe and who has backed the EU in every referendum and decision since I was a teenager, and will continue to do so - because, fundamentally, the EU is good for Ireland and Ireland is good for it - it is with great sadness that I say we are in this situation because the Juncker Commission is possibly one of the most appalling ever. It is not there to do what a Commission is supposed to do - that is, to use its power to enforce the treaties, equally defend all member states and make sure there is balance and fairness. Its Commissioners are there to enforce their own warped political agendas at the bidding and behest of some of the big countries in the EU. In the past couple of months we watched the tragedy of a member state leaving the EU. I fought against it. I stood in this Chamber to say it should not happen. In its behaviour and the way it now seems to think it can behave towards small member states, the Commission is sowing the seeds of the destruction of the EU. We must consider whether there should be some sanction or some way of dealing with a Commission that has gone off the rails. It is no coincidence that former Commissioners say these rulings are absurd and that people who believe the Commission should be there for the reasons I believe it should do not support this political agenda. As a country we need to be very forceful about this. We have put up with, and agreed to, some things in terms of bailouts because we believed that was best for Ireland and for Europe. Now Europe needs a level playing field. It needs to recognise that all member states are equal, including the small ones.

At the heart of that is tax policy. The tax policy of a member state is that state’s concern and prerogative. The Commission cannot use a backhanded way of dipping into tax policy, calling it competition and an investigation into competition policy. Doing that is going down a slippery road because that is trying to bring in tax harmonisation. That may be what large member states want but it would be to the absolute destruction of a small member state like Ireland and the economic way in which we have built the jobs in our country over the past 20 or 30 years. If the Commission does not realise that it is going down the wrong road, the Government needs

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to point this out in its dealings with the Commission. Without those jobs, economic growth and the things we have been able to achieve since we joined the EU, sentiment can very quickly turn and the EU and the Commission might end up with another country that will no longer value its membership of the EU. For everybody’s sake, that would be a disaster. I urge the Commission to think again, although it has given this judgment. It needs to base its judgments on reality, leave the tax policy to the member state and be influenced not by a political agenda but by fairness.

**Deputy Declan Breathnach:** This appeal will decide once and for all if the finding of the European Commission confirms whether the activities in question were tax avoidance or loopholes that need to be closed. There should be no preferential treatment of any company or corporate entity. The Revenue Commissioners’ contention is that there was no preference shown in applying the law and that the profits which could be taxed in Ireland were taxed here in accordance with the law at the time. On the ruling, the fact that Ireland is required by law to recover the alleged State aid from the company pending the outcome of such an appeal is to be welcomed and should have been declared by the Minister a week or ten days ago. This would involve the recovery of additional tax payments over a ten-year period in accordance with the methodology set out in the Commission’s decision. The recovery sums must be placed in a ring-fenced escrow account. If the appeal is successful, the money will be repaid to Apple but if is unsuccessful and the Commission’s decision is upheld, then the sum will be paid to whoever is deemed by the Commission to be entitled to it. Estimates of how much Ireland would get are very much speculative at this point.

Ireland has been working hard on mismatches in the global tax system and agreed to adopt the European Commission’s anti-tax avoidance directive in July 2016. The European Commission states that Ireland is responsible for 60% of Apple’s tax liability. However, the tax liability should be in proportion to the number of people employed. Apple has staff in many countries around Europe. It has in excess of 6,500 in the UK, 2,400 in France, 2,200 in Germany and 5,500 in Ireland. It is obvious that the actual liability would be closer to €5 billion, although that is speculative. The tax liability should be based on where the workers are, the products produced and the value of trade in each region. Under Irish law, non-resident companies are chargeable to Irish corporation tax only on profits attributable to their Irish branches by reference to the facts and circumstances in each case. The Revenue Commissioners have reassured us repeatedly that this is what happened in the case of the Apple companies. Apple has in excess of 4,700 suppliers around Europe, with 23 European countries manufacturing parts. While 5,500 are directly employed by Apple here in Ireland, there are approximately another 2,500 jobs that exist because of Apple, such as security, catering and recruitment. Ireland has around 38,000 app developers, many of which are there directly thanks to Apple and Apple products, with huge growth in the app development sector since 2008.

Apple should pay its taxes wherever they are owed. It is widely recognised that the existing international tax rules were designed 80 years ago and that the international tax framework has not kept pace with global and digitally driven businesses. A global effort is needed to fix these issues. The decision to appeal the ruling of the European Commission is the right one. Why? Not to do so is tantamount to accepting that the Government and Revenue were doing something illegal. The Revenue Commissioners have been fully transparent at all times in applying Irish tax law to Apple Operations Europe. There was no breach of Irish law and no underhand deals. If the appeal is upheld, then whatever money is due to Ireland will be spent where it is needed. As I said earlier, we do not know that figure yet. According to European Commis-
sioner for Competition, Margrethe Vestager, if other countries were to require Apple to pay more tax on profits in their countries over the same period under their own taxation rules, then the amount to be recovered by Ireland would be much lower. The EU Commission decision is in conflict with global thinking on this issue.

There is also an interesting view from the US Treasury on how “impermissible actions” should be viewed in that there should be no retrospective recovery of “avoided tax”. It praises the appeal. It is all very well for certain people to trot out the populist approach of “take the money and run”. This is like chasing fool’s gold. I listened to Deputy Fitzmaurice talk about the golden egg and the goose. A more appropriate analogy is that there is no point in killing the golden goose to grab an imaginary egg.

Deputy Alan Farrell: I welcome the recall of the Dáil to debate this matter. I fully support the Government’s decision to appeal the European Commission findings, which have unjustly accused the Government of providing unlawful state aid to Apple. The setting of taxation levels is a matter of national sovereignty and it is the duty of the Government and, indeed, the Oireachtas to pass it. The Commission has no authority whatsoever to influence our tax policy, which has been said on many occasions over the past few hours. A number of fundamental questions arise from these findings. Did the Revenue Commissioners do a specific deal with Apple? Did we, by extension, ignore our own domestic laws and have Apple breach taxation laws in the Republic of Ireland? I believe the answer to those questions is a rather emphatic “no”. I am not alone in this.

We would all like €19 billion to spend on public services. We could, no doubt, devise a way of dividing it up among the 40 constituencies and deliver on pet projects that we all have. In my case, why have one metro north when we could have five? Of course, we live in the real world. We have a responsibility to defend not only the actions of this House over decades but also the Revenue Commissioners, who operate independently of Government and of the Oireachtas, with the exception, of course, of implementing the laws we enact. The unjust claims of the Commission should be robustly disproved and our corporation tax rate must be defended from the undue influence of the Commission. Failure to do so would erode our sovereign responsibilities and would not be in the best interests of all the components of this State.

It is ironic in the extreme that a party that has solidly called for a “Níl” vote in nine consecutive EU referendum campaigns from 1972 to 2002 is now supporting one of its institutions, to paraphrase John Downing earlier in the week. Our taxation system follows OECD principles, where a company pays tax on its economic activities in a state, but the Commission seems to want us to forgo this principle and not only to collect taxation that is not due to us but also to apply its current view retrospectively as far back as 1991. What further erodes the credibility of this finding is that while the clock is ticking on the appeal, there does not appear to be a timeline for the publication of the report. In any legal scenario I can think of, it would not be acceptable for a headline charge to be levied against a person or company while the nature of it and the detail behind it are withheld. I also question the validity of the requirement for a private company to hand over billions of euro for a finding - not a judgment of a court but, in effect, an opinion - by an entity that, in broad terms, has no competence to make such a determination. At the very least, the full report should be published before any transfer takes place.

What is clear in this case is that Apple has paid its tax on activities in Ireland, according to the Revenue Commissioners, and if it owes tax on its global profits, it does not owe it to this jurisdiction. The State has a responsibility and a duty to its citizens to ensure it collects revenue
where it is owed. That applies to all member states in the EU. The failure of others to do so should not have repercussions for our State or, indeed, our international reputation. Our tax code is based on a statutory footing and, as such, the Revenue Commissioners do not have the ability to offer sweetheart deals. Claims to the contrary are disingenuous at best.

In Ireland, our headline and effective tax rates are almost identical, being 12.4% versus 12.5%. That is according to PricewaterhouseCoopers and the World Bank. We do not do special deals and our Revenue Commissioners would not have the authority to do so in the first instance. The PricewaterhouseCoopers report was given this headline in the following days: “Turns out Ireland was telling the truth about company taxes. Unlike nearly everyone else…” Our tax code is implemented fully and without deviation by the Revenue Commissioners, as passed by this House and the Seanad. It seems that the Commission is not entirely sure where this tax is due. Ireland should not be used as a scapegoat in this matter. Either the tax is due or it is not.

In order to resolve this situation, we must appeal the decision of the European Commission to the European Court of Justice to ensure a non-political decision is reached, based upon legal facts. A failure to appeal would be a negation of the responsibility to protect our national interest and an admission of guilt where no wrongdoing has occurred. This would be a disservice to the people.

5 o’clock

Deputy Kevin O’Keeffe: Much of my contribution may be similar to that of many of the previous speakers who are in favour of this appeal. However, I will repeat it in order to have it on the Dáil record so it will be properly weighted to show the urgency of appealing Commissioner Margrethe Vestager’s ruling. This same Commissioner has shown an inconsistency in terms of the mechanisms used to bail out other European banks in comparison to those used in respect of the Irish banks. What has been created by the events of the past week is huge uncertainty over the future of foreign direct investment in this country. Many who are employed by multinational companies in Ireland now feel that the Apple ruling directly affects them. They are asking themselves if the company they work for will be taxed retrospectively and whether the European Union will infringe on our right to set our own corporation tax, which has attracted so much foreign investment and multinational companies to Ireland.

We have heard from some today who have given their opinion on why we should not appeal this ruling. I completely reject many of these claims. The decision to appeal this ruling is a stand taken to protect the working man and his family. There are approximately 700 multinational firms in this country, employing 187,000 people directly and another 200,000 people indirectly. It is the future of these people and the future of their jobs that I and my party have taken into account when the decision was made to appeal this ruling. Any threat to future foreign direct investment and the sovereignty of our taxation system needs immediate action. That is why Fianna Fáil has taken the lead on this issue on this occasion while others have hesitated to do so. I agree that certain aspects of our taxation system need to be corrected but making our system retrospective, which is what the European Union has sought to do with regard to the Apple ruling, would be a move in the wrong direction and would have serious consequences. It would undermine tax certainty for all companies both Irish and multinational. Our corporation tax system allows for certainty and forward planning. Any attempt by the EU to introduce any form of retrospective taxation among its member states would lead to a withdrawal of multinational companies and a lack of new ones entering the country and Europe as a whole.
Despite negative international pressure and internal concerns, the work that Ireland has done over the past two years on the international scene with regard to global tax reform should not be underestimated. International tax rules have been changing and Ireland has been playing its part. We have shown an ability to adapt when necessary and resilience in maintaining sovereignty in our taxation system. It has been acknowledged that we have one of the most robust anti-avoidance regimes globally. We were one of the first countries to employ a mandatory disclosure regime which ensures that taxpayers must provide information to Revenue on certain transactions that may give rise to a tax advantage. We were to the forefront in working with the OECD and the European Commission in phasing out the so-called double Irish to ensure that Ireland now has a default tax residence rule for Irish incorporated Irish companies.

In 2008 Fianna Fáil received heavy criticism from many for forcing a second run of the Lisbon treaty. Like many of my colleagues, I was on the campaign trail for both of these referenda pushing for a “Yes” vote. The biggest fear among many at that time was that at some stage down the line, the long-term goal of the EU was to impose tax harmonisation among its member states. Our corporation tax and our ability to determine what it should be was a key issue during both referenda. Uncertainty with taxation and who would control it was a key reason many voted “No” in the first Lisbon treaty in 2008. Fianna Fáil reassured the Irish people before the second referendum that nothing in the Lisbon treaty made any change to the EU’s competence with respect to taxation and, in particular, the right of member states to set their own corporation tax rates. Retention of consensus in voting on taxation policy matters was a key Irish aim during the negotiations on the treaty. Appealing this ruling upholds the principles of the Lisbon treaty.

As a Cork man, I am well aware of the impact that Apple has had in my county over the past 30 years. I am aware of many of my constituents who, when times were difficult, were able to secure employment with Apple, which has now created more than 6,000 jobs which contribute enormously to the local economy. Appealing the European Union’s decision on Apple’s tax affairs is the correct decision and this needs to be fought tooth and nail. It provides an air of certainty for those who wish to invest in this country and also shows that this House puts jobs before all else. We should continue to play our part in global tax reform. We should continue to work with the OECD and the European Union on all taxation issues and be adaptive when needs be. We need to be firm and deal with conviction on any infringement or threat to the sovereignty of our taxation system.

Deputy Brian Stanley: I welcome the opportunity to speak on this issue.

Acting Chairman (Deputy Bernard J. Durkan): Is the Deputy sharing his time?

Deputy Brian Stanley: I am sharing with Deputy Seán Crowe.

Acting Chairman (Deputy Bernard J. Durkan): The Deputies have two and a half minutes each.

Deputy Brian Stanley: The past eight years have seen harsh austerity, cutbacks in basic services, a housing crisis and increased job insecurity. In my constituency of Laois and the Monasterevin area of Kildare, the housing list has reached an all-time high of 1,700 households in Laois and 620 in Monasterevin and Kildangan, which is just a small corner of Kildare. Portlaoise regional hospital is chronically underfunded with services such as the emergency department running the risk of closure. Mountmellick, Shaen and Abbeyleix nursing hospitals have
struggled due to lack of investment. In the case of Abbeyleix and Shaen, they were under threat of closure. If one takes employment, of which we have heard much, it has been retarded due to the absence of broadband and investment in infrastructure. I could go on but money for vital services and infrastructure is needed.

Here we are debating a proposal from Fianna Fáil, Fine Gael and the Labour Party proposing that we waste public money fighting a case in the European courts to justify the facilitation of tax evasion by conservative Governments over the past two decades. That successive Governments turned a blind eye to tax evasion is bad enough but now the Government wants to waste taxpayers’ money defending it. It is shameful. We have heard all the bogus arguments being trotted out such as tax certainty. What is being done creates the opposite to tax certainty because the Government is saying it is trying to defend a position where rules can be changed for different people and a blind eye can be turned for different companies. The idea of threats to the 12.5% corporation tax rate is rubbish. Everyone knows that is a national competency. Some 95% of the Deputies in this House support the 12.5% rate, as does Sinn Féin. We have been solidly behind it and we do not want it changed. It is there across the board. That we become an international tax collector is another load of nonsense. We are not being asked to do that. The companies concerned are incorporated here in the State not anywhere else. The tax is due here. Other dubious reasons have been thrown out. The double standards in how Irish businesses and some of these multinationals have been treated is there to see. The double standards with the PAYE workers are obvious and I do not need to list them. The right thing to do is to ensure that we collect the 2.5% and the 12.5% from all companies on their profits. That is the reasonable and fair thing to do. All the tax loopholes and tax avoidance schemes should be closed. If Apple wants to go to the European court, let it do so but do not waste taxpayers’ money and whatever is left of the credibility of the State to do that.

Deputy Seán Crowe: The majority of Irish taxpaying citizens are absolutely fuming as they look on with disbelief at the Government’s antics and the ludicrous proposal to appeal a finding that could possibly mean billions of euro to the Irish taxpayer. Parts of my constituency have some of the most deprived areas in the State. If a fraction of this tax was invested into those disadvantaged communities, it would have a life-changing effect on many children and the families in that area. Let us get this right. The Government, along with Fianna Fáil and the Labour Party, wants the State to not retrieve billions of euro in outstanding taxes. It is bizarre and unbelievable but comes from the same mindset that decided to appeal a ruling that could have prevented the demolition of the historic Moore Street terrace in Dublin. It is a disgraceful decision and is being cloaked in words such as the national interest or that it is somehow defending our reputation or good name just as it was supposedly in our reputational interest to shift billions of private banking and speculator debts onto the shoulders of Irish taxpayers. Fianna Fáil and Fine Gael were unable or unwilling to stand up to EU elites when Irish citizens were saddled with billions of private banking debts. Apple representatives have testified under oath to the US Senate sub-committee that since the early 1990s, the Irish Government calculated Apple’s taxable income in such a way as to produce an effective tax rate in the low single digits which from 2003 has been less than 2%. While many have tried to muddy the waters, this is simply about tax structures and tax justice. There is no justification for challenging the ruling against this deal which the European Commission says amounts to illegal state aid.

Let me state the obvious now. Ordinary companies and SMEs were not given any special deals, nor were the self-employed, PAYE workers, low-paid workers or those struggling to make ends meet. It is important to note that, contrary to the Government’s attempts to spin this
issue, the ruling from the European Commission has no effect on Ireland’s corporation tax rate or on our right to set that rate.

Deputy Sean Sherlock: In the few minutes available, I wish to crystallise my interpretation of this issue as best I can. I represent part of the county of Cork and many of my constituents work for Apple. There is no doubt, based on the feedback I have received, that there is concern for the long-term future of Apple and other FDI companies located in the Cork region in particular. There is concern about the possible effect of the Commission’s ruling on long-term investment on Irish soil and on our ability to sustain the employment that already exists not only in Cork but also throughout the Republic as a whole.

Members must distinguish between what was interpreted as a breach of state aid rules, on one hand, and an overreaching by the European Commission into the sovereign affairs of a member state on a matter of taxation policy, on the other. I have been trying to get to the nub of the issue and there is a very good blog post by Mr. Tony Connelly of RTE which outlines what is at play here. He argues that for a tax concessions such as that given to Apple to qualify as illegal state aid, four criteria must be fulfilled. The aid “must be provided by the state and financed by state resources” - that is questionable. It must “grant advantage”. Did it grant advantage to other companies in a similar sector? The advantage must be “selective”, that is, “it goes to one company or one category of companies with a specific commercial activity, and not to others”. Finally, it must “distort competition and trade within the EU”. If it does not meet those four criteria, then arguably, the ruling should fall and there are questions around whether those criteria are being applied objectively as they relate to the treaties of the European Union.

I wish to refer briefly to the US Treasury Department’s white paper, which was issued on 24 August and which is entitled, The European Commission’s Recent State Aid Investigations of Transfer Pricing Rulings. This document makes the following very pertinent point:

There is the possibility that any repayments ordered by the Commission will be considered foreign income taxes that are creditable against U.S. taxes owed by the companies in the United States. If so, the companies’ U.S. tax liability would be reduced dollar for dollar by these recoveries when their offshore earnings are repatriated or treated as repatriated as part of possible U.S. tax reform. To the extent that such foreign taxes are imposed on income that should not have been attributable to the relevant Member State, that outcome is deeply troubling, as it would effectively constitute a transfer of revenue to the EU from the U.S. government and its taxpayers.

It goes on to say:

Adopting new enforcement regimes with retroactive effect will hinder companies’ ability to assess risks and plan for the future, and sets an unwelcome precedent for tax authorities around the world to take similar retroactive actions that could affect U.S. and EU companies alike. It also undermines the G20 agenda to improve tax certainty.

There is a battleground here and that battleground is Ireland. This country is being used as a battleground between the European Union and the United States of America to see who can give effect to the issue of global tax justice and transparency. It is our contention that the only reasonable and logical thing to do is to be joined in an appeal of this decision. There is a pertinent political point here as to whether the Commission is perceived to be reaching into the sovereignty of a member state in the area of taxation policy. There is precedent here where
taxation has been or could be deemed to have been used as a state-aid tool and there are established cases in that regard, for example, one involving the Spanish bank Santander. Europe is moving to the extreme right at present and while Ireland, as a nation, has always been vehemently pro-European, there is a perception that the European Commission is overreaching in this particular case.

