Ireland to appeal EU's record $14 billion tax order on Apple

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In this Sept. 5, 2014, file photo, the Apple logo hangs in the glass box entrance to the company's Fifth Avenue store in New York. Ireland is appealing the European Union's landmark order to collect 13 billion euros ($14 billion) in taxes from Apple. (AP Photo/Mark Lennihan, File)

Ireland will appeal the European Union's landmark order to collect a record 13 billion euros ($14 billion) in taxes from Apple, the Irish Department of Finance announced Monday.

The Irish countermove comes nearly four months after EU competition authorities hit Apple with the back-tax bill based on its longtime reporting of European-wide profits through Ireland, which charges the American company only for sales on its own territory at Europe-low rates that in turn have been greatly reduced by the use of shell companies at home and abroad.

In its formal legal summary , the Department of Finance declares that is the whole point of Ireland's sales pitch to foreign investors—and asserts it is perfectly legal to levy far less tax on profits than imposed by competitors. It accuses EU competition authorities of unfairness, exceeding their competence and authority, and seeking to breach Ireland's sovereignty in national tax affairs.

The ruling unveiled Aug. 30 by EU Competition Commissioner Margrethe Vestager called on Apple to pay Ireland the 13 billion euros for gross underpayment of tax on profits across the European bloc from 2003 to 2014. Her report concluded that Cupertino, California-based Apple used two shell companies incorporated in Ireland to permit Apple to report its Europe-wide profits at effective rates well under 1 percent.

The EU judgment could have been even huger, because EU time limits meant the judgment could include potential tax infringements dating only from 2003, not all the way back to Apple's original 1991 tax deal with Ireland. Still, Irish specialists in corporate tax estimate that the EU's order, if enforced, actually would total 19 billion euros ($20 billion) because of compounding interest from delayed payment.

The centerpiece of Ireland's argument is that Vestager should have confined herself to policing illegal state aid that gives an unfair advantage to a particular company, whereas the EU has launched an assault on a policy that Ireland has offered to all foreign companies locating on its soil.

The benefits are obvious in Ireland, which has the fastest-growing economy in Europe driven by the exports of about 1,000 multinationals that employ 5 percent of the workforce and generate nearly a quarter of economic output. Apple today is the biggest private employer in the Irish Republic's second-largest city, Cork, with a workforce exceeding 5,