The Revenue Commissioners have stated clearly that there was no departure from the applicable Irish tax law. There are some in this House who do not want to believe the Chairman of the Revenue Commissioners and that is fair enough, particularly if they want to make a political point in that regard. I accept the statement by the Chairman of the Revenue Commissioners. On the basis of the fact that the Revenue is an independent statutory body, we should make this appeal.

Deputy Ruth Coppinger: The Socialist Party, the Anti-Austerity Alliance and People Before Profit are under no illusions regarding the European Union but it is hilarious to hear people on the other side of the House talking about a completely different EU to the one they spoke about a month ago. They are now talking about its lack of democracy. It seems that the European Union is okay when it is inflicting austerity on the general populace but it is not okay when it has a lash at a multinational corporation.

We have heard a number of defences of the Government’s decision to pursue an appeal against the judgment. The Government is to set up an inquiry into our corporation tax regime. Laughably, that inquiry will not question the actual corporation tax rate. The latter will be the subject of a cordon sanitaire. The usual suspects of accountants and establishment insiders will conduct this inquiry, not ordinary workers, trade unions or community representatives. This is a very poor return from the presence of the Independents in government and shows that people can only rely on the left for a real challenge to this sort of policy.

We have also heard scaremongering about job losses. The multinational sector provides 10% of employment in this country. It is not only multinational jobs that have a multiplier effect; so too do public sector jobs and other jobs in the private sector. It is not the case that there is a threat to those jobs because the multinationals are making vast profits here on the basis of current policy. They will not leave on that basis. If they do leave, it will show that they have no social commitment to this country in the first instance and are not a reliable basis for our industrial policy.

I wish to address the key idea that has emerged to the effect that the money is not ours or that we would get very little of it because it belongs to others. First, Revenue follows the orders of Government - please give us a break in that regard. Revenue does not make these decisions but implements Government policies. The Irish Government knew that Apple was avoiding paying taxes in other countries and was shifting vast sums of money into this country. Apple was, as Joseph Stiglitz has said, “pretending that the money, the profits, the billions and billions of profits it was making were really being originated in some Irish company that was registered in cyberspace ... that is a ruse, that is an attempt at tax evasion, tax avoidance, whatever you want to call it”. That lies at the heart of this matter. It is like allowing one’s house to be used for a crime and then pleading innocence. The chickens are now coming home to roost for Irish corporate tax policy. If it emerges that ordinary workers and unemployed people in Europe are being fleeced by this policy, then I also have a problem with that. It is not the case that we only care about citizens in this country.
The Anti-Austerity Alliance does not support the defence of our 12.5% corporation tax rate. It is clearly not being paid in any event and is a work of fiction. The rates should be substantially increased. The rate was substantially decreased over the years. Tomorrow, Dublin Bus workers have to miss a day’s pay, and the days after, while striking for a living wage. In 1970 the proportion of GDP ascribed to wages was 66%. Today the figure is 44%. This is because of corporate tax policy and having as little tax as possible on the rich and wealthy. Why should multinationals not pay similar tax rates to workers? A discussion around that is needed in society. If one stands over low corporation tax policy one stands over growing inequality in the world. Oxfam reports that the top 50 multinational companies hoard cash in tax havens to the tune of $1.24 trillion. Can one imagine what could be done with that wealth if it was invested and if it was owned and controlled by those people who create and toil to produce the wealth, not the likes of Tim Cook, Bill Gates or Mark Zuckerberg - one would think they had personally toiled in the iPad factories the way we hear some people talk. Of course, it is the very exploited and low-paid workers who do that work. There is potential for that wealth if it was owned and controlled by the people who produce it. For example, $100 billion is lost by the poorest countries because of tax evasion. That could provide drinking water for 2.2 billion people. Apple is top of this list. It is the top company, sitting on $180 billion of non-invested dollars. What type of society is that? This is why we had the Occupy movement, the movement against globalisation and the anti-austerity movement around Europe.

Deputy Martin attacked the idea of socialism or any other alternative. We have heard James Connolly much quoted today, including by the Labour Party. James Connolly said socialism is indeed worthy to be entitled the great anti-theft movement of the 20th century - as it is of the 21st century - because it means, as he said, a proposal to establish honesty once and forever as the basis of our social relations. It is the only alternative to the robbery of the poor and of workers that is taking place throughout Europe because of these multinationals.

Deputy Thomas P. Broughan: Like other Deputies I listened with incredulity to the speeches this morning of the Minister, Deputy Noonan and the Taoiseach. Both speeches were full of contradictions revolving around self-praise for the beginnings of the first fundamental reform of our corporation tax system since 2012-13 and a total refusal to accept that certain foreign multinationals were heavily favoured by Irish Finance Acts down through the decades since the 1960s. The Taoiseach waxed lyrical this morning about the importance of the 187,000 FDI supported jobs for our people and the sterling work of the IDA since the early 1950s. Nobody can deny the huge importance of that investment and the contribution it has made to transforming the lives of ordinary Irish families. I have listened to the Cork Deputies with interest about the contribution of Apple. However, the general disquiet felt by constituents over the years about the hugely favourable taxation of high net worth individuals and companies included grave concerns that Fianna Fáil and Fine Gael led governments were permitting massive multinationals to turn Ireland into a tax haven in Finance Bill after Finance Bill. Even long before the 1991 and 2007 Revenue tax opinions on the operation of Apple companies, I recall the Sunday Independent publishing a detailed investigative report on a prominent Californian IT company based in north Dublin. That report clearly showed that transfer pricing was effectively being used by the company and its affiliates in the Netherlands and in an offshore location to greatly minimise its Irish and United States corporation tax bills. The useful reports on the Apple - Vestager judgment prepared for us by the Department of Finance seems to indicate that up to 300 companies based in Ireland have been looked at by the EU Competition Commissioner and that no further action may be taken on foot of these examinations. However, the sterling investigative work carried out by editor Ian Kehoe and his colleagues at The Sunday Business
Post concludes that around six multinationals - at least six - struck sweetheart deals with the Irish State in the early 1990s. The amendment to the motion in the name of my colleagues and myself clearly states that this House should now be given all the details of every one of those deals and all similar information on the 300 tax examinations I have referred to.

Like the Acting Chairman, I was a member of the Committee of Public Accounts of two Dáileanna and on many occasions raised the issues of the volume of outstanding taxes and the numbers of companies and corporations involved. Clearly, the level of secrecy - allegedly on commercial grounds and to protect the work of the IDA - which surrounded the Apple deal and other deals and the deliberately obscurantist framing of Finance Bills has withheld key information on the huge tranches of tax revenue deliberately siphoned away from the Irish, American and European peoples over recent decades. When we requested information on the cost of FDI jobs from the relevant Departments and agencies, it was clear that taxes deliberately forgone and serious tax expenditures were not factored into the equation. We were not given the information, as the Acting Chairman will remember. If one examines our creaking health, education and welfare systems and the grossly deficient housing and transport investment over the decades, it is clear that a truly fair and transparent corporation tax system would have significantly enhanced these resources for our people. That is why we should now accept the Apple ruling, move on and put the €19 billion - or whatever the amount is - into the escrow account until Apple’s own appeal is decided.

I welcome the review of the corporation tax code which was promised this morning by the Minister, Deputy Noonan, which he said is intended to ensure that Ireland meets the standards of the OECD base erosion and profit shifting, the BEPS project. According to the Minister’s speeches over the past year, the very appetising “double Irish” and “Dutch sandwich” can no longer be served up to giant multinationals like Google. Our new knowledge box half rate corporation tax seems also to meet international and OECD standards. Given these improvements in transparency and the explicit statement by Commissioner Vestager that “this decision does not call into question Ireland’s general tax system or its corporate tax rate”, it seems incredible that Ireland is appealing the Apple decision. It is outrageous that we do not have the full Apple ruling in the House - it is treating the House very badly. The reality is that the Commission’s report clearly indicates that Ireland did a special tax deal with Apple Inc. and its Irish subsidiaries.

Other EU states and states close to the EU, including the Netherlands, Luxemburg and Switzerland, also facilitated giant multinational companies in return for investment and jobs. The Acting Chairman probably appreciates that it is highly ironic that the President of the Commission, Jean-Claude Juncker, led the Luxemburg Government for many years which facilitated massive tax avoidance, and probably tax evasion, as revealed in the Lux leaks disclosures. The governments of France and Germany and sometimes even the UK in particular have looked in envy for a long time at the concentration of American high-tech companies in Ireland. That is why the reputational damage done to Ireland by the Commissioner’s ruling may have very serious consequences as the larger EU states seek to continue to try to circumscribe the smaller states’ competence in the area of taxation. Those large states ignore the profound cultural and family connections between Ireland and the US which continue to make Ireland a very comfortable home for US investment within the EU. Apple has given reassurance on its plans to maintain its major Irish presence, come what may says Mr. Cook. We need to ensure that multinationals pay their fair share of taxation in the country where economic activity takes place and that any offshore elements of sectors such as Ireland’s financial services and marine regulation are urgently addressed in the coming Finance Bill.
Deputy Tom Neville: I welcome the debate today as it gives a chance for the public to hear the finer details beyond the headline grabbing slogans we have seen over the past number of days. The Minister, the Taoiseach and a number of Deputies have outlined already the broader context within which this €13 billion sits. This issue is not just about the €13 billion, this is about a fundamental pillar of the Irish economy, a pillar that has yielded so many positives for this State and its current generations. We have to be very much aware of who is watching this debate. I guess that it is not only workers and decision makers in current organisations situated in Ireland who are watching this, but also potential investors who are in the process of making a decision on Ireland are watching closely. We need to be very careful of the language we use so as not to harm the international marketability and reputation of Ireland as a place in which to invest and subsequently create jobs.

I speak as a person who has worked in the private sector all my adult life. Not only have I worked directly for a multinational but I have also worked for a small indigenous company that was a service provider to multinationals for many years. I want to send the message today that I want foreign direct investment to continue coming to Ireland. I want them to invest here. We have a highly educated workforce, industrial stability, strong infrastructure, access to the Common Market and a competitive tax rate. This has been fostered and developed over a period from the hard economic lessons learned by past generations. Like any other discipline the more successful we are at it the better we become, thus beating the competition. Obviously competition will always be present and I also welcome it as it forces us to do our jobs better and to continue to innovate. However, I do not welcome the European Commission’s agenda in trying to bring about a common tax base and erode Ireland’s competitiveness.

I embrace the ideals of the European movement. It has fulfilled its objective in fostering economic co-operation and focusing on similarities thus sustaining the longest term of peace the Continent has ever seen. However, we are a sovereign nation and I respect that above all. I campaigned and voted for both Lisbon treaties in the assurance that our corporation tax was not part of the agenda and could not be compromised or changed by an outside European authority. Through the economic depravity of years gone by Ireland was forced to rethink its economic vision. The vision in the 1980s and 1990s became increasingly outward-looking and was targeted at foreign direct investment. This was a no-brainer. We had to do it. We must remember that, in economic terms, Ireland in the early 1990s was worlds apart from where it is today. I remember entering senior cycle in school to be told that my options were the Civil Service, to stay in college for as long as I could afford to do so or to emigrate. The private sector’s appeal and attraction were very much off the table. However, by the time I started college in the mid-1990s, all that had changed - and for the better - due to the influx of multinationals as a result of tax, social partnership and educational policies.

The University of Limerick was born as the National Institute of Higher Education Limerick, which was built in Plassey Technological Park as a provider of an educated workforce to the multinational electronic manufacturing companies that were situated there at the time. That development worked. It did so against the backdrop of increased competition from emerging economies in Europe, including those to the east of as a result of the revolt against communism and the hard-left administrations and policies in situ at the time. More and more companies located in Ireland and there were more jobs and better opportunities, which fostered new industrial innovation and confidence and increased self-belief among the members of a new generation who were better educated. Education was one of the major positives to come from these companies and the new economy. This cannot be stated often enough and it has been a
huge by-product of foreign direct investment. It changed the face of Ireland. I know so many people in Limerick who have been given the opportunity to study as part of their job and to gain qualifications and access opportunities that they would never have got if they had not been in that position. These are people who, for myriad reasons, may not have had the opportunity to avail of education in their early lives. This, in turn, has permitted and fostered innovation and creativity. Countless times today, I have heard the indigenous company being pitched against the multinational but how many of these smaller indigenous companies have been formed out of knowledge, experience and networks acquired from working for the multinationals?

I could discuss this issue here for the next half hour but I will conclude by saying that the Government has my full backing. Workers in these multinationals on the manufacturing lines and in accounts departments, those serving in the canteens and those in human resources, engineering, stores or the warehouses have my unequivocal support in helping secure their jobs, futures and increased opportunities and education by continuing to attract and retain the type of companies for which they work. Recruiters, bartenders, delicatessen assistants, childminders and taxi drivers making a living from the customer working for the multinational company have my unequivocal support in sustaining their jobs and customers. I want to tell the international investors who are looking at investing and watching this debate to come to Ireland. We offer an English-speaking and educated workforce, industrial stability, access to the Single Market and a very competitive corporation tax rate of 12.5%. There is a reason other companies are situated here and every time they have relocated, we have learned to make the transition and start-up as seamless as possible. We have the expertise to do this. We need to continue this investment. Please let us not go back to the 1980s.

Deputy John McGuinness: International corporate tax principles dictate that tax is paid where the value is created so this debate is not about fair tax. It is about where tax is paid. It is my opinion that to use a state-aid argument to dictate to a member state its tax policy is simply wrong. It is Commission creep into the sovereign - into our policy of taxation, which is created by those who legislate in this House and which is implemented by the Revenue Commissioners. On umpteen occasions in the past, I have heard the chairperson of the Revenue Commissioners say that the tax of 12.5% is applied fairly to all, be it large or small companies that provide varying rates of employment and how companies then use that mismatch of national tax policy to achieve their end is a question in terms of taxation.

The Commission has been reckless in its approach to this matter. To a degree, the Government is at fault for not keeping its ear to the ground in respect of what the Commission was discussing. I understand the confidentiality of this and the activities under discussion at Commission level but surely officials from the Department of Finance or the Department of the Taoiseach have known that something very significant was coming down the tracks because Europe is interested in destabilising our 12.5% corporation tax rate. Where they got the figure of €13.5 billion from is beyond me. We should remember that other states have a call on that €13.5 billion. Like previous speakers, I would love to allocate that money to the deserving causes that exist in every constituency throughout the country but we cannot do so. If we get €1 out of it at the end of the process, that will be it. I cannot see it going any other way after seven years of debate, legal challenges and so forth. My main concern is how the Commission could be so reckless and use the state-aid argument to go after our corporation tax rate.

Let us be clear about this. Every state in Europe is doing its best to attract foreign direct investment. They are offering all sorts of incentives. The one clear statement in terms of Ireland is that we offer a fair taxation system that is applied to all and sundry. That is the reality.
Wherever the 6,000 people involved are employed, they contribute to the local community and the tax base. We are talking about 6,000 families that will be affected. Yes, it is an investment for Apple but other multinational companies in Ireland is doing the same thing. What will the Commission do next? I agree with the argument that when the banking crisis came about, not enough was done by this country to protect its interests, that we were caught flat-footed and accepted a debt that we should not have accepted and that Europe picked out the smaller countries, as it is doing now, and imposed its policy on them. It has learned nothing from Brexit. The sooner it is forced to come back to deal with a European Union that focuses on its citizens and the betterment of their lives the better. At present, it seems to be totally interested in the bureaucratic structure of Europe and how it can control states rather than having a position where states can be flexible within the application of a correct rule, in this case, on relating to taxation, and any other rule that it should apply and where Europe is there to serve its people rather than dominating and working on behalf of big countries such as Germany and France. I support the appeal on the basis that we have to do it to protect the integrity of the Revenue Commissioners, the policy of successive Governments and the jobs that have been created in every community all over this country by IDA Ireland.

**Deputy Bernard J. Durkan:** Like previous speakers, I strongly support the move to appeal this decision. It is fundamental to our tax policies, our continued economic growth, our role within the European Union and our right to set our tax affairs in accordance with the agreed principles and precedent that we pursue an appeal. This is not a new attempt by anybody to move in on what was seen as a preferential rate of corporation tax that was applicable in this country, if nowhere else. As we know, some years ago it was discovered that a number of the greatest critics of the 12.5% corporation tax had actual tax rates well below that. This continues to be the case. What is really obnoxious about this proposal is the fact it proposes that Europe now has the right to direct a national government to apply a particular rate of corporation tax to profits that were not earned within that country. That is a serious deviation. Jean-Claude Juncker has completely overstepped his responsibilities and authority and should consider his position. I would strongly support any attempt to remove him from office. He has gone way beyond the bounds of propriety in what he has attempted to do.

**Deputy Peadar Tóibín:** A coup d’état.

**Deputy Bernard J. Durkan:** We can snigger about this all right but I am not so sure we fully appreciate the significance of what is intended. I attended a meeting in Brussels approximately six or seven years ago during the darkest days, when there were seriously envious eyes cast upon our taxation system, although we were financially broke at the time. There were people who sought to take advantage of that weakness by moving in on us. As it transpired, that move never happened but they have come around again, deciding that somehow and somewhere, somebody can now tell us the European Commission has the right to dictate our tax policy on corporation or any other tax. The time has come to tell them “I am sorry about that, guys, but you are wrong and offside”.

The Commission knew full well what it was doing and the intention is to isolate countries like Ireland and establish a power that the Commission does not possess. There are two or three ways to go about this. We can knuckle down. This is the iron fist clad in a crock of gold. This is something we can never collect, as is well recognised by the Commission. It has come out to say that other countries could have a claim on this. Of course, if the profits were earned in other countries, we can hardly expect them to say they will give the money to the Irish. It is a con job and intended as such. It was intended to be a sweetener so we would grab it and, unfortunately,
many of our people have grabbed at this mirage. They have said that of course we would like it and do many things with €11 billion, if we could get it. We should not allow ourselves to be press-ganged into a position whereby we would accept this.

I am amazed that the 28 Commissioners sitting around the table agreed to this. That should never have happened. At a fragile time for the European Union, there is a re-emergence of a type of nationalism we have not seen in a long time. We know what the consequences were in the past when there was such a manifestation of nationalism throughout Europe. If the Commission persists in this direction, and the indications are that it will, either it will be discredited or the member states will be seriously disadvantaged as a result of its decisions. If nothing is done to stop or challenge the Commission in this mad race, member states will have a problem. Not only that but the European Union as an entity will have a problem.

Not only do I strongly support the need for an appeal but there should be no doubt in anybody’s mind about this. Multinational corporations seeking to invest in any country seek tax stability. It is what they request. They want to know the rate of tax and how it will affect them before they proceed. If we remove this from the arena and say it depends on what the President of the Commission thinks at a particular time, we will have a problem. We do not live in the middle of Europe; we live on the fringe. We need all we have to try to do the best we can in a highly competitive market, so we should proceed on that basis.

Minister of State at the Department of Foreign Affairs and Trade (Deputy Joe McHugh): Tá mé buíoch go bhfuil seans agam caint ar an díospóireacht thar a bheith tábhachtach seo, a bhaineann le postanna agus cuideachtaí ilnáisiúnta a choimeád agus postanna bhreise a fháil amach anseo.

I begin by echoing the comments of the Taoiseach and the Minister for Finance in saying I disagree profoundly with the Commission’s decision alleging state aid to Apple. I welcome the Government’s decision to recall the House today to discuss this important issue, which has an impact on Ireland’s hard-won international reputation. Today is an opportunity for the Dáil to endorse the already significant work that this and the previous Government have taken, in close co-ordination with other EU and OECD members, to address the failings of the international tax system. This debate also provides the Dáil with a timely opportunity to voice our support of the Government’s decision to appeal the case and reaffirm our commitment to measures that underpin the 187,000 jobs in IDA Ireland client companies, namely, the 12.5% corporation tax rate, the research and development tax credit and the knowledge development box.

In the past five years, this Government and its predecessor worked tirelessly to restore Ireland’s international reputation. As Minister of State at the Department of Foreign Affairs and Trade, I am fully aware of the work of my Department in that regard. The decision by the Commission has led to negative references in national and international media on tax deals, and it is important that this is addressed fully. Ireland did not give favourable tax treatment to Apple, no state aid was provided and Ireland does not do deals with taxpayers. Moreover, it is important that international audiences understand the significant work that Ireland has already undertaken to address the failings of the international corporate tax system. Domestically, we have closed tax loopholes in successive budgets and Ireland was among the first countries in the world to implement country-by-country reporting in domestic law. Internationally, we have played an active role in global work to reform the international corporate tax system through both the OECD base erosion and profit shifting, BEPS, agenda and at EU level with the agreement of the anti-tax avoidance directive in June this year. It is through these co-ordinated international ac-
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tions, accompanied by domestic implementation, that the failings of the international corporate tax system are best addressed.

As Minister of State with responsibility for international development, I am happy to say Ireland has also played an active role in ensuring that developing countries have a voice in these international discussions. Domestic resource mobilisation in developing countries will be central in implementing the ambitious agenda of the sustainable development goals in the coming years. Ireland’s development policy, One World, One Future, recognises this and commits us to doing more on the issue of taxation and development. Since 2011, Ireland has contributed €500,000 to the OECD task force on tax and development programme to support greater engagement of developing countries in the BEPS project. We have also contributed €100,000 annually to the Africa Tax Administration Forum, which supports the development of tax administrations in Africa. In future, Ireland will increase funding to assist developing countries to collect appropriate and adequate tax revenues in order to reduce poverty.

I welcome the Commission’s explicit statement that its decision does not call into question Ireland’s general taxation system or its corporate tax rate. There is confirmation that no other companies are subject to its decision. Business operates on the basis of certainty and a stable corporate tax environment is a key part of Ireland’s overall policy of attracting foreign direct investment in international start-ups, along with our youthful, well-educated, mobile, ambitious, adaptable and productive workforce and our pro-business environment. The decision by the Government to appeal the Commission’s decision to the European courts is necessary to defend the integrity of our tax system and provide tax certainty to businesses that operate in Ireland.

I reaffirm my support for the Government motion. Appealing the Commission’s decision is the right course of action. It is also important that the Dáil reaffirm its commitment to the measures that underpin jobs in IDA Ireland client companies, almost 3,000 of which are in my constituency in Donegal. To those who look to undermine Ireland’s hard-won reputation, I point to the significant work already undertaken, both domestically and internationally, to address the failings of the international corporate tax system. These challenges cannot be fixed by one country but rather by concerted actions by international partners in multilateral fora in which Ireland will continue to play an active role.

Deputy Margaret Murphy O’Mahony: I echo the sentiments of my party colleagues in supporting this motion and everything that defends Ireland’s right to decide its own tax rates. Ireland’s competitive and stable corporate tax rate is what attracts multinational companies to make their home here. Nobody can deny the investment they make in jobs on this small island and, particularly, how they did so during the hard years of the recession. With approximately 700 US multinationals located in Ireland, our young and talented workforce has the opportunity to work across a wide variety of sectors; it is an opportunity about which the generation before it could only have dreamed.

As I am from Cork, I have first-hand knowledge of the direct and indirect employment provided by Apple. A report commissioned by the American Chamber of Commerce Ireland in 2015 indicates that Ireland is the number one destination in the world for US foreign direct investment, with US firms investing more than €277 billion here since 1990. If we fail to appeal the ruling, we threaten this relationship and we will be saying that we gave special treatment to Apple. As my colleagues have been saying here all day, Ireland has done nothing wrong and is entitled to set a competitive tax regime to attract foreign direct investment.
While opening its offices in Dublin in 2014, the US multinational Airbnb said that Ireland had hospitality in its DNA. This was one of the qualities that attracted the company to open here. There are many other qualities which make us appealing and our tax rate is one of them. In the words of the former President Bill Clinton, however, one would have to be nuts not to take advantage of the unique investment opportunity presented by one of the most business-friendly countries in the world with the youngest, best-educated workforce. He was referring to Ireland. Fianna Fáil considers strongly that Ireland should continue to make it a priority to make our country as attractive as possible to foreign direct investment while ensuring the highest standards in ethical and international obligations. Ireland has led the way in addressing concerns on tax avoidance by big companies and will continue to engage fully with the OECD process and EU initiatives such as the action plan for fair and effective taxation. However, we will reject any EU measures to standardise corporate tax rates and take away our competitive capacity.

The European Commission’s ruling is simply an effort to expand EU power over areas of taxation. If it is allowed to get away with it on this occasion, future attempts to maintain control over our tax rates will be jeopardised. Ireland has the right to protect its sovereignty on tax policy as do other EU member states and that is what we need to do. There can be no hesitation. By appealing this judgment, Ireland will send a strong and clear message that it is our sovereign right to decide our tax rate and that we will not compromise on that. If we do not appeal the decision, it will look like we accept that we have done something wrong. Certainly, we have done nothing wrong. The Government handled this situation badly and needs to learn lessons for the future. Nevertheless, I will support the motion.

Deputy Pat Buckley: In my constituency of east Cork, many families are employed by Apple. Do not get us wrong, we are delighted to have the company there. It has provided very good paying work for many local people over the years. However, the people in my constituency need more than these jobs and the income tax the workers pay. Like all other Irish people, they rely on myriad public services and infrastructure provided for them through taxation for their daily lives. We have families in my constituency who have been on boil-water notices since February. There are children with no school transport. There are hundreds of families in need of housing. Last month, 11 homeless families presented at my office. Despite all of this, one of the only groups the Government is fighting for in my area is the multi-billion euro corporate giant which thinks taxes are beneath it. The people of east Cork and everywhere else rely on public services. They pay their fair share of tax and do so knowing the collective benefits outweigh the individual costs. We have a serious problem when major corporations making billions of euro in revenue a year do not see the logic of this system and the necessity to adhere to same. Apple refuses to pay. It will use what we have built collectively, but will not contribute to the pot.

Every employer pays a wage and that wage is taxed, but it is the worker that is being taxed. It is clear from the revelations of late that Apple pays the bare minimum it can get the Government to agree to. If a worker earning €30,000 per annum was levied at the same rate as Apple, he or she would pay just €1.50 tax a year. That would be devastating to the Exchequer. Why, then, should a corporation which benefits from so much of our public investment be exempt from contributing to its costs? The Government talked today about transparency while peddling rubbish that no one believes. Apple got a sweetheart deal. It paid barely any tax as its profits soared and it fiddled its finances to ensure that it paid even less. The Government talks about international reputation. We have not done ourselves any favours. The Government has
portrayed us as spineless sleeveens who will do anything to please our masters. The piper may have changed, but the tune is still the same. It is Irish people who are being sold down the river. By appealing this decision, the Government reaffirms this portrayal of the Irish people and their Government. That is why I support Sinn Féin’s amendment to the motion.

Deputy Peadar Tóibín: There will be many citizens looking at this debate who are paying tax rates of 20% and 40%. Many businesses will be paying their full rate of tax also. What is blowing the minds of these people right across the State is that the political establishment says on one level that it is on their side but on the next level tells them they should pay a tax rate 8,000 times greater than the richest company in the world. One cannot have it both ways. The Labour Party was here a few minutes ago and said that Revenue was just fulfilling the tax code and there was no departure from doing so. However, the Labour Party is missing the point. It is the Labour Party that is in part responsible for that tax code and it has a good part of the responsibility for this issue also.

The Government talks about sovereignty. It is very important that we do not mix up this issue. This is an issue of state aid. The Minister for Finance, Deputy Michael Noonan, said himself that no other company got this deal. If no other company got this deal, it is a preferential deal by definition. Therefore, it is state aid. Appealing a payment of back tax owed to the tune of €13 billion for tax evasion just after the Government facilitated the fiscal assault on this country by the European Union is the polar opposite of what sovereignty is about. Sinn Féin has struggled for sovereignty for over 100 years and would never use it to charge the richest company in the world 0.005% tax. The major tragedy here is the issue of opportunity cost. Where Apple did not pay its taxes and where the Government appeals the Commission decision, the Government is, in effect, stealing from the people of Ireland. It is stealing from hospital budgets and the budgets of people with disabilities, from the roads and from the capacity to develop broadband and the infrastructure necessary to attract businesses to come here other than by way of a bargain-basement corporation tax rate. I appeal to the Government to step back and look to its true responsibility to the citizens of the country. It should make sure the citizens get what they are entitled to.

Minister of State at the Department of Health (Deputy Finian McGrath): I am grateful for the opportunity to speak to this very important debate. When this issue arose in recent days, the Independent Alliance had five major objectives in dealing with it. We wanted to achieve certainty for the Irish people on this important and landmark issue. We wanted to get the balance right between tax justice and the hugely important foreign direct investment on which 320,000 families directly rely and on which many SMEs feed. Another very important issue for the Independent Alliance was to reinforce the message that tax evasion or any hint of it is wrong. The fourth matter on which we pushed very strongly was to recall the Dáil so that our colleagues in opposition would have the opportunity to address the matter. The final objective of the Independent Alliance was to review the whole taxation system, in particular this issue. Most of these issues are covered in the motion. We achieved the recall of the Dáil and the review.

Let us look closely at the second paragraph of the motion, which proposes that the Dáil “commits itself to the highest international standards in transparency in the taxation of the corporate sector”. That is what many people want. Paragraph (iii) of the motion proposes that the Dáil “resolves that no company or individual receives preferential tax treatment contrary to the Tax Acts and calls on the Revenue Commissioners to continue to observe this principle”.

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These are core issues for the Independent Alliance.

On the broader issue, Ireland accepts that there is a problem and I have listened to some of the points made by my Opposition colleagues in that regard. There is a consensus that the international tax system is broken and can only be fixed by deep and meaningful reform. This consensus has led to an unprecedented agreement on the 15 OECD BEPS reports, which represent a comprehensive global response to the problems identified. The core principle underlining this ambitious project is that tax should be paid where the activity takes place. This is a crucial point and aligns with Ireland’s long-standing policy of attracting real and substantive operations that bring jobs and investment to this country. Let us say it loud and clear that Ireland is playing a full part in implementing the BEPS reports domestically and at EU level through the anti-tax avoidance directive. The way to tackle difficult problems is through tax policy reforms agreed at international level. State aid, which is a competition tool and not a tax policy one, is an inappropriate mechanism for achieving international tax reform. The European Commission’s decision undermines, impedes and conflicts with the global consensus. These are the realities.

This is a landmark issue and we must all be sure of the details before we can progress. Ireland’s reputation is important and the appeal is necessary if we are to set out our side of the case. We need a strong legal basis to proceed and we must remove ambiguity in respect of the issue. The appeal is a means of getting a definitive legal decision on the matter. Of course, all companies should pay the taxes they owe. It is important to be clear about what exactly is owed. This is important for sound policy in the future, which is our concern. These situations arise because of a lack of clarity. It behoves us to resolve this issue now and to reach a conclusion from which we can work. It is not a case of Ireland refusing €13 billion, a point about which there has been much discussion. Apple will appeal the ruling, so the money is frozen in any event. Ireland should take the opportunity to put its side of the case forward. Apart from the question of who owed what money, the Commission has also stated that other countries may claim part of the €13 billion.

Tax evasion is wrong. It is time that we define it clearly. We must lay out our case and be sure of where the fault lay. If legal fault is found, we should follow up on that and identify who or what was responsible.

It is widely recognised that aggressive tax practices are neither sustainable from a tax point of view nor acceptable from a societal point of view.

**Deputy Mary Butler:** Fianna Fáil supports the Government’s motion to appeal the European Commission’s decision that Ireland provided unlawful state aid to Apple. We believe an appeal is essential. We are a small country with a small population on the edge of Europe. Providing a competitive, consistent and certain tax policy is a key feature of Ireland’s attractiveness as a leading location for foreign direct investment, FDI. The Commission’s unprecedented and deeply misleading €13 billion decision on the Apple case is a direct challenge to that.

Approximately 700 US multinationals are located in Ireland, with some 187,000 people directly employed by FDI firms and a further 200,000 employed indirectly. All are potentially affected by the decision’s implications. During the economic downturn, FDI companies were consistent employers across the country. The ruling affects our relationships with other multinationals and we need to be careful about how Ireland responds.
Dáil Éireann

In Waterford, thousands of jobs are dependent on multinationals believing that Ireland is a good place to do business. This must be protected. On Monday, other Deputies from the south east and I attended a meeting organised by IBEC. It was the first ever meeting in the new Carri-ganore sports and conference facility, which is located on the outskirts of Waterford, and was attended by all business stakeholders in the south east. As I looked around the room, I was struck by the number of FDI businesses that were represented, namely, Bausch + Lomb, Genzyme, Teva Pharmaceuticals, Cartamundi, which was formerly Hasbro, GSK and West Pharmaceutical Services Ireland, which is building a factory 1 km up the road at which up to 250 people will be employed by late 2018. These jobs were important to the local economy during the recent recession and continue to be so. I was also struck by the number of FDI companies located in the south east, yet the region is underperforming in terms of employment statistics, bucking the national trend in the first quarter of this year with unemployment increasing by 0.6% instead of decreasing. Can we jeopardise our relationship with the multinationals? I do not believe so.

We had been expecting a decision from the Commission on this case, but the scale of the ruling means that it is in Ireland’s strategic interests to be careful about how it responds. Government hesitation has only worsened the impact. The Commission’s judgment marks a decisive overreaching of EU power into national tax matters. A strong, clear Government response is required. It is important for the country’s strategic interests that we vigorously defend Ireland’s reputation and independence.

The Revenue Commissioners are independent of the Government. They make tax rulings, including what was an honest one on this matter in 1991. It is important that there be certainty around Irish policy, including tax policy. It is also important that the independence of the Revenue Commissioners be upheld. As elected representatives, we must stand with the Revenue, which is a respected and independent State body.

Ireland has the right to protect its sovereignty on tax policy, as do other EU member states. This was a major issue when the Lisbon treaty was debated and the people voted in favour of a protocol on tax independence. Ireland must fight its corner to defend our national sovereignty and attractiveness for investment. In addition, we must continue to lead the way in progressing international efforts to curb tax avoidance.

It is disappointing and strange that the full EU ruling is yet to be published even though the Commission pressed ahead with the announcement. The Apple decision is essentially a power grab by the Commission. It marks a move by the EU to expand its power unilaterally and to use competition law on state aid to interfere with national tax matters. The astounding figure is designed to soften the ground before the controversial common consolidated corporate tax base, CCCTB, measure is relaunched later this year. It forms part of a broader agenda to set a common corporate tax rate across the EU. Our corporation tax rate of 12.5% is the envy of Europe. Ireland has done nothing wrong and is entitled to set a competitive tax regime to attract FDI.

The Revenue Commissioners fully applied Irish law as set out by the Oireachtas. The right of member states to set their own tax policies has been consistently upheld and affirmed in EU treaties. Ireland’s tax sovereignty is important to Fianna Fáil and contributes significantly in attracting companies to locate here. It cannot be up for negotiation. With this highly political decision, the Commission is attempting to take control of Ireland’s tax strategy by the back door. Those in Ireland who rushed to embrace the Commission’s decision - not one of whom is present in the Chamber - need to spell out why they are prepared to cede that control.
Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Damien English): I thank the Acting Chairman for the opportunity to address this motion. I support the Government’s decision to appeal the Commission’s ruling that Ireland provided unlawful State aid to Apple, which was not the case and is untrue. There was no proof in the ruling, yet the position taken was damaging. As such, it was imperative that the Government made its decision in a strong, considered and timely manner. I welcome the opportunity to debate it now and for everyone to put his or her thoughts on the record.

In a modern and fast-moving world, the Commission’s decision does not constitute sensible economics. Rather, it constitutes an attempt by the Commission, an appointed body as opposed to an elected one, to meddle in the national taxation affairs of a sovereign member state and of its people. Taxation is not an area of competency of the EU under the treaties, each of which was voted for by the Irish people in a referendum. The European Commission is meant to serve the interests of the EU as a whole, which is how it has generally defended its behaviour, but the EU’s very existence is meant to serve the needs of the member states, not to control or replace them. It is important that Ireland remains in control of its tax and economic affairs. Having spent time in the Department of Jobs, Enterprise and Innovation, I see the benefits of being in control of our tax and economic affairs when it comes to winning jobs.

The politics of populism and protest from the fringes of the Opposition has already pocketed the €13 billion from Apple, adding some €6 billion in interest, to apply it as the magic formula to cure all our social issues. The politics of populism is spreading false hope, sowing the seeds of resentment and, ultimately, damaging politics and democracy. This is the wrong approach and one I oppose. Earlier, a speaker claimed the Government was stealing this money. This kind of language is just being used to get news coverage and headlines. It is not helping Ireland’s recovery or job creation. The people have already copped on to this behaviour. Any Member who has spent time knocking on doors and talking to people will have realised the people understand what is at play and what the Government must do. The people understand what the majority of political parties which have been in government for a long number of years are doing to drive the country’s economic affairs. They will not buy into this populism of making grand statements in the Dáil, claiming that the Government is stealing money, just to get news coverage and headlines.

We need to maintain control over our economic affairs and taxation because we are a small island country located beside another island which is off the coast of Europe. We have few natural resources in the traditional sense. Yet, we are a magnet for indigenous and global business investment. Why? Why did IDA Ireland have its best year in 2015? Why did Apple decide to locate here in the 1980s? Why did Shire decide to create a new state-of-the-art biologics manufacturing campus in County Meath which it expects will lead to the creation of approximately 400 permanent jobs for the locality? Why did Facebook in April of this year begin construction on its newest data centre at Clonee, County Meath, a facility which will be the size of 14 Aviva Stadiums? Why are there 6,855 people employed in Meath in 164 companies supported by Enterprise Ireland in 2015?

It is because of our pro-enterprise environment, one of certainty and stability. That is why the Commission’s ruling going back over 25 years is a crazy decision. It is because we have a young, well-educated and flexible workforce. It is because we have an education system responsive to the needs of enterprise, one that is ever reforming and changing with new apprenticeships, traineeships, Springboard and other conversion courses to deal with the IT sector’s needs. It is because of our historic ties with Britain and that we are a bridge between America
and the European Union. It is because of our vast global diaspora acting as unofficial ambassadors worldwide, spreading the message of how beneficial it is to locate business in Ireland. Finally, it is because of our taxation policy, one to which all major political parties have subscribed and respected while in government through the years.

It is also a taxation policy that the European Commission and others have tried to strike down, most recently in their response to the economic crisis. The Apple tax ruling by the European Commission is our biggest economic and sovereign challenge since the arrival of troika. It will have to be dealt with in the same way. Unless overturned, it is a challenge to our open global economy and Irish jobs. My personal view is that our position is correct, the Commission is wrong and we will win the appeal. Backing this position is backing Ireland in its hunt for the best of international capital, investment and jobs. Backing this position is backing Irish research, innovation and talent. Backing this position continues to create opportunities for all our people beyond what an island nation of ours could otherwise expect or hope.

All of our businesses can avail of our taxation system. It is fair, equal and transparent, a point on which Revenue has been clear. Ireland has over 180,000 direct jobs from foreign direct investment. Around them, there are 200,000 other jobs. The wage bill alone from the multinationals amounts to over €9 billion a year, money which is spent in the economy. We have gone through a transformation over the past five years, winning back jobs that were lost in the construction sector. We are still not fully there as we still have high unemployment. We cannot rest for the next two years. To turn our backs on jobs and investment, to damage Ireland’s reputation and to cede control to others to dictate our economic policy and tax affairs is wrong for jobs and the future of this country.

Deputy Niall Collins: I am glad for the opportunity to partake in this important debate which impacts on every community, whether urban or rural. Our foreign direct investment policy impacts on every community, either through direct or indirect employment. For every direct job, up to four spin-off jobs are created. Taxes collected from foreign direct investment companies and those they employ assist in the provision of the public services. Our foreign direct investment policy over the years has been significantly successful in attracting pharmaceutical, technology, life sciences, manufacturing and financial services companies. All the big global names have a presence in this country, providing valuable employment. One cannot overstate the importance of these companies to our economy and how they have been attracted through our State agencies.

Naturally, I support the Government’s appeal of the European Commission’s finding. Given the many contradictions in the decision, many of which were aired today, and given the fact Apple is appealing the finding, it would be foolhardy and naive for the Government not to do so either.

Our sovereignty is central. Several years ago when the troika came in to fund this country, the big cry was about our loss of sovereignty. Now we have a challenge to our sovereignty with this finding. Many of those who decried the fact the troika funded this country several years ago and claimed it was a loss of sovereignty are happy to support an action which we now deem to be a direct attack on our sovereignty.

The Revenue Commissioners also need to be supported. They are independent and professional in their approach when dealing with individual taxpayers and companies. They have spoken clearly and succinctly on this matter.
We hear of a sweetheart deal for Apple. How can anyone with a degree of credibility, either inside this Chamber or outside, make such a claim? No one is privy to anybody else’s tax affairs. All individuals’ and companies’ dealings with the Revenue are on a one-to-one basis. Taxation policy and legislation is available to everyone. No legislation or policy is tailor-made for one individual or company.

We must stand up for our national reputation. I support all of the Government’s endeavours to protect our national reputation. Several nights ago when watching Sky News, I noted some commentator allege that Apple just had a brass plate presence in Ireland. This was ill-informed nonsense being beamed across the world by Sky News. Nothing could have been further from the truth. Apple has 6,000 employees in this country with further significant investment planned for Athenry.

What is also troubling about this judgment is its retrospective nature. This is somewhat hypocritical of the European Commission. We all recall how, at one stage, the Commission promised retrospective recapitalisation of our banks but welched on the idea. Now it wants to collect taxation retrospectively. Again, another contradiction. The people know one cannot write legislation which impacts people retrospectively as it is unconstitutional. I cannot create a tax rate and retrospectively collect it from the people.

Some want to take the €13 billion and run, waving away the fact Apple will appeal it and that the money may have to be repaid to Apple from the escrow account, along with accrued interest. The money is not available and there is uncertainty about how much is owed to the US and other countries. The argument to take the money and fund the health service for the year is a complete puff of smoke.

We must protect our corporation tax rate, which has been attacked many times by France, Germany and other countries. It should be remembered that we applied a 10% corporation tax rate to manufacturing companies at one stage. We also had the successful Shannon free zone and similar zones elsewhere where a zero rate of tax applied. Low rates of tax are central to our highly successful foreign direct investment policy, which funds our public services and provides jobs. The Government is right on this issue on which I support its endeavours.

Deputy Seamus Healy: I will vote against the Government’s proposals on this issue. Mr. Martin Shanahan, the chief executive officer of IDA Ireland, stated in a recent radio interview that the ruling “does not call into question Ireland’s tax regime and does not call into question Ireland’s 12.5% tax rate”. The European Commissioner, Mr. Phil Hogan, subsequently agreed with Mr. Shanahan. Both Mr. Hogan and Mr. Shanahan are correct that the Commission’s ruling does not affect Ireland’s corporation tax rate or sole competency to set that rate. Why then is the Government, by which I mean the Fine Gael Party, the Independents supporting Enda or “Endapendents”, Fianna Fáil and the Labour Party, stressing its militant opposition to any change in the 12.5% corporate tax rate? This fake militancy is in total contrast to the grovelling support shown by these parties for the bailout and fiscal treaty, which fly in the face of the 1916 Proclamation and Irish sovereignty.

Sweetheart deals and allowing corporate entities to avoid paying their fair share of tax have serious consequences for ordinary people. We have, for instance, a serious housing emergency, with more than 100,000 families on housing waiting lists, and a growing homelessness problem, with 2,000 children living in emergency accommodation. Families continue to be evicted from their homes by banks owned by the State. Hundreds of thousands of people are on hos-
hospital waiting lists and chaos prevails in hospital emergency departments. Home help services, home care packages and education are being cut and the list goes on. Low and middle income families are also being fleeced by the universal social charge, house tax, inheritance tax, VAT, student fees and the water tax.

Fine Gael, the “Endapendents”, Fianna Fáil and the Labour Party are betraying the Irish people by refusing to accept €13 billion with interest from the €228 billion which Apple has resting in subsidiaries with no tax residence. The same politicians meekly gave €64 billion of citizens’ money to large international investors who gambled on Irish bank bonds. They now want to give back the guts of €19 billion to one of the largest companies in the world.

We heard a great deal in this debate about the Organisation for Economic Co-operation and Development, OECD, and base erosion and profit sharing, BEPS, a concept to which the Minister referred and which is referred to in many, if not all, of the amendments to the motion. BEPS, it seems, will be our saviour, but nothing could be further from the truth. However, if the current proposals are implemented, Ireland’s position will worsen as corporations will pay each country tax on the profits they make from sales of their products in that country. As sales in Ireland account for only a tiny fraction of worldwide sales, corporation tax revenue will come under serious threat from these proposals. While the 12.5% rate will not change, it will apply to a much smaller share of profits, which will have serious implications for employment here. Many countries, including the United Kingdom, have announced reductions in their corporation tax rates in a race to the bottom. For this reason, the fake militancy of supporters of this motion is a smokescreen to cover up the effects of their current policies and the economic development policies they pursued over decades, including, above all, the ceding of all effective economic sovereignty to the European Union and multinational companies.

Ireland’s ability to respond to this serious threat has been weakened by the privatisation of various companies, including Eircom and Aer Lingus. The Finnish Government, through a nationalised wood company, created thousands of jobs in an indigenous company, Nokia. We must do likewise by creating tens of thousands of jobs in indigenous industries in the high-tech, energy and agricultural sectors, as well as in public works programmes. Above all, we must recover our sovereignty to allow us to cope with future developments. Italy, France and Spain flout the fiscal treaty when it suits them and we must do likewise.

**Acting Chairman (Deputy Declan Breathnach):** As a large number of Deputies have indicated, I must be strict regarding speaking times.

**Deputy Martin Heydon:** Previous speakers, notably the Minister for Finance and the Taoiseach, described the Commissioner’s decision in the Apple case as wrong and damaging to the country. The messages from many of today’s speeches were stark and clear. The Government is taking a strong line on this matter for good reason. The Commission’s decision is, in some respects, an attack on the country and the Revenue Commissioners, a vital and independent organ of the State. It is also an attack on Ireland’s reputation as a country in which to do business and one which conducts its affairs in a legal, fair and transparent manner.

I have been shocked by some of the contributions by Opposition spokespersons and some of their recent media comments. Certain Deputies who oppose everything connected with the European Union suddenly want us to roll over and accept the Commission’s ruling that Ireland has broken the law, which is not the case. They believe we should collect the money involved and allow the country’s reputation to be flushed down the toilet, thereby affecting future busi-
ness. They would have us sell our reputation for 30 pieces of silver.

Let me put in context the €13 billion sum involved. This figure amounts to only two years of direct corporation tax collected from the foreign multinational companies that employ people here. It does not include the PAYE contributions made by hundreds of thousands of citizens who work in such companies, including many of my constituents who are employed by foreign companies that have invested here. These employees have important jobs and spend money in their local communities, which creates indirect employment. For 30 pieces of silver, we would send a message to foreign investors and employees that if the European Union tries to bully us on our corporate tax rate and attempts to change the rules retrospectively, we will roll over and allow it to do so. This is a shocking approach from parties that describe themselves as nationalist and it is one that I will not support.

As the Commissioner stated, the €13 billion would not be available to Ireland. Although we would collect it, other countries would be entitled to claim a share of it from us. This is proof that the Commission accepts that the tax was not ours to collect. Apple’s intellectual property is based in the United States. The €13 billion would be moved out of Ireland because taxes would be due to much larger European countries. Certain Deputies want to sell our reputation for money that we would ultimately not receive.

It is wrong that a company should pay only €50 on a profit of €1 million and I would not condone that for one minute. However, we must be clear about where the problems lie and they do not lie with the Irish tax system. They are as much to do with the US tax system which allows companies that have been incorporated to hold money offshore. Ireland is working with the OECD and other countries to address deficiencies in the tax system. It is incorrect to suggest that Ireland plays hard and fast with the rules and we cannot allow our reputation to be destroyed.

On inward investment, IDA Ireland client companies directly employ 187,000 people. IDA Ireland estimates that one in five jobs in the economy is directly or indirectly supported by inward investment.

The Taoiseach outlined the history of State economy policy. In the first couple of decades after independence, we tried hard but ultimately failed to become an industrial country. At that time, the economy was based primarily on agriculture. T.K. Whitaker and other people with great vision realised that the future lay in opening up the economy to foreign investment and playing to our key strengths as a small island nation on the edge of Europe. We should not make any apology for continuing to pursue that policy. Apple is a company that employs 6,000 people in Ireland. Those involved in the company see the value of the Irish people, the skill-base we have and the proven track record in delivering a good return on investment. They see a proven young talented and hard-working workforce and a positive business environment as a result of the hundreds of measures put in place through the Action Plan for Jobs since 2012 that have made a real difference, never mind access to European markets.

We cannot allow any damage to our reputation. Earlier, Deputy Seamus Healy referred to Martin Shanahan. He was selective in what he said. From what I heard, Martin Shanahan of IDA Ireland said that this was ultimately very damaging for our reputation and that is not a good place to be.

Europe has had positive influences on this country and I consider myself pro-European.
However, if the people in the European Commission want to make a habit of trying to enforce retrospective actions and attack us based on present day rules over something that occurred 13 years ago in a very distorted manner, then they can expect a fight back from Ireland. This is an opportunity for us, as a Parliament, to send a clear message to the effect that Ireland does not offer sweetheart deals, Ireland fights its corner for foreign direct investment in a fair and transparent manner and it will continue to do so in future, working with the OECD and other countries.

**Deputy Louise O’Reilly:** It is refreshing to hear Deputy Heydon talking about the great fighting spirit in the Government. It is regrettable that none of this is going to be made available to the poor hard-pressed citizens of the country. Instead, Deputy Heydon chooses to don the green jersey, roll his sleeves up and go out to bat for a multinational corporation.

**Deputy Martin Heydon:** It employs 6,000 people in the country.

**Deputy Louise O’Reilly:** The Government is defending an historical tax arrangement which it claims is fair and just. Clearly there is a lot of anger outside this Chamber at this decision. Only last night I was at a public meeting in Swords. The people I spoke to were clear: they are angry that our Government appears to be incapable of questioning what some suggest is the dubious notion that we must impose water charges against the wishes of the majority of voters, but, at the same time, it believes the European Commission must be challenged when it is to the benefit of a multinational corporation.

Sinn Féin rejects the Government and Fianna Fáil motions. We call on Teachtaí Dála to support our amendment. I wish to signal my party’s support for the Social Democrats motion but we reject the other motions which, we believe, add nothing to the debate. We recognise good elements in the amendments proposed by AAA-PBP but it falls outside our party’s policy. We reject the amendments tabled by the Green Party and the Labour Party. Due to a lack of clarity in some aspects, we intend to abstain on the amendment of the Independents 4 Change. The Green Party amendment contains some worthwhile points but given that it does not oppose the Government’s decision to appeal, we cannot support it. Shamefully, the Labour Party amendment would also leave the decision to appeal unchallenged.

The political cowardice displayed by this Government has some parallels in our recent history. Let us recall the Financial Emergency Measures in the Public Interest Act 2009. In 2009 Apple was paying far less than its fair share. I recall the words of the late Brian Lenihan, who said that the pension-related deduction “is a reasonable and reasoned measure to deal with the serious imbalances which have emerged in the public finances”. He went on to further assure Members that the then Government did not take the decision to introduce the measure lightly: “We know it calls for a measure of sacrifice but it is worth calling for so as to avoid a worse fate”. This was a measure of sacrifice the likes of which the Government would not ask of a corporation but it was happy to take it out of the pockets of home help recipients. He further stated that the pension-related deduction did not seek to scapegoat public servants but that there was simply no alternative. Are we not all wiser after the fact? In fact, there was very much an alternative to the Government putting its hands into the pockets of hard-pressed civil and public servants.

Since 2009 and all the talk of no alternatives, not once has this Government or the previous Government dug in their heels. When the troika rocked into town those in the Government bent themselves out of shape to accommodate it. When demands were placed to cut back our public services, they took the scissors out and cut away happily. It was only when they were told that
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the actions taken were illegal and that the State could be in line for a recovery of €13 billion did they suddenly develop principles, grow backbone and all of a sudden decide to stand up for Ireland’s interests.

At the same time as the Batman and Robin combination of the Taoiseach and Deputy Micheál Martin are fighting the European Commission on this ruling, members of the public service remain crippled under the weight of the pension-related deduction. I do not understand how they can have the brass neck to look into the face of a nurse, teacher or garda when they have passed up the opportunity to levy taxes on a corporation. They are appealing a ruling that could be of benefit to the State and could alleviate that burden. They have some brass neck. They also ignore the fact that Apple has made a statement committing the company to Ireland and pledging ongoing investment. We have a problem recruiting and retaining nurses in this State. The Apple jobs are safe - Apple has given that commitment and the chief executive has confirmed it. Yet the Government cannot manage to organise a targeted recruitment campaign for nurses.

I put it to those in the Government, and to their best friends in Fianna Fáil and the Labour Party, that they all need to get their priorities right because right now they are so out of touch that it is embarrassing.

Minister for Jobs, Enterprise and Innovation (Deputy Mary Mitchell O’Connor): Our international reputation as a place of business and future job creation is critical. Multinationals invest in Ireland for many reasons. They come here because of our highly talented and capable workforce. They come here because we are an English-speaking country in the eurozone. They come to invest in Ireland because they can rely on the stability and transparency of the Irish legal and taxation regime. They know that laws will not be re-written or retrospectively applied. They know our courts will vindicate the rights of people.

The European Commission has called into question our sovereign right to collect tax according to our tax laws. We are a sovereign nation with jurisdiction over our own tax laws and we make no apologies for doing so. We make no apologies for putting in place the right enterprise conditions for investment for international companies. We stand by our 12.5% corporation tax.

We are a country that makes real goods and provides real services - whether medical devices, pharma products, infant milk powder, microchips or FinTech products. We compete with other countries for foreign direct investment. Let no one be so naive as to think that potential FDI companies come here for our smiling Irish eyes or turf fires. It is a cutthroat business. Singapore, Luxembourg, Denmark and London, to name but a few, are places vigorously fighting to win investment. As the Minister for Jobs, Enterprise and Innovation, I am keen to ensure that the 187,000 people living in Ireland who depend on foreign direct investment for work have certainty now and in future.

Apple employs 6,000 people in Ireland, many of whom are in Cork. The company will, in a short time, invest €850 million in a facility in Athenry. These are real people and jobs, not simply statistics in a tax report or a brass-plate company.

FDI companies account for 15% of all employment and for exports worth €130 billion in goods and services. They contribute significantly and support innovation in every part of our economy. They represent the potential pipeline of employment for our children and grandchildren. It is incumbent on us to protect our reputation and we will do so.
I point out to Deputies who are critical of the Government’s approach to appeal this decision that many of them cry foul when IDA Ireland does not facilitate enough visits to their constituencies. We should make no mistake about it: IDA Ireland investment depends on our international reputation. These people cannot have it both ways. We cannot and will not allow the fallout from this Commission decision to hamper our ongoing efforts to win more foreign direct investment for Ireland.

The ruling has the potential to cast a cloud over our hard-won reputation as a legitimate home for international business and it creates uncertainty. Uncertainty frightens investors and delays investment. We have a responsibility to robustly contest the Commission’s decision and I am confident our appeal will succeed. That is because, in very simple terms, Ireland did not provide favourable treatment to the company involved. The facts and historical record bear this out.

I urge every one of my colleagues in this House to support this appeal. Nothing less than our country’s reputation and prosperity is at stake.

Deputy John Brassil: I welcome the opportunity to speak in the debate. Listening to the various opinions expressed all day, it is very easy to lose sight of the fundamental issue, which is that the EU competition authority has found against Ireland and claimed we provided illegal state aid to one company, namely, Apple. Regardless of how much is at stake, we have no option but to appeal the decision for the benefit of present and future foreign direct investment in this country. I remind the House that Neelie Kroes, the former EU Competition Commissioner came out very strongly against the decision of her successor in stating:

You cannot change the rules of the game through ad hoc state aid enforcement, and then seek retroactive recovery for unpaid taxes.

Doing so would be fundamentally unfair and would harm competition, growth and tax income in Europe. And it raises serious questions about legal certainty and the rule of law.

I think we should take note of that.

The second issue I wish to raise is to question whether this money is real. Despite everything I have heard, I have heard no argument so far that convinces me that one cent of this money will stay in this country. How can anyone expect taxes generated on sales in another jurisdiction to be collected in Ireland? I cannot understand it and I cannot understand the ruling.

As mentioned by numerous speakers, I wish to talk about the interest on the money to go into the escrow account. Even at the paltry rates available at the moment of 0.5% to 1%, a sum of €13 billion would raise approximately €100 million a year in interest. If this appeal takes six years, it would be a substantial amount of money. The Minister has a duty to negotiate with Apple and some of that money might get into our coffers.

Throughout the debate there seems to have been a them-and-us attitude, particularly from my colleagues on the left. There is an opinion that supporting Apple or any multinational is somehow a bad thing and goes against the PAYE worker, the self-employed or SMEs. I argue the opposite. We need Apple and we need multinationals. We need the 4,000, 5,000 or 6,000 jobs that those companies create and through them generate the type of tax we need to provide public services such as education, health care and social welfare. To me it is not a case of them
and us. By supporting Apple and appealing the decision, we are also supporting the workers and supporting the country. We need to provide certainty. We need a country in which foreign direct investment will continue to flourish. For that reason, I support the motion.

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Pat Breen): I fully endorse everything the Taoiseach and the Minister, Deputy Noonan, said here earlier today. We cannot and do not accept the ruling of the Commission or the warped logic that underpins it. We must make it clear that Ireland did nothing wrong and that we have not provided special tax arrangements to anyone.

We must make no apology for competing fairly and within the rules for foreign direct investment. Imaginary sweetheart tax deals have nothing to do with the long-standing presence of Apple in Ireland, nor any of the other hundreds of successful multinational companies that have made Ireland their home. These businesses invest in Ireland because of our determined and talented people, our improving infrastructure, our first-rate education system and our continued membership of the EU. They also invest here because of our reputation as a country that fosters entrepreneurship, innovation and creativity. Of course, our competitive rate of corporation tax is also an important factor but it is only a single piece of a much larger puzzle.

We have worked hard, over many generations of public policy-making in this country, to put all of these conditions in place. This required patience, commitment and focus across many decades. We should be proud of that track record and what we have achieved, working together, to attract high-quality foreign direct investment to our shores.

That is why I find the recent European Commission ruling particularly disappointing. By wrongly asserting that Apple was the recipient of illegal state aid, it suggests somehow that international businesses are here on account of illegitimate inducements. It, therefore, impinges on the integrity of the legal and commercial regime in this country and the strengths Ireland has to offer.

In addition, the ruling has the potential to create uncertainty for international businesses looking to invest or expand in this country. It could cause them to wonder whether they can rely on the operation here of the basic principle of the rule of law. It might cause them to question whether Ireland is a place in which they can do business without fear of political intervention. Ultimately, it may lead current and potential investors to consider alternative destinations as a better home for their businesses.

All of us in this Chamber appreciate that the stakes are very high. We all know how heavily we rely on foreign direct investment in the country. Overseas companies here create hundreds of thousands of jobs, export tens of billions of euro worth of goods and services, contribute significantly to Government revenues and support innovation across every part of our economy. Their presence here is at the heart of the model that helped transform the Irish economy to the modern, open and thriving one it is today.

That is precisely why the Commission’s ruling, which is based in neither fact nor law, is potentially very serious. It could, if we do not respond in the right way, weaken the foundations of our outward-facing, export-orientated economy. It is, therefore, incumbent on us to appeal this ruling if we want to protect the country’s reputation and our capacity to win FDI in the future.

I recognise, of course, that there is a temptation to accept moneys that the Commission have mistakenly interpreted as being owed to the State. However, to do so would be to accept its
I fully support the motion presented today and I ask everyone here, regardless of party affiliation or political ideology, to stand together and support this appeal.

Deputy Frank O’Rourke: I welcome the opportunity to contribute to this important debate relating to Ireland’s corporation tax policy. Some 187,000 jobs are supplied by 700 US multinational companies located in Ireland and supported by IDA Ireland. Many others are indirectly employed as a result of the presence of these multinationals as suppliers or contractors. Let us be in no doubt that this is an important sector for our economy. The multinational sector now represents nearly 10% of the country’s total employment. Companies are attracted to Ireland for a number of reasons. These include the skills of our people, the flexibility of our labour market, the ease of doing business and the fact that Ireland is the only English-speaking eurozone country.

While our taxation system is important for attracting foreign direct investment, many other factors affect our ability to attract inward investment. The provision of a competitive, consistent and certain tax policy is a key feature in the attractiveness of Ireland as a leading location for foreign direct investment. Corporation tax is an important element of our tax base that allows us to provide services for our people. It is worth noting that 80% of all corporation tax paid in 2015 was paid by the multinational sector. Such tax receipts will boost the Exchequer by €6.6 billion this year alone. This amount will almost cover the expenditure of the Department of Education and Skills.

Ireland has worked hard over the last 30 years to highlight its attractiveness to multinationals. We have been hugely successful in encouraging them to set up in Ireland. This success has led other countries to copy our approach by investing in education and setting their corporation tax rates close to our 12.5% rate. I read recently that despite having just 1% of the EU population, Ireland has secured 11% of foreign investment into the EU by US companies. Great credit is due to IDA Ireland, other State agencies and successive Governments for pursuing this successful strategy. We must realise that certainty in relation to our tax policy is a key enabler for attracting multinationals. We need certainty with regard to our fiscal position, our education policy and our tax policy. This EU ruling undermines that certainty. How can a company operate in Ireland if it reaches an agreement with Revenue, which is independent of the Government, only for the EU to make a ruling a few years later that undermines the agreement in question?

The retrospective nature of the EU ruling is also unfair. In this House, we cannot make laws retrospective. Revenue is independent of political interference. It implements the law independent of the Government. It is important that this policy is not undermined. Tax policy is a competence of the Irish Government, not of the EU. My constituency, Kildare North, is home to many multinationals, including Intel, Hewlett Packard and Wyeth. We have been hugely successful. I want to acknowledge the work of Kildare County Council in proactively developing partnerships with companies of such significance. I see at first hand how these companies have strengthened the bonds with local communities in Kildare. I see how Intel has developed links with NUI Maynooth, which is now Intel’s global education partner and has become a key knowledge provider for that company.

We need to ensure confidence in our tax system is restored following the EU decision in the Apple case. The level of tax paid by Apple during the period of investigation is not defendable.
As this is an international issue, solutions should be arrived at through the OECD. Following recent changes in tax laws, Ireland is leading the way in the elimination of these loopholes. Ireland is the only island nation in the EU. We need to take a proactive approach to attracting inward investment. It is much easier for other countries that have land borders with their EU partners to market their goods and services. We use airports and ports when we are taking our products and services to the EU market at large. This potentially increases the cost of doing business in comparison to other countries. As a result, over the last 30 years we have successfully focused on policy initiatives to counterbalance this potential drawback. The EU should not undermine our key platform for attracting inward investment. The Government must defend our right to have our own tax policy. We have the right to protect our sovereignty on tax policy.

I would like to make two final points. It is important for the Government to be seen internationally to be at one on this matter. It is disheartening that it took some days for the Government to get its act together on this important national issue. Fine Gael and the Independent Minister, Deputy Zappone, should not have allowed this issue to fester in public for a number of critical days last week. Strategic national issues of importance, such as this decision, should not be treated so casually. Finally, if the EU is really serious about this €13 billion tax liability, why does it not indemnify Ireland from any future liability in connection with this alleged tax liability? It has not done so because it is playing politics with our tax system.

Deputy Jonathan O’Brien: I come from the Cork North-Central constituency, where Apple’s headquarters are based. I know all too well the value of foreign direct investment not only to the State but also to the communities in which such investment is made. There was a very mixed reaction when this judgment came out, mainly because it was immediately followed by a lot of hysteria. We have heard some of that again tonight. I will touch on that in a moment. Many people in the north Cork city area who are employed by Apple, or who rely on Apple’s secondary industries, are very appreciative of the investment that has been made by the company over the years. I think the most calming statement that has been made on foot of the European Commission ruling came from Apple when it said that the ruling would not have any bearing on its commitment to Ireland or its commitment to expand its operations, as it is currently doing on the north side of Cork city.

It is fair to say that people in the area have no issue with Apple wishing to appeal this decision. It is within the company’s rights to do so. If that is what Apple chooses to do, I think people in the local area will understand that completely. There is anger, however, about the Government’s decision to row in behind an appeal. I remind the House that people are looking at the scenario that has played out over recent days with the same eyes they used to look at previous Government actions. We have heard Ministers talking about having to stand up to Europe because this is an attack on Ireland. When Europe was implementing austerity and attacking the Irish people, the Government did not stand up for anyone. It held people down while the European Commission stomped on them. That is where the anger is coming from. There have been two different outcomes. Those who now seem to be eager to stand up to Europe on behalf of the multinationals would not stand up to Europe on behalf of the Irish people some years ago.

I would like to refer to what the Minister for Jobs, Enterprise and Innovation said earlier. I do not want to misquote her. She said that Opposition Deputies “cannot have it both ways” by being critical of the European Commission while accepting its ruling on this issue. I suggest that her remarks and those of her colleague, the Minister of State, are actually contradictory. The Minister, Deputy Mitchell O’Connor, said:
Multinationals invest in Ireland for many reasons. They come here because of our highly talented and highly capable workforce. They come here because we are an English-speaking country in the eurozone... They know our courts will vindicate the rights of people.

I fundamentally disagree with the suggestion made by the Minister of State at the Department of Jobs, Enterprise and Innovation that this ruling has the potential to create uncertainty for international businesses looking to invest or expand in Ireland. Apple has committed to investing and expanding in Ireland, despite the Commission’s ruling. The Minister of State went on to say that the Commission decision may lead current and potential investors to consider alternative destinations as better homes for their businesses. I would argue that the Government cannot have it both ways. It cannot say on the one hand that Ireland is an attractive place for foreign direct investment companies to do business because it is an English-speaking country in the eurozone with a talented and highly capable workforce, while at the same time claiming, without putting forward any evidence in support of such a claim, that we may lose foreign direct investment because of this ruling and this ruling alone.

According to the Government, the whole basis for the appeal is our national reputation. The reality is that our national reputation went down the Swanee when we were sold out by the Fianna Fáil crowd when they were in government some years ago. It is ironic that Fianna Fáil is now rowing in behind the Government in arguing that we have to appeal this ruling. Of course Fianna Fáil would say we have to appeal it, given that it did these deals in the first instance, even if it cannot admit that. Fianna Fáil has no option other than to support the Government in its proposed appeal. I hope the Minister will clarify these matters in a way that makes it very clear to people, particularly in my constituency and other constituencies that rely on foreign direct investment, that regardless of whether Apple’s appeal is successful, this ruling will have no bearing on companies that are willing to invest and expand in Ireland.

7 o’clock

Deputy Willie Penrose: There have been thousands of words written and volumes of speeches made by people pontificating about their understanding of the implications of the recent Commissioner for Competition’s decision on state aid purportedly afforded by the Irish State to Apple plc. I am inclined to review this issue as a lawyer looking at same from first principles, in terms of its efficacy from a legal perspective and its overall legality but we are hamstrung by the fact that the full text of the judgment is not available. We all subscribe to the objective of collecting in a legal fashion each and every penny of tax due, which is important in terms of the provision of social and public services for our citizens.

The Labour Party has tabled several amendments today and I urge the House to support them. One amendment is to get the agreement of the House to the principle that every profitable company should pay a real and reasonable level of tax. Our 12.5% rate has brought jobs and investment to Ireland and is a cornerstone of our industrial policy to date. It clearly should remain in place. It is sacrosanct and should be protected. It has drawn some jealous eyes from other places. I am very attached to the effective tax rate which is extremely important. There have been too many avenues, ways, options, allowances and incentives to reduce the nominal tax rate to a small percentage. I subscribe strongly to the amendment tabled by the Labour Party that the effective tax rate would become the normal tax rate. Initially it should be around 6.2%. That would be desirable and would certainly see a significant increase in the tax collected.

An editorial in today’s Westmeath Topic, a locally produced, published and owned country
newspaper has got the issue spot on when it describes how in the current forum of the debate across the globe, on Sky News and so on, Ireland is in effect a pawn of the EU in its battle with the USA. We are all aware that 350,000 jobs are produced in this country by up to 1,000 or so multinationals, how important they are, and how their families and others derive benefits from them. I want to see a greater emphasis on domestic and indigenous firms to give them the opportunity to create sustainable and long-term employment as small, indigenous and local firms have done in the past. There are 700,000 jobs in those firms.

Under the Lisbon treaty we were assured that Irish taxation policy lies exclusively within the competence of our sovereign Government and that it is sacrosanct and immune from interference by any European country or institution. This commitment was reinforced by EU law but this seems somewhat hollow in the context of Commissioner Vestager’s decision. A simple question arose for me immediately upon hearing of the EU judgment. How could anyone rewrite corporate tax rules so as to create a fog of uncertainty and undermine the rule of law - our tax laws are written under statute - and bring into the heart of the matter the retrospective application of tax laws? This is a breach of common law principles underpinned by statutory interpretation. It is interesting to see an EU institution wanting to seek collection of these taxes retrospectively when, notwithstanding its solemn commitment to retrospectively deal with bank recapitalisation in respect of our bailout it welched on that commitment and engaged in mealy-mouthed and pious platitudes. It is clear hypocrisy, which is breathtaking. It is no wonder people continually question how the EU operates and feel detachment from it. This is the type of action that brings that type of cynicism to the fore. I cannot understand how that can apply, how one can arrange one’s business with certainty, which is certainly a breach of another important EU principle of legitimate expectations whereby one is assured that when one complies with the law pertaining in all respects, any amendments or changes to be made will be made prospectively.

Worse, it conjures an image of funny money, in terms of a €13 billion windfall, possibly increasing to €19 billion with interest over a ten year period. To illustrate the phantom nature of the exercise, in reality if the European Court of Justice, ECJ, were to uphold the decision of the competition Commissioner we might not get a tosser, if Apple is forced to cough up. It will be coughing up because it will put the money into an escrow account or a spending account for the next four months and nobody can touch that in the interim. The USA, which permits a tax deferral system, could collect most of the money if it is due on the basis of research and development, industrial patents and original concepts. Other EU countries and countries in the east will be at the coalface seeking their share as they will be entitled, according to Commissioner Vestager, to their tax share, only for specific activity that takes place in their jurisdictions. This is precisely what the Revenue Commissioners have always done as required by law. They have collected the tax due on activities that are specifically related to sales on products that arose in Ireland. That is the gold standard for tax collection and the Revenue Commissioners are scrupulously fair, efficient and effective and are clearly independent in that role. Like everyone else, I have numerous ways to spend additional money if it is ours to collect: €25 million is immediately required for the construction of new operating theatres and other important facilities in the Midland Regional Hospital in Mullingar but we have to live in the real world, as distinct from the imaginary world or the world we would like to have. The EU Commissioner has entered into the political arena at a level I thought was reserved for the European Parliament and the Council of Ministers, has directly interfered with our tax policy and in the process has created a fog of confusion about future tax policies.
Deputy Maureen O’Sullivan: At the core of the discussion tonight is the principle of tax justice. I go back to November 2015 when the then Technical Group tabled a Private Members’ motion on this issue. Worldwide there is a lack of accountable and transparent tax systems. That lack is creating inequality and exacerbating existing inequality. We know that economic inequality is growing and with it inequalities in access to health care and education. There are many examples of tax injustice where millions and in some cases billions of dollars have been lost to countries through lack of transparency, accountability and poor governance. The big multinationals have played countries off against each other for years to ensure low taxes and therefore massive profits for themselves. In the November Private Members’ debate one statistic we knew was that Apple’s annual revenue was approximately 80% of Ireland’s GDP. I remember saying then that we were not sure what else would emerge about Apple. That is what we are facing now and we are asking questions of it.

When it came to Ireland first in 1980 how come Apple, which was then a final assembly and testing company, was able to secure a 10% tax rate as a manufacturing company when it was not manufacturing? At a recent US Senate committee meeting it was asked why it chose Ireland and it declined to comment. It did say, however, that the paperwork from that period in 1980 had been lost. There are questions to be answered in order to get to the truth and, as the proverb goes, we should not be afraid of that truth.

The Government has chosen to take on the European Commission over this ruling because it says it is the basis of our sovereign right to tax as we see fit. I am also very much in favour of our acknowledging our sovereignty and working to it but where was our concern for our sovereignty when we took rulings from Europe and outside Europe on the austerity budgets, which were imposed and which caused so much suffering here? We know that tax avoidance, tax evasion and favourable arrangements for multinationals are the biggest single cause of inequalities in the developing world and countries of the global south. The Organisation for Economic Cooperation and Development, OECD, stated that up to $240 billion is lost annually by governments around the world because of aggressive tax planning by multinationals. The United Nations High Commissioner for Refugees, UNHCR, tells us that 1.2 billion people live on less than $1.25 a day and a further 2.7 billion on less than $2.50 a day. One way to eliminate global poverty is to use resources such as tax. Illicit tax flows have gone from $9.7 billion over 25 years ago to almost $1 trillion.

We play the leadership role, and are respected for that, in respect of the sustainable development goals. Goal 16.4 is to “significantly reduce illicit financial and arms flows”. We are respected for our development aid because it is not tied but we should equally be respected because we are committed to tax justice. We cannot be selective when it comes to fairness and justice. We are very taken with this god of foreign direct investment and it is very valuable in creating employment in this country. I acknowledge the employment it has given and have listened to other Deputies outlining the extent of foreign direct investment in their constituencies but there are also examples of companies which come and go. Sometimes the reliance on foreign direct investment is at the expense of our small and medium enterprises. Country by country reporting is vital for tax transparency in order that all multinationals report sales, profits and taxes paid in all jurisdictions in their audited annual reports and tax returns. Many of our non-governmental organisations, NGOs, wanted Ireland to support an intergovernmental body on tax under the United Nations. We went for the OECD best package, country by country reporting, which was very positive but we did not go for it to be made public.

Our rate is ostensibly 12.5% but we do not know how much each company pays. Why not?
Social Justice Ireland tells us that if we had an effective tax rate of 6.5%, millions more euro would be realised so we can only come to the conclusion that the effective tax rate is much less. Ending the secrecy around tax payments and the economic activities of multinational corporations is crucial. Surely we have a right to know what multinationals pay here in tax.

Minister for Social Protection (Deputy Leo Varadkar): I thank the Acting Chairman for the opportunity to speak on this important issue. I only have a few minutes and I am not going to repeat what others have said, but I want to make three important points. First, I strongly support the Government’s decision to appeal the Commission’s ruling. The decision of the European Commission essentially asks us to become a global tax collector for the entire European Union, collecting tax on profits made on products that were not made, sold, marketed or developed in Ireland. If that ruling were to stand, it would surely make companies think twice about basing their operations in Ireland.

It is also important that we stand over the integrity of our tax system and the opinions issued by the Revenue Commissioners. Business and investors need certainty, not uncertainty and retrospectivity. The case in the European courts will provide clarity in respect of other cases, which is very important, establishing how much Apple owes and to which jurisdictions. It will also give other countries the opportunity to make their case for claims. I also want to reject the dishonest and cynical accusations that have been made by some of the speakers on the political left, suggesting that this money should be collected and used almost immediately to solve problems, such as providing a house for everyone who needs one, motorways, metros, transforming our economy and so on. It is an argument that is blatantly bogus. Even if we did not appeal, others would, and Apple has already done so. The money will be collected and the Revenue Commissioners are obliged to collect it now. However, it cannot be spent and must be held in an escrow account until such time as all litigation is complete. In some ways, those on the political left are acting like serpents in the Garden of Eden, tempting Eve with a promise they know they cannot keep and the fruit of a poisoned tree.

My final point relates to our industrial policy. Ireland’s industrial policy over the past 30 years has been an enormous success story. We have gone from being a poor, largely agrarian country that missed out on the Industrial Revolution to a modern, high-tech, wealthy country, with the number of people at work increasing from 1 million to 2 million. That was achieved through two major policy decisions. We ensured Ireland was attractive to investment through IDA Ireland, low corporation profit tax, good administration, accessible government and a skilled workforce, and we showed our commitment to the European Union, making sure we were very clear that our place is at the heart of Europe - we are in the euro and we are in the European Single Market - and that we have no ambiguity about that. We are attractive to investment and fully part of the European Union. They are the key tenets of our industrial policy.

In the past couple of weeks, the shock of the Apple decision gave rise to understandable anger in this country, but we need to be careful in the weeks and months ahead about the language we use. In the immediate aftermath of the announcement, it was inevitable that harsh words would be spoken on both sides. I reject the use of terms like “tax haven” for our country, but I also reject the characterisation of the European Union as a conspiracy of large states against small countries such as Ireland. Europe has been very good for Ireland and, as a small country, on the western edge of the Continent, the European Union gives us access to the largest market in the world and the ability to ensure that large corporations have to act in a way that is to some degree fair and appropriate, because only entities like the European Union have the scale to take on big trading issues like this, and large corporations where necessary. The European Union
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has also given us harmonised standards, for example, in terms of labour laws, health and safety, and the environment, to prevent a race to the bottom and unfair competition.

In recent years in the neighbouring jurisdiction, we have seen where anti-European rhetoric and nationalist rhetoric can ultimately lead. We need to be balanced in our assessment of the European Union. Of course the Union and its institutions make mistakes, but so do we. We forget a little too easily how Irish Governments thumbed their nose at the European Union during the Celtic tiger period, when Governments at best ignored, and sometimes ridiculed, warnings about our pro-cyclical fiscal policy and over-dependence on the property sector. In families and among friends there are always disagreements, but we should not allow these rows to degenerate into a serious rift. We should disagree with European institutions when they are wrong, and we should do so loudly and vigorously, but we do not need to attack those institutions. A robust engagement with our European partners and European institutions is what we need in future, but we should not slip into the language of “them and us” - plucky Ireland against conspiring foreigners. It is not in our long-term interests as a country or as an economy.

Deputy Timmy Dooley: I, too, welcome the opportunity to contribute to this important debate. Like others, I support the position taken by the Government in appealing this decision. Ireland, as we well know, has one of the fastest-growing economies in Europe. That is no mean feat considering the recessionary period we have come through. One has to look a little deeper to understand why. It is clearly based on the open nature of our economy and the outward-looking nature of our economic policies, the companies and the people who represent them. That is not by accident. It is because we have an investor base in this country that is modern, with a global footprint, that is selling products and services that are needed right around the world. Our education system is exceptional, we are an English-speaking country, we are bright and intelligent, we have a creative workforce, we are really good at developing research with our universities, and we have the skills and the skilled people to develop new services right across the board, whether in the pharma, biopharma, insurance, ICT, or medical device sectors.

I am concerned about a sense of taking what we have for granted that is creeping into this debate. We need to take ourselves back 30 years to a time when we did not have that kind of landscape. There was no certainty around our capacity to develop the skills to which I refer or regarding the fact that we had an education system that was fit for purpose and was connected with industry through the work in our universities, that we had a research base, and that we had all these skilled people. We did not have those. We had to use other incentives and we had to develop our corporate tax policy in a manner that would attract these companies. I stand over that and I make no apologies to Deputy Jonathan O’Brien for the decisions that were taken back then to try to convince these companies. Luckily, we have been able to develop alongside them and now we have a much greater foundation to attract the next wave of investment.

It is a very different landscape to what it was then. We all know the number of jobs associated with it - 187,000 direct and 200,000 indirect. I see that in my own constituency. I see the industrial base that has been developed in Shannon since the Lemass era, when the airport and the free zone were put in place. Small local companies started out there and foreign multinationals followed. They succeeded in employing a greater number of people. They upskilled the workforce in the region and now we have been able to move to a higher level, with higher-value jobs being created all the while.

At this stage, the battle lines are drawn between Ireland and the Commission. The courts will decide. However, the battle is not about the €13 billion. Let us be clear: the €13 billion
is not there. What is at stake is the certainty afforded in respect of our capacity to develop our own tax policy. The retroactive nature of the decision that has been taken so far is hugely damaging to our capacity to attract the next wave of investment. We are certain about the skills of our people, we are certain about our education system and we are certain that we are going to continue to speak the English language. There are plenty of things about which we are certain. However, the one thing we do not have certainty is our capacity to continue to decide our own taxation policy, notwithstanding that it is recognised in EU treaties that the latter is a competency of this State. We need to assert that and we need to challenge the Commission and defend our sovereignty in that regard. I would have hoped that would have come to the fore here and that others, particularly those who seek to represent the left, would have a greater understanding of that.

This notion that Apple will not leave is a bit of a red herring. Of course Apple is not going to leave. The multinationals are not going to leave overnight, but anyone who suggests that should be a plank of our future policy fails to understand how these multinational companies work. Every three to five years new waves of investment come from the United States and, whether it is Apple alone or one of the many of the other multinationals, each site has to fight for a portion of that wave of investment. We could be fighting with Luxembourg next month. We could be fighting with Belgium the year after. In many cases we have lost some companies as a result of the aggressive nature of the activities and industrial policies of other member states. I just looked at what happened in Clarecastle recently when Roche lost the capacity to retain investment it had looked for and other member states succeeded in getting that.

Acting Chairman (Deputy Alan Farrell): The Deputy’s times has expired.

Deputy Timmy Dooley: I want to make a point in conclusion. There has been an effort by some, particularly some within Sinn Féin, to demonise the policies that made us a home for FDI. Deputy O’Brien talked about the irony of what is happening today versus the decisions that were taken again. We need to look at the context of what happened in the early 1980s when Government and the IDA were trying to convince multinationals to locate here-----

Acting Chairman (Deputy Alan Farrell): I have to rush the Deputy.

Deputy Timmy Dooley: -----at a time when the only interest of some within the republican movement in foreign direct investment was where the chief executive of those companies lived so they could bundle them into the boot of a car and look for a ransom at some stage to have them recovered.

Deputy Louise O’Reilly: That is nonsense. The Deputy is way over his time.

Acting Chairman (Deputy Alan Farrell): Thank you, Deputy Dooley.

Deputy Timmy Dooley: That is a fact. It happened to extort a ransom in return for the safe delivery of those chief executives.

Acting Chairman (Deputy Alan Farrell): The Deputy is way over time.

Deputy Timmy Dooley: That is the context-----

Acting Chairman (Deputy Alan Farrell): The Deputy is well over time.

Deputy Timmy Dooley: -----in which these policies were developed. That was the kind of
difficulty the State had in trying to attract foreign direct investment at that stage.

**Acting Chairman (Deputy Alan Farrell):** I will have to cut the Deputy off now. Please take your seat.

**Deputy Timmy Dooley:** I think we have been successful and I commend the motion to the House.

**Deputy Michael D’Arcy:** This is about tax, tax owed by whom, where it was to be owed and who it was to be paid to. There have been a lot of conversations in the past within the legislature in the US about a repatriation holiday for tax. It is not spoken about but it has gone before the Senate and the House of Representatives on a number of occasions and has been defeated. There are trillions of stateless dollars off shore of the United States. We are absolutely not going to become - nor should we - some version of a collector general for Europe for taxation. Tim Cook, in his interview with RTE, said that Apple has made provisions to repatriate those funds. There are billions on deposit to pay their tax when they enter the US. Speaker Paul Ryan, former vice presidential candidate for the Republican Party said, “Above all, this is yet another reason why we need to fix our tax code... Today’s decision by the European Commission should be a spur to action.” According to Adam Halpern, a top tax lawyer at Fenwick & West, “For now, that may be little solace for Apple and its U.S. rivals. The revelation that a regulator can impose higher tax bills retroactively - even though they were legal according to national laws - will top companies’ list of concerns.” He said, “You thought you understood what your risk profile was in terms of tax, and then a regional non-government agency comes in and tells you to pay more.” That is the big problem for foreign direct investment companies. We have removed the certainty that a company can obey the law of the land and not have a retroactive bill thrown at it. The EU is picking on Ireland. The question is around what the Commission has determined was the legality of the Irish Revenue Commissioners’ ruling. That was the prior opinion. This will be determined by the ECJ. What is legal is for the ECJ to determine not the European Commission. The ECJ has overturned many decisions by the Commission.

I want to correct the Taoiseach today. He said that in regard to the OECD’s BEPS process Ireland was one of the first movers. Ireland was not one of the first movers; we were the first mover. That happened at budget 2014. Prior to the publication of the final report by the OECD on base erosion and profit shifting we changed our tax structure before anybody else. I remind the House that there are countries within the OECD that have still not changed the tax structure in line with the BEPS project. I have a real issue with this with the European Commission. This is what I describe as the foot in the door on taxation. I am speaking as somebody who is pro-Europe. Donald Tusk, the President of the European Council, said following the Brexit vote that we must pause the integration of the European project. I agree with President Tusk. The ruling of Commissioner Vestager has the potential to do further damage to Europe at a time when Europe has been already damaged. We have the anti-EU Alternative für Deutschland coming second in local elections in Germany. We have Norbert Hofer, an anti-EU candidate, on the verge of winning a presidential election in Austria. We have Marine Le Pen of the National Front in France promising a referendum on EU membership. Has the European Commission learned nothing from the Brexit vote?

I want to look at the hundreds of thousands of jobs that are directly impacted by foreign direct investment. The personal tax receipts in this State are now the largest source of income for the Government at 40% of the total collected. There are 6,000 people employed by Apple and if they can average €75,000 per year, it is almost €9 million a week into the Cork economy.
Anybody who could put that at risk must be out of their mind. If these jobs are lost to Cork it could destroy the Cork economy. I have seen a figure that companies attached to FDIs are responsible for 50% of PAYE returns. These are not minimum wage jobs. The Commission’s attack on Ireland is a land grab. It is dishonest, deceitful and just plain crooked. We have been in their sight for years. As long as there have been taxes there have been tax advisers. In a globalised world multinational corporate tax can only be dealt with in an integrated, coherent, international way. We are the meat in the EU-US sandwich. We have to ensure we do not get gobbled up.

Minister for Foreign Affairs and Trade (Deputy Charles Flanagan): I am pleased to speak on this important debate for two reasons. I consider it absolutely essential that the Irish Government appeals to the courts regarding this decision of the Commission and its analysis. Second, it is really important that we have the opportunity to set out clearly to the Irish people why we wish to appeal. As Minister for Foreign Affairs and Trade, I am particularly conscious of the need to protect our international reputation. Appealing to a court to determine the legal validity of the Commission conclusions is a necessary step to defend the integrity of our tax system and the tax system across the European Union. With my trade hat on, speaking as chairman of the Export Trade Council, I can say that it is also crucial that we provide tax certainty to business. I continue to be a passionate supporter of the European Union project. I believe part of its great strength is that it is clearly governed by the rule of law. In this instance the Commission is encroaching into an area of taxation which is a sovereign competence. I believe the European courts will support that view. Our taxation system is founded on the strict application of the law as enacted by the Oireachtas, without exception.

The Irish Revenue Commissioners, whose integrity is widely admired, collected the full amount of tax due from Apple in accordance with Irish law. Ireland did not give any favourable tax treatment to Apple. No State aid was provided. These are the simple facts at hand. I welcome the Commission’s statement that its decision does not call into question Ireland’s general tax system or its corporate tax rate. While this has been little reported upon, it is a most important statement.

No one can dispute that the international tax system is in need of improvement. I commend the Minister, Deputy Michael Noonan, for his leadership in this area during the course of his tenure as Minister for Finance. Ireland has been actively addressing aggressive tax planning both domestically and in multilateral fora. In 2014 and 2015, the Minister, Deputy Noonan, enacted changes to our corporate tax residence rules to combat stateless companies and to end the so-called double Irish tax structure. These reforms are little commented upon but they remain of fundamental importance.

Speaking as Minister for Foreign Affairs and Trade, I am acutely conscious that while there is some space for domestic action, the problem in the international tax system are most effectively addressed in multilateral fora. Ireland alone cannot solve these difficulties in global taxation practice. We continue to play an important and active role in global work to reform the international corporate tax system, most importantly through the OECD and BEPS agenda. Ireland has actively sought to implement BEPS through measures such as country-by-country reporting. The knowledge development box was the world’s first such tax measure to comply with the OECD’s tough new standards. At EU level, Ireland agreed the anti-tax avoidance directive in June with other member states. The international community needs to work together to tackle the problems in the international tax system. This is a time when the European Union should be seeking to work more closely with the United States of America rather than clashing.
The approach to state aid proposed by the Commission is a recipe for confusion and uncertainty. Taxpayers in EU member states are entitled to rely on the law of those states. Governments cannot prudently manage their finances where tax receipts can be subject to retrospective and unforeseeable changes on foot of a very broad application of state aid rules. The need for fairness and certainty are critical factors in the Government’s appeal of the Commission’s decision. The analysis presented by the Commission sits very uneasily with the overall Commission demand for responsible fiscal management by member states. Investors, as I am sure everyone in the House will agree, take decisions on the basis of predictability. Uncertainty militates against investment and job creation. In the context of Brexit and other economic headwinds, this is a time to underpin the resilience of the Irish economy in the coming years.

It would be totally wrong to see the Government’s decision to appeal the Commission’s findings as turning away from the European Union. On the contrary, we are turning to the European Union courts to support our view on the correct demarcation between taxation and state aid under the law. While we disagree with the decision of the Commission, it is important to underline that Ireland is a committed member of the European Union. Our appeal is in defence of the European Union acting in a fair, predictable and certain manner. This is not only in Ireland’s best interests but also in the interests of the European Union and all of its member states. In doing so, we are taking the urgently required remedial action in defence and support of our economy, our reputation and the wider business community.

Deputy Brendan Smith: This debate should be an opportunity for everyone in the House, regardless of political affiliations or philosophical differences, to put Ireland’s long-term strategic and economic interests first. It should be an opportunity for us to state with a single voice that we reject the European Commission’s ruling on Apple and its spurious claims that Ireland has done sweetheart anti-competitive deals with an individual company. We should be united in asserting our sovereign right to decide our own tax laws - a right acknowledged in the EU treaties - and stand up to this crude and baseless attempt by the Commission to use bogus state aid claims to direct our tax policies. Instead of arguing against the decision to appeal the ruling, we should be united in reminding the Commission that it once saw itself as the champion and defender of smaller EU member states but is now behaving as the protector of the bigger states, unfortunately.

We are absolutely right to appeal this wrong decision. Indeed, to do otherwise would damage us irreparably and would call into question many other tax judgments lawfully and rightfully made by the Irish tax authorities. No less an authority than the previous European Commissioner for Competition, Ms Neelie Kroes, has questioned the basis for the Commission’s ruling on Apple. Writing in *The Guardian* last Thursday Ms Kroes, who was very tough on stamping out anti-competitive practices in the EU during her time as a Commissioner, argued:

EU member states have a sovereign right to determine their own tax laws. State aid cannot be used to rewrite those rules. However, the current state aid investigation into tax rulings appear to do exactly that, by suggesting a radical new approach to so-called transfer-pricing rules that determine where profits shall be allocated.

She went further and specifically warned:

...you cannot change the rules of the game through *ad hoc* state aid enforcement, and
then seek retroactive recovery for unpaid taxes. Doing so would be fundamentally unfair and would harm competition, growth and tax income in Europe. And it raises serious questions about legal certainty and the rule of law.

It is regrettable that some contributors to this debate fail to recognise the role that strong and successful FDI has played in providing good quality employment for so many of our people. There are almost 190,000 people directly employed by FDI companies across a range of sectors all over the country, with a further 200,000 employed indirectly. While not every town in the country benefits from FDI plants or sites, the basic fact remains that one in five of all jobs in our economy is directly or indirectly supported by inward investment. Are we to put that level of investment at risk so that some political points can be scored? Are those jobs, livelihoods and contributions to our communities really so unimportant to those Deputies who oppose appealing this wrong decision?

As others have stated repeatedly over the past few days, the central tenet and foundation of Irish corporate tax law is that those profits arising in Ireland are subject to Irish corporation tax. Conversely, the profits from technology, design and marketing generated outside Ireland cannot be charged with Irish tax under Irish tax law. This mismatch between the tax laws in Ireland and those in other countries is not something that should be laid at our feet, as the Commission has attempted to do. Ireland is not the reason that there has been no international agreement on a tax system suitable for the age of online sales and virtual stores. Not alone are our systems transparent and fair, as Deputy Michael McGrath pointed out earlier, we have been to the forefront in the OECD in working to sort out the mismatches in national taxation systems. Ireland must continue to work to progress international efforts to reduce and eliminate tax avoidance.

In appealing the Commission’s decision we are asserting our sovereignty and independence in the face of the Commission’s bluff and bluster as well as acting responsibly in safeguarding our economic future. Not to appeal this decision would be to sacrifice both for very short-term pickings, be they political or financial. Taxation is a national competency. The Government must send out a clear, strong and unambiguous message that this Commission decision will be vigorously contested. Our 12.5% corporate tax regime must be constantly reaffirmed as a cornerstone of our industrial policy.

Deputy Caoimhghín Ó Caoláin: The collective stance of Ministers, Fine Gael Members of this Dáil, their Fianna Fáil prop-you-ups and the so-called Independent members of the Cabinet - who could aptly be referred to as the Apple crumbles of this grand coalition - today in this Chamber is a sham, as is their proposition to not only turn up their noses at a €13 billion back-tax windfall, but to set a course to spend already secured public taxes on a case in opposition to our Exchequer receiving its due entitlement from one of the world’s most successful and wealthiest companies. Today we heard many voices saying that we will not be able to do this or that in what I regard as a limp effort to justify their voting intentions here this evening. There is no certainty as to what can or cannot be done but €13 billion would make a difference, no matter how it were employed.

Others have worked up a lather over our sovereignty and the views expressed by some Deputies in this area have come as a real surprise to me. Let there be no mistake about it. There are no voices more concerned about the sovereignty of the Irish people - all of the Irish people - than the Sinn Féin voices in this Chamber and chambers across this island. There are no voices more aware of the importance of domestic control over our tax affairs, including in the setting of our corporation tax rates. Those tax rates should mean what they say on the tin and should
apply equally to the contents of the Apple box as to any other supposedly similarly taxed product range. The European Commission has not exposed something that was not already known by many here at home and by others in interested quarters. The Commission has merely shone a light on the extent of the evasion involved in this case. Evasion it is and those we entrust, the Government included, are complicit in this illegal act. So, set the Granny Smith’s aside, it is time to take a bite out of a very different apple.

Deputy Eoin Ó Broin: At the heart of today’s debate is the very simple issue of tax justice. For decades a small number of very large global corporations have been engaged in aggressive tax practices. They have used their financial power to force countries into a race to the bottom. These companies have demanded ever lower tax bills and governments, large and small, have acquiesced. Governments have allowed some of the world’s most profitable companies to avoid paying any tax on billions and billions of euro.

Earlier today the Taoiseach and Deputy Micheál Martin sought to defend this way of doing business. They claimed that it was good for jobs, tax revenues and public services. They are simply wrong. There is a huge human cost to the aggressive tax practices of companies such as Apple. The biggest losers are the developing world countries. In a recent report, Christian Aid has estimated that poor countries lose more than $160 billion in forgone tax revenue annually. This is more than one and a half times the total global development aid budget to these same countries. Christian Aid has also estimated that the human cost of this legal tax avoidance is the deaths of 1,000 children in the developing world every single day. Closer to home, EUROSTAT has calculated the annual cost of tax revenue from legal tax avoidance is €190 billion annually. The €13 billion owed to the State by Apple is just the tip of the iceberg. We see the cost all around us: families living in hotel rooms, loved ones lying on hospital trolleys, children in overcrowded classrooms and hundreds of thousands of people unemployed or in precarious low paid work.

Did Apple get a sweetheart deal from the Irish Government? Yes, it did. We know because Apple has admitted this on the record. As far back as 2013 whistleblowers from the Revenue Commissioners have confirmed this in reports in Irish newspapers. Is the European Commission doing the right thing to call Ireland out on this? Yes, it is. The Government should not appeal the ruling and it should join the fight for tax justice at home and globally. The Government should collect the taxes that are now due and invest the funds in social and economic development. By doing this the Government should send a very clear signal that every person and every company, no matter how rich or powerful, pays their fair share. That is what is meant by tax justice.

Minister for the Environment, Community and Local Government (Deputy Simon Coveney): I am pleased to have the opportunity to speak to the Government motion. Not to appeal the European Commission’s ruling on the Apple state aid case would fundamentally undermine the credibility of the Revenue Commissioners and be an acceptance of the serious and flawed overreach by the European Commission in its attempt to change tax policy retrospectively through a state aid ruling. The precedent set by this ruling with regard to the European Commission’s role in the tax affairs of sovereign member states, and the principle of ruling something unlawful on state aid grounds 25 years after a tax ruling was asked for and given in accordance with domestic tax law of the time, provides a level of uncertainty, not only in Ireland but across the European Union, that requires the clarification of a court ruling.

The debate around the levels of tax that multinationals pay globally on the profits they earn
is a necessary debate, on the back of valid concerns, to ensure they pay their fair share. Ireland is committed to working through OECD structures to play our part in that. Ireland was an early actor in adopting new approaches when we made tax changes into 2013 and we will continue to be proactive in that regard. However, efforts to respond to the challenges of international tax fairness do not mean we should accept the flawed intervention of the European Commission. The core issue is whether Ireland gave special treatment to one company through a sweetheart tax deal which was not available to other companies so as to confer a legal, unfair advantage, or state aid benefit, on that one company. I believe that did not happen.

In 1991, Apple asked for and received a Revenue tax ruling to clarify what tax it should be paying. In 2007, when Apple was a very different and much larger company, it got another tax ruling from the Revenue Commissioners which again outlined the implications of Irish tax law on the amount of tax that Apple should be paying in Ireland, and Apple paid accordingly. Whether one believes Apple should or should not have been paying more tax globally from 2004 until 2014 is a different issue from whether Apple was paying its taxes lawfully in Ireland. If this ruling is to go unchallenged, how can we maintain or create any certainty for multinationals around how they will be treated within the European Union? The Commission has challenged the tax arrangements for companies in Luxembourg, Belgium, the Netherlands and Ireland on the grounds of breaches of state aid rules, retrospectively applying a standard that is accepted today to arrangements of many years ago that were legal at that time.

Europe and Ireland survive in a very competitive global economy where we need to compete with each other within the European Union and also with destinations outside the EU for investment and job creation. This ruling sends out a message of uncertainty on previous tax rulings, never mind what the future holds. It is worth noting the British Government’s reaction to this Commission ruling, which was to invite Apple to relocate in Britain. Turkey had a similar response. While the EU should, of course, give leadership on global tax justice, it most certainly should not be naive in undermining the stability and certainty which is demanded by companies with regard to investments they make and the tax treatment they receive. The former European Commissioner for Competition has expressed serious reservations on the approach of using state aid rules to influence tax policy. The European Commission’s response to that intervention was also instructive in how the Commission views Silicon Valley and other such places.

State aid rules deal with internal competition within the European Union. Mobile multinational investment is a highly competitive global marketplace within which the EU is an important regional marketplace, but with fierce competition from other parts of the world. We need to appeal the ruling to clarify the role of the Commission in state aid rules in the retrospective changing of sovereign tax policy, to reaffirm Ireland’s sovereign competence within the EU to determine our own tax rates as outlined in the treaties, to challenge the flawed accusation of an illegal sweetheart deal for one company by the Revenue Commissioners who are adamant that this did not happen, to expose the farcical claim that Ireland should be a tax collector on up to 60% of Apple’s global profits for a decade and to provide a stable and predictable environment for future investment and business activity in Ireland and across the European Union.

**Deputy Robert Troy:** I welcome the opportunity to contribute to the debate. Perhaps the only thing for which we must thank the Independent Alliance is the forcing of the debate in the Dáil on the issue today. I listened to the earlier speeches by the Minister for Finance and by the Taoiseach on the serious reputational damage done to Ireland by this ruling. They spoke about the damage done to Ireland’s credibility in international tax debate. The question must
be asked then why the Government was so ill prepared for this ruling. Following the announce-
ment, the Government was at sea. Emergency Cabinet meetings were held but they have been
called “non-scheduled” meetings, which is a play on words and more spin. Bilateral meetings
were held between the Minister for Finance and various Independents and between the Taoise-
ach and various Independents. The Independents were unsure what they would do about the
situation and were on the verge of bringing down the Government. We knew that Apple was
under review and that a decision was imminent. Perhaps the ruling was a few weeks earlier
than expected, but we know from the Minister that he himself had been informed privately of
the decision a week before it was public knowledge. Given the severity of the situation, it must
be asked why the issue was not discussed at previous Cabinet meetings and a response formu-
lated based on either outcome. The Government talks about the importance of certainty and
confidence with regard to foreign direct investment. Certainty and confidence are important.
However, they are also important for our indigenous businesses and SMEs. The key thing here
is the independence of the Revenue Commissioners.

Anyone looking in over the past week would not have confidence in collective Cabinet
responsibility and a strong Government that is prepared to stand up for the autonomy of its tax
affairs. We must remember that in the Lisbon treaty, the Irish people voted on the protocol to
have autonomy in respect of our tax affairs. The IDA has been extremely successful in attract-
ing foreign direct investment. We have 187,000 jobs directly and 200,000 jobs indirectly. Last
year alone, foreign direct investment produced €6.6 billion in tax receipts. When I think of my
constituency, I think of Abbott, Alexion, Covidien and Alkermes and all the jobs they created
directly and the spin-off jobs. We should never take this for granted. Some people on the left
are saying “sure, they’ll stay here anyway; they don’t need any certainty.” I think of the IDA
park in Mullingar, which the previous Government and this Government have shamelessly
ignored in terms of investment. I listened to “Morning Ireland” and Martin Shanahan talking
about how this decision will make it more difficult to attract foreign direct investment. Were
we not to appeal the Apple decision, it would be far more difficult.

We listen to Sinn Féin and the AAA-PBP whose argument is disingenuous. Their argument
is that the €13 billion is there for us to take. They like to think perception is now reality. We
know that the Commission’s assessment claims that the head office existed only on paper and
that this could not have generated such profits with no employees, no premises and no real
activities. We know that if this appeal is not successful, not only the US but other European
countries will be first in line to claim their share of the money.

I commend the motion, which we are happy to support, but in the words uttered by the Min-
ister of State at the Department of Health, Deputy Finian McGrath, when he used to sit in this
seat here, it is time the Government upped its game because given the last two weeks, we would
not have a lot of confidence in it.

Deputy John Paul Phelan: I thank the Whip’s office for allowing me a few minutes to
speak on this issue. I agree with Deputy Troy about the importance of confidence. It is unfor-
tunate from his point of view that the issues being referred to in terms of the guidelines issued
by the Revenue Commissioners concern a timeframe during which Fianna Fáil was in office.
Indeed, it is also interesting that Apple’s operations in Ireland are mostly concentrated in the
Cork constituency, which presents a number of issues for the leader of Deputy Troy’s party.

I agree with many of the points he made. I want to refer to the number of contradictory ele-
ments contained in the ruling by the European Commission. In respect of the idea presented in
this ruling that Ireland is effectively to be the tax collector for the European Union and indeed the US, if the figure of €13 billion is to be believed, it would mean that 60% of Apple’s operations in the years being inquired into were carried out in Ireland. Everybody inside and outside this House knows that this is patently not the case. It is remarkable that so many people who have spoken in opposition to this motion have the €13 billion already earmarked and nearly spent. Even if the Government’s appeal did not work, the fraction of the €13 billion that might end up in Irish coffers would be small.

The real issue here is that there are many within the European Union who covet Ireland’s position in terms of attracting foreign direct investment and who believe that they want to use any mechanism available to them to ensure that our corporation tax rates are higher. We must resist this at all costs. There are few levers that are available to a small, open and peripheral country such as ours and this is one we have used to great effect over many years. It is a matter of tax sovereignty.

My last points relate to Sinn Féin. I usually do not make many partisan points in this Chamber but I looked at a contribution made in 2001 from Deputy Pearse Doherty, a fine Member who makes many good contributions, when he spoke about taxation matters and the role of the European Union. It is rank hypocrisy for every Sinn Féin Member to come in here today and take a position exactly opposite to the one they held then and have espoused in every European referendum in my lifetime. The Deputy spoke about how it is not an attack on small states, how people were scaremongering about jobs, how it is not a threat to our corporation tax rate and how this is our money. This money does not exist and the Government has no option and is perfectly correct to defend the role of the Revenue Commissioners in ensuring that our taxation system is protected.

Minister of State at the Department of Finance (Deputy Eoghan Murphy): I thank Deputies for their contributions to this important debate. I will address a number of issues raised on the floor of the House today. I welcome the support of Deputy Michael McGrath for the Revenue Commissioners who have been very clear that they gave no selective advantage and that the full amount of tax was charged in this case. I welcome the support for the appeal expressed by Deputies Michael McGrath and Brendan Howlin and many other Deputies. I also express my agreement with their point about the dual importance of attracting investment to Ireland and meeting the new international tax standards.

The Government is clear that an appeal is necessary for all the reasons that have been outlined. As the Minister said, an appeal is entirely consistent with a commitment to a fair and transparent tax system. Deputies Adams and Boyd Barrett have made the argument that there is nothing at stake here in terms of foreign direct investment. I would like to make it clear that Ireland’s attractiveness for investors has been hard won and built up over 50 or more years. We should not be complacent. A core part of our attractiveness is that we offer stability and certainty.

Over the new few years, tax reform will bring significant change to international business. Many large employers are now making key strategic and long-term decisions about their future and we should not underestimate the need for Ireland to stay relevant in this changing environment. Deputies Catherine Murphy and Eamon Ryan and others have made some very strong remarks about Ireland being a tax haven. The OECD, the EU and our tax treaty partners do not regard Ireland as a tax haven. Declaring that Ireland is a tax haven is a baseless and fundamentally incorrect claim. Deputy Catherine Murphy further referenced the IFSC as a brass plate.
location. We are not a brass plate location. The Irish financial services, IFS, sector has been an important feature of Ireland’s economy for close to 30 years and now employs over 38,000 people in 400 IFS companies in the State, 200 of which are Irish-owned. I also reject Deputy Boyd Barrett’s inaccurate description of the knowledge development box, KDB, as a tax write-off. The KDB is designed to meet the OECD’s tough new standards and is specifically focused on substantive research and development undertaken in Ireland.

Deputy Shortall asked whether there are other cases like that of Apple. No other companies are subject to this decision by the European Commission and we have already legislated to eliminate the so-called “stateless” structure. I acknowledge the comments made by Deputies Pearse Doherty and Stephen Donnelly about the proposed amendment to section 110. I assure them that, as stated yesterday, proposals relating to the use of funds in the Irish property market are being considered for inclusion in this year’s finance Bill.

I note the comments from Deputies Howlin and Burton and others recommending the creation of an independent commission to examine tax loopholes and ensure that these loopholes are closed off at the earliest possible time. The Taxes Acts have extensive protections to prevent tax avoidance. These are strengthened on a regular basis to keep pace with any new threats to the tax base identified by the Revenue Commissioners or otherwise. When any loopholes are identified by the Revenue Commissioners, proposals are put forward for inclusion in the finance Bill at the earliest possible time. In addition, the Department undertakes regular reviews of tax expenditures and conducted a review of Ireland’s corporation tax policy in 2014. However, the OECD BEPS process represents a step change which warrants a specific focused review. I believe the forthcoming expert review can sit comfortably alongside the ongoing practice of regular tax policy evaluation.

Deputy Burton referenced effective tax rates and noted the difference between headline and effective rates. I refer the Deputy to recent research done on behalf of the Department of Finance which showed that the effective corporate tax rate has averaged almost 11% over the period since 2003. While this percentage is lower than the 12.5% headline rate, it can be attributed to the availability of the small number of targeted tax measures available in Ireland such as the research and development tax credit which may lower the effective rate of corporation tax paid in Ireland.

8 o’clock

This motion seeks the support of the Dáil to appeal the European Commission decision and other important aspects of our corporation tax system. Our corporation tax code is founded on fairness, transparency, consistency and the rule of law. We have a proven track record in international tax reform and a matchless commitment to meeting the best international standards. For the Government there is a clear and pressing case for taking an appeal. As the Minister for Finance has already stated, we have done nothing wrong here. We compete for foreign direct investment from a position of legitimacy. I commend the motion to the House.

An Leas-Cheann Comhairle: In accordance with the order of the House, we will proceed to 30 minutes of questions and answers. I respectfully suggest that those putting the questions should take one minute, with a minute and a half or less for the Minister. We could, therefore, have 12 questions, as otherwise might only have a few. Is that agreed? Agreed.

Deputy Michael McGrath: I will be brief as I have just a few questions. One concerns
the mechanics of the appeal. Who will put the appeal together? What expertise will be drawn from? Will it be the Attorney General or will the Minister bring in outside help on tax or legal issues? Will the Minister explain that process? Is the Minister confident the appeal will be successful? Will he and his Government colleagues seek international support from other countries that might be like-minded to Ireland, sharing our perspective on the issue, to join the appeal? Has he had preliminary or informal discussions in that direction? Do we have allies internationally on the issue and what role can they play? Will the Minister explain the mechanics of this escrow account? In whose name will be the account and I assume the beneficial interest will be in respect of the State? Who will manage the escrow account? Is it, in accordance with speculation, the National Treasury Management Agency, NTMA?

Minister for Finance (Deputy Michael Noonan): The Government decision was to appeal but there was a second leg to the decision, entrusting the development of the grounds for appeal to the Attorney General and her advisers. She will employ counsel and a full legal team led by senior counsel. They will be responsible for the appeal. She has approximately two months to do this under the guidelines and I am sure she will inform the Government of the detailed grounds of the appeal when she has that developed.

On the question of allies, there have been other cases on state aid grounds in this round of scrutiny by the competition Commissioner. By decision of government, Ireland has joined with the appeals from Luxembourg, Holland and Belgium on the cases with which the Deputy will be familiar. We expect and request that they do the same in respect of this case. We have indications already of support but this must be in the judicial forum. We are not talking about political support here.

An escrow account is, in effect, an account that is beyond the reach of the contending parties until triggered by a specific decision. It is either Apple’s money or that of the Revenue Commissioners and the Exchequer. Both are prevented from having access to the money unless triggered by an event. That would either be success or failure in the appeal. That is how the escrow would work. The NTMA will take charge of it but it will clearly not be held in cash, as that would not be possible with whatever amount of money is coming in. The obligation of the NTMA in looking after it would be to ensure that in these times of very low interest, at least the nominal value would be held, and it should be grown if possible. In all cases one must balance the return in terms of interest against risk. The lowest risk currently is in German bunds and it could all be put in there but the interest rate is negative; the nominal amount would go down. The NTMA has already set up a group to advise on this and it will proceed on the basis of how to get some return to increase or maintain nominal value while not taking risks that might reduce value. I will keep the Deputies briefed on it as the NTMA develops the guidelines.

Deputy Pearse Doherty: We know that Apple Operations Europe, AOE, and Apple Sales International, ASI, were what we call stateless companies with no tax residency in Ireland or anywhere else in the world. I asked this question in 2013. Could we now have clarity on whether the Minister or his officials are aware that over the past two decades any other company was incorporated here in Ireland with the same status as ASI and AOE, meaning it would not be tax-resident here or anywhere in the world?

The Government has taken the decision to appeal this. What is the estimated cost associated with that appeal? There would have been a discussion on ballpark figures as to how much the appeal would potentially cost. Will the Minister inform the House before a decision is made as to how much an appeal could cost? What is the estimate of the interest to be gathered and put
Dáil Éireann

into the escrow account on top of the €13 billion that the Commission has judged should be paid to the Irish people? Following the comments of the Minister of State, did the Revenue Commissioners ever inform the Minister, any of his officials or, to the Minister’s knowledge, any of his predecessors that there was a company incorporated in Ireland that was deemed stateless and that the loophole should be closed?

Given that we are talking about transparency and money being diverted from the people, will the Minister let us know when he plans to publish the Comptroller and Auditor General’s report into the sale of Project Eagle, which is all the more relevant given the revelations we saw on “Spotlight” last night?

Deputy Michael Noonan: The affairs of individuals and corporations are confidential and the Revenue Commissioners does not give information about the tax affairs of individuals or individual companies to the Minister or anybody else. It is confidential and the information would not be available. The Deputy knows from our debates from 2013 onwards that stateless companies or companies not resident anywhere for tax purposes was a major international issue. We dealt with it in legislation that I proposed and which were put through in finance Bills before the House.

Are there other companies with the same kind of model as Apple? If there were, I do not believe there would be a state aid case. The principle of the state aid case is that a company got unique preferential treatment. If it were a general policy, the state aid case would fall. My argument is that what Apple did was available to the entire sector. It is one of the reasons the state aid case will not stand.

On the costs to date, €667,000 has been spent on consultancy, legal fees and advice since this started in 2014. It is not possible for anybody to give an estimate of the costs of the appeal but they will be in line with the costs of solicitors and senior and junior counsels. I have no doubt it will be a sizable amount. The Deputy had two other questions.

Deputy Pearse Doherty: Yes. They relate to interest and whether the Revenue Commissioners informed the Minister or his predecessors as to whether stateless companies were operating in the State. The last question was when the Minister would publish the Comptroller and Auditor General’s report into Project Eagle. It has been sitting on his desk for a considerable time.

Deputy Michael Noonan: The Revenue Commissioners are being charged with collecting any arrears deemed to be due. They will advise on the interest rate as well. If I have information on the exact amount of interest or estimates, I will share it with the Deputy, the House and the other finance spokespersons, such as Deputy Michael McGrath. Everybody familiar with the issue of corporation tax and the debate driven in recent years by the G20 and the OECD knew there was an issue of stateless companies for tax purposes. However, because of confidentiality rules, the Revenue Commissioners would never nominate individual companies availing of stateless status. The Deputy and everybody involved with these debates knew it was an issue. That is why we legislated to eliminate the possibility by changing not tax law but residency law. I think it was in the Finance Act 2013.

The last question was on the NAMA report. I received it in mid-August. I have three months to consider it. It is my intention, after scrutiny by my officials, to publish it before the Dáil reassembles after the summer recess.
Deputy Joan Burton: The Minister has been able to read the report which none of us has been able to do. Does the Commission decision address the issue of tax competence which is reserved to member states in the treaties? If so, does the report suggest that this can be avoided or negated by competition or state aid rules? Has Ireland become a pawn in a war between the USA and the Commission? As a small country, is Ireland piggy in the middle? Is it the practice of the Revenue Commissioners to give rulings such as those given to Apple? If so, how many other companies got similar rulings? Will the Minister publish the number, please?

Deputy Michael Noonan: If the Commission is advising that it cannot publish until interested parties have an opportunity to redact or advise on redactions from the report, I cannot give the Deputy accurate information on elements of it by stripping out the information in response to questions. In general terms, the competition Commission insists that under state aid rules it is acting in accordance with law and not invading the competence under the treaties to the effect that tax matters are within the competence of the sovereigns in Europe.

Deputy Joan Burton: Is the Minister saying that the Commission denies that states have sovereign competence on tax issues?

Deputy Michael Noonan: No. It is saying that states have competence on tax matters under the treaties and that this adjudication is not on tax but on state aid where it regards a tax issue as state aid. The Commission will not say it has the competence on tax issues. It is saying it has competence on state aid and that is its space.

Is it being used as a Trojan horse? Certainly, the decision will be used as a Trojan horse by some people. There are countries which have been very opposed to Ireland’s 12.5% rate for a long time. Deputy Micheál Martin knows from his experience in government and the Taoiseach knows the pressure that has been put on Ireland over the years to change the 12.5% rate. That continues. There is, of course, a document that has been put forward for a common corporation tax rate. It got very little traction when first distributed by the Commission but it is being revised now by Commissioner Moscovici. One can see where that might go. There is this attempt. The Deputy had a last question.

Deputy Joan Burton: Have the Revenue Commissioners given rulings such as the two rulings they gave to Apple in the past to other companies? If so, will the Minister publish when these were given and the numbers?

Deputy Michael Noonan: First, the Revenue Commissioners do not regard them as rulings but as opinions. An opinion does not have the force of law underpinning it. In the scrutiny by the Commission of possible state aid to Ireland, it requested a lot of files for a lot of companies. In the first tranche, five opinions were sent to the Commission, and in the second, there were ten. There was a more recent one. For confidentiality reasons, the Revenue will not publish these opinions. However, it has committed as a result of conversations with it - and I referenced this in my speech today - that its opinions will now have a five-year life and will be reviewed. In its annual report, the Revenue will publish the number of opinions but will not disclose tax information on individual companies.

Deputy Joan Burton: Does the Commission report say “opinions” or “rulings”?

An Leas-Cheann Comhairle: The Minister has exceeded the time. I call Deputy Paul Murphy.
Deputy Paul Murphy: On a couple of occasions, the Government has been embarrassed by making statements in respect of which it is later contradicted by the European Commission. It strikes me that the same may have happened this morning on the confidentiality of the Commission’s ruling. The Taoiseach, in response to Deputy Boyd Barrett, said that the document was in the ownership of the European Commission and that it was a matter for the Commission to decide when to publish it in whatever form. The Commissioner said that if it was up to her, the non-confidential version would have been published yesterday and that right now the ball is basically in the hands of Apple and Ireland. She said she hoped that Apple and Ireland would be as open and co-operative as possible. Was the Taoiseach telling the truth and being accurate this morning or was the Commissioner being accurate? Who has the power to publish and will the Government agree to waive confidentiality to allow the decision to be published in order that all the things the Government is claiming about it can be verified by Deputies and the public at large?

Deputy Michael Noonan: I cannot comment on the accuracy of the quotations the Deputy attributes, but I can tell him the position. There is a 130-page document which was generated by the competition Commission which incorporates the context of the decision and the decision itself. The Commission advised us that it would send a copy to Apple and to the Government as the two interested parties and that it would send it to us for the purposes of requesting redactions of what was regarded as confidential. That is one piece of information. The second piece is that it did exactly the same with Luxembourg, Belgium and Holland in their cases and it was six to eight months before some of their full reports were published in respect of those particular cases. We are not doing anything out of line with the practice that has been developed. It is fair to say that there are very few confidentiality considerations in respect of the Government but, obviously, Apple, since its tax arrangements were gone through, will have a lot of confidential material it may or may not want in the public domain.

An Leas-Cheann Comhairle: Deputy Catherine Murphy is next.

Deputy Catherine Murphy: The rulings were issued in 1991 and 2007. Did Revenue check with Brussels whether they constituted or would constitute illegal state aid? How did the deal come about? Was it an approach from Apple or an approach to Apple? Was the IDA involved and was the Government involved? Has the Government looked at the rate at which the Court of Justice of the European Union, CJEU, rulings endorse Commission decisions? It looks to me like it is very high. Did that have any bearing in considering this appeal?

Deputy Michael Noonan: What were issued in 1991 and 2007 were opinions. There is no suggestion of any political input into those decisions by the Government of the day. The Revenue Commissioners are independent and they decided on independent grounds that this was the position. An opinion arises when a company looks for advice on what the tax situation is. A company is coming into a country and wants to know what its tax liabilities are and it looks for advice from the Revenue as to what the law is. It is not a deal, it is the giving of an opinion on what the law is. That is what was done. In respect of it being state aid, the Deputy’s question prompts me to come to one of the essential elements of the appeal which is as follows. The criteria against which we are now being measured were developed by the OECD and enshrined in Irish law in 2010. It is like being penalised for something one did in 2000 when it did not become an offence for another ten years. That is the aspect of the retrospective nature which is going to be under appeal. It is not that Revenue does not collect tax retrospectively, it is that we are being found guilty of an offence which was not an offence at the time. The state aid issue would not have arisen------
Deputy Róisín Shortall: It was under Single Market rules.

Deputy Michael Noonan: If the Deputy wants to interrupt me, she can. If she wants to hear my answers, she had better listen. That is the way the Parliament works, we hope.

Deputy Catherine Murphy: I asked other questions.

An Leas-Cheann Comhairle: There are only a few minutes left. I have no control over the Minister’s response. I call Deputy Eamon Ryan.

Deputy Catherine Murphy: I asked precise questions.

Deputy Eamon Ryan: Will the Minister indicate what contact or discussions he has had with the US Government in this regard and whether he expects that Administration or European governments to take up the suggestion within the Commission’s PR that the final tax paid in Ireland might not be €13 billion, in that the US Administration might collect an amount of that or European governments could change their tax arrangements so as to get some of the money? Is there anything in the revelations of the past week that might see the company having to face questions under US or international tax law?

Deputy Michael Noonan: I have had no direct contact with the US Administration on the Apple case. I was in Washington some years ago when I met Mr. Jack Lew. Before that, I used to meet Mr. Tim Geithner frequently. However, general tax issues were under discussion then, not this case. My officials have had discussions with people in the US Treasury, for example, Mr. Bob Stack, who is fairly high up in the pecking order there. He has been in contact to discuss this matter, but I have not have any direct contact at either official or political level with the US Administration.

Clearly the Americans have a strong interest in this because the American political fear is that the US taxpayer will carry the ultimate liability. If Apple has to give €13 billion plus interest to the Irish Exchequer, Apple will look for a credit for the payment of that tax. It will present that credit to the Internal Revenue Service in the US to reduce its tax liability there. As the Deputy probably knows, it is not that international American companies do not have tax liabilities. Rather, their liabilities are not activated until they repatriate their profits. They have enormous profits that are outside the US. When they repatriate them, they are liable for tax. The tax rate is 35%. If one does the sums, the hit on the US Exchequer is much greater than €13 billion.

Deputy Paul Murphy: It is 35% of-----

An Leas-Cheann Comhairle: I call Deputy Connolly.

Deputy Catherine Connolly: I am sorry. I was explaining that I am after Deputy Catherine Murphy. That was the confusion.

An Leas-Cheann Comhairle: It is non-transferable.

Deputy Catherine Connolly: I wish to ask two questions, the first of which follows on from those of Deputies Pearse Doherty and Catherine Murphy. The Minister has not answered this specific question. Did Revenue bring to the attention of the Minister or Europe the fact that it was dealing with a stateless company in this or other cases? Did Revenue raise an issue about the difficulties posed by that?
The *Irish Examiner* has reported that the State was ordered this year to retrieve €10 million in illegal State aid to a company in the Minister’s area, the Aughinish plant. Has the State collected that money or appealed the decision?

**Deputy Michael Noonan:** There have been state aid interventions with the Aughinish company over many years and there have been appeals. I understand that the matter is under appeal again, but the appeal is not by the State, it is by the company. We are generally aware of it, but it does not concern this issue, namely, tax. It is a different issue.

Regarding Revenue informing me, it did not have to. Anyone who was familiar with corporation tax, which has been a raging debate at the G20 and OECD for several years, and all well-informed Deputies knew that there was an issue with companies that were effectively not resident anywhere for tax purposes, that is, stateless companies. When we introduced the amending legislation in 2013, of course we would have referenced it with Revenue and my officials would have been advised by Revenue.

**Deputy Mattie McGrath:** What is the Minister’s estimate of the amount that has been spent so far on legal aid-----

**Deputy Brendan Howlin:** Already answered.

**Deputy Mattie McGrath:** -----regarding this issue and what will it cost the taxpayer to appeal?

**Deputy Michael Noonan:** I have already answered that question.

**Deputy Micheál Martin:** Would the Minister care to comment on the manner in which the Commissioner went about making this announcement? She used a fast-track mechanism to announce the decision. I stand to be corrected, but I understand that the College of Commissioners was given a 24-hour notice. The decision was circulated and the other Commissioners were told to revert within 24 hours with informed comments. That was unnecessary and unusual, in that the full two weeks or so were not given to them.

There was no heads-up given to the Government by the Commission. Why all the secrecy?

**Deputy Mattie McGrath:** Big Phil.

**Deputy Micheál Martin:** Why all this choreography and orchestration by the Commission on a major issue that is of significant importance to a member state? Does it suggest a contemptuous attitude on the part of the Commissioner towards the Irish Government? Apart from the issues, there should have been no great difficulty in alerting a government that a serious decision and an announcement of figures were coming down the line so that the government in question might be ready to respond. One gets the sense that the Commissioner had a certain performance to give last week and that the normal procedures applicable in a situation of this scale did not apply.

**Deputy Michael Noonan:** I was surprised by some elements of the announcement. I was telephoned on what I believe was Tuesday, 23 August, a week before the announcement by Commissioner Margrethe Vestager. I knew her because she was the economy Minister from Denmark and attended ECOFIN meetings. I had worked with her for three years, especially on banking union and such like. She had promised earlier through officials that we would be contacted in advance. There was a meeting of the College of Commissioners scheduled for the
second week in September, maybe 8 September. I had signalled to colleagues and Deputies Michael McGrath and Pearse Doherty that I expected the decision in September or October. I thought it to be more likely in September, and I believed it would come after the College of Commissioners had met. When she telephoned me, I told her that I supposed it would be the second week, but she told me that, no, they were not going to the College of Commissioners and were instead going to use a written notification. She told me that there was a written process that they could invoke. I was surprised that the decision did not come through the college after the Commissioners’ meeting. I thought that it would be this week rather than last week. I was surprised at that.

Regarding the process, she did not give me the date or the time. She told me that it would be “early next week” and be negative. I asked her about the amount of money, but she told me that she could not give me that figure and would announce it in due course. It was-----

Deputy Sean Sherlock: Political.

Deputy Michael Noonan: -----an unexpectedly early announcement in the end, but we had all of the work done in the Department of Finance and were ready to go to the Government and look for a decision to appeal. I contacted the Taoiseach. The Government’s first meeting was to take place this week, but he brought a special meeting forward to last Wednesday. We then consulted colleagues and gave them plenty of time. Even with the limited documentation that came through initially, there was much to be considered. It was not that we failed to agree on Wednesday. It was just that people needed time.

An Leas-Cheann Comhairle: I will take two final questions from Deputies Ó Caoláin and Howlin and then ask the Minister to give one answer.

Deputy Caoimhghín Ó Caoláin: Is the Minister in a position to advise the House of what number of cases in respect of state aid in the taxation context are under active consideration within the European Commission? Is he aware of any case that has been referred and is currently suspended for further consideration pending the outcome of separate actions by other interests in other member states that may or may not influence the consideration of these Irish-based situations?

Deputy Brendan Howlin: Has the Minister had any discussions with any of his ECOFIN colleagues since the Commission’s decision? If so, what is the attitude of his other ECOFIN colleagues?

On the statement by the European Commissioner, Margrethe Vestager, that the money is Ireland’s to spend as it chooses, for the past week, including today, I have sought confirmation of that position from the European Commissioner for Economic and Financial Affairs, Taxation and Customs, Pierre Moscovici, but without success. Has the Minister any notification from the Commission that the attitude taken by the competition Commissioner, namely that this is our money to spend without reference to the fiscal rules, is an accurate position?

Deputy Richard Boyd Barrett: Can I come in for 30 seconds?

An Leas-Cheann Comhairle: No, we must abide by the order of the House. All questions have been taken. I did it in a fair manner.

Deputy Michael Noonan: There are three cases under appeal and another two of which I
know that have been in the public domain. I have been told unofficially that there is another case pending which will be announced shortly. I do not, however, have the details of that. The Commissioner, Margrethe Vestager, advises that there is no Irish case pending. All the time I am talking about tax practices which were regarded as state aid. There may be other state aid cases for different reasons. In case my memory is inaccurate, I will ask my officials to give Deputy Ó Caoláin a briefing note on the number of cases outstanding.

I did not have any discussion at ECOFIN. We are appealing to the courts. I do not believe it would be appropriate to start political lobbying when it will be decided by judges.

**Deputy Brendan Howlin:** It will affect all member states.

**Deputy Michael Noonan:** There are Eurogroup and ECOFIN meetings in Bratislava this Friday and Saturday. I will be attending there tomorrow evening. I know it will be a topic of conversation but I doubt it will be an agenda item. I am sure I will get much advice on it, especially from the smaller countries.

The position on the spend is that if this money were available, it would be regarded as a windfall. The fiscal rules state one cannot spend it for ongoing expenditure.

**Deputy Brendan Howlin:** That is what Margrethe Vestager said.

**Deputy Michael Noonan:** In our language, one cannot use it for current expenditure. It could be used for debt reduction and, in theory, it could be used for capital projects. However, because it would be likely to accrue to the Exchequer in one year, one’s capacity to spend would be caught in the fiscal rules. Then we would be back to the fiscal space. Accordingly, there would not be fiscal space to accommodate it. The amount one could spend on capital projects would be quite restricted. We are preparing a budget now with a fiscal space of slightly less than €1 billion. When one tries to fit big amounts of money into a small fiscal space, one can see the difficulty. If one does not get caught on the primary rule, one will get caught on the secondary rule.

**An Leas-Cheann Comhairle:** I must ask the Minister to conclude as there is an order of the House for this session to end after 30 minutes.

**Deputy Michael Noonan:** In my view, it would be possible to use a small amount of it for capital expenditure.

**An Leas-Cheann Comhairle:** That concludes the question and answer session. I apologise to other Members who wished to raise questions but could not. This was because of the order of the House.

I wish to advise the House that the Standing Order providing for formally recording abstentions in a division came into effect from the beginning of September. Therefore, Deputies wishing to formally record an abstention in a walk-through division should not proceed to the lobbies but should go to the Clerk’s desk.

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Deputy Mick Wallace: I move amendment No. 2:

To delete all words after “Dáil Éireann:” and substitute the following:

“supports the ruling of the European Commission that a sweetheart tax deal between Apple and the Irish tax authorities amounted to unlawful State aid;

calls on the Government to make public the details of how many similar deals have been made by the Revenue Commissioners, to what sectors and what companies;

calls on the Government to support public country-by-country corporation tax reporting, so that the extent to which profits are shifted into and through the country are known;

calls on the Organisation for Economic Co-operation and Development (OECD) to audit Ireland’s international tax relations, with specific regard to transfer mis-pricing where profits have been filtered through Ireland, to Bermuda via the Netherlands;

calls on the Government to demand that all companies operating in Ireland, including unlimited ones, and those owned by other limited companies located anywhere in the world, be required to put their accounts on public record, and that the accounts of their parent companies will not be accepted as a substitute; and

calls on the Government to introduce a general anti-avoidance principle – where any part of a transaction was found to be undertaken solely or mainly for tax gain, then it
would be ignored when it came to calculating the tax due.”

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Tellers: Tá, Deputies Clare Daly and Mick Wallace; Níl, Deputies Jim Daly and Regina Doherty.

Amendment declared lost.

Staon: 16

An Leas-Cheann Comhairle: Amendment No. 3 is in the name of Deputy Catherine Mur-
Deputy Catherine Murphy: I move amendment No. 3:

To delete all words after “Dáil Éireann:” and substitute the following:

“notes:

— that appealing the decision of the European Commission creates uncertainty thereby causing further reputational damage to Ireland;

— the decision to appeal the ruling of the European Commission was made without recourse to Dáil Éireann despite there being a significant cost to the State associated with such a decision;

— the need to reaffirm the 12.5 per cent rate of Corporation Tax and ensure that the effective tax paid by corporations is commensurate with that rate;

— that the tax ruling provided to Apple was unethical and resulted in a significant loss of revenue to Ireland and other States;

— that appealing the European Commission’s decision requires the State to refuse any amounts found to be owed to it by a multi-billion dollar corporation; and

— that the European Court of Justice has a strong track record of supporting the decisions of the European Commission thus rendering this appeal a costly but futile exercise;

confirms that proceeding with the appeal will be a hugely costly legal exercise further impacting the loss to the State associated with the tax ruling; and

notes the valuable work that the European Commissioner for Competition has undertaken over recent years; and

calls for:

— an immediate commitment to close any current loopholes which allow for the avoidance of tax; and

— a deferral of the vote on the Government’s motion until the full ruling is published and made available.”

Amendment put:

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Deputy Brendan Howlin: I move amendment No. 4:

To insert the following after “as set out in the EU Treaties.”:

“(v) strongly supports the ongoing work of the Organisation for Economic Co-operation and Development (OECD) and the EU through the Base Erosion and Profit Shifting (BEPS) process to tackle aggressive cross-border tax planning;

(vi) insists that any remaining loopholes that are exploited to minimise effective/real tax rates in the corporate sector are abolished immediately;

(vii) calls for the forthcoming Budget to include measures to underpin minimum effective tax rates for all profitable companies in Ireland; and

(viii) calls for an independent Standing Commission on Taxation, to review trends in our tax laws against agreed principles of tax justice, to identify anomalies as they arise and to keep the tax code focussed against overly aggressive tax planning and avoidance.”

Amendment put and declared lost.

Deputy Mick Barry: I move amendment No. 5:

To delete all words after “Dáil Éireann:” and substitute the following:

“condemns the Government decision to appeal the European Commission’s ruling that Ireland provided unlawful State aid to Apple and calls for the appeal to be dropped
immediately;
calls on the Government to:

— waive confidentiality and seek to publish the European Commission ruling; and

— develop a plan to invest the money owed to the Irish State in resolving the social crises in housing, health and education and to form part of a major programme of public investment, including in the green energy and technology sectors, creating tens of thousands of decent jobs;

notes that:

— contrary to Government suggestions, the so-called ‘double-Irish’ tax avoidance mechanism utilised by Apple has not been abolished, but rather is being phased out and is therefore still available to Apple and other multi-national corporations to avoid paying billions of euro every year in Corporation Tax; and

— it is almost certain that other multi-national corporations utilised the same tax avoidance mechanism as that used by Apple over the same period and that therefore the €13 billion figure identified in relation to Apple is likely to be only a fraction of the full amount of Corporation Tax owed by all offending companies over that period;

condemns the functioning of Ireland as a tax haven as part of a model of ‘tax competition’ pursued by successive Governments;

calls for:

— an end to the continuing use of section 110 of the Taxes Consolidation Act 1997 by corporations to avoid their tax liability and the abolition of any other Corporation Tax incentives or loopholes being utilised by large corporations, vulture funds and real estate investment trusts; and

— the immediate abolition of the ‘double-Irish’ and the application of the full Corporation Tax take on all companies incorporated in Ireland;

further notes:

— that ‘tax competition’ and the operation of ‘tax havens’ to facilitate major corporations avoiding tax has negative impacts worldwide in terms of reduced expenditure on public services and extra taxation burden on working people and the operation of a ‘race to the bottom’ in terms of wages, conditions, regulation and Corporation Tax, with ‘developing countries’ losing $100 billion a year according to the United Nations Conference on Trade and Development; and

— the failure of an industrial policy based on ‘tax competition’, reliance on foreign direct investment, the domestic private sector and the capitalist market to develop an indigenous manufacturing base in Ireland;

further calls for:
— a substantial increase in the effective Corporation Tax rate to fund an increase in expenditure on health, education and housing;

— an immediate investigation into the tax affairs of all other companies that may have avoided paying the full Corporation Tax rate using the same or similar mechanisms as that used by Apple and the recovery of all such unpaid tax; and

— a radical change to put people’s needs before profits with the development of a socialist industrial policy, based on public investment and public ownership under democratic control of the key sectors of the economy, to enable planning for economically and environmentally sustainable growth.”

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Tellers: Tá, Deputies Mick Barry and Ruth Coppinger; Níl, Deputies Jim Daly and Regina Doherty.

Amendment declared lost.

Staon: 20

Staon
Brady, John
Buckley, Pat
Connolly, Catherine
Crowe, Sean
Cullinane, David
Doherty, Pearse
Ellis, Dessie
Kenny, Martin
Deputy Eamon Ryan: I move amendment No. 6:

To delete all words after “Dáil Éireann:” and substitute the following:

“(i) commits itself to the highest international standards in transparency in the taxation of the corporate sector;

(ii) resolves that no company or individual shall receive preferential tax treatment contrary to the Tax Acts;

(iii) notes the decision of the European Commission on 30th August, 2016 outlining the level of uncollected Corporation Tax from Apple operations within the European Union from 1991 to 2015;

(iv) signals our support for the reform measures being introduced by the Organisation for Economic Co-operation and Development (OECD) and the European Union to bring greater certainty and equity in the implementation of international taxation and transfer pricing policies;

(v) commits to working with the US and other European Governments on the closure of all inappropriate offshore tax avoidance mechanisms; and

(vi) resolves to provide a level playing field which allows all companies operating in Ireland to benefit from a competitive and consistent corporate tax regime.”

Amendment put and declared lost.

Question put: “That the motion be agreed to.”
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Tellers: Tá, Deputies Jim Daly and Regina Doherty; Níl, Deputies Pearse Doherty and Aengus Ó Snodaigh.

Question declared carried.

The Dáil adjourned at 10.05 p.m. until 2 p.m. on Tuesday, 27 September 2016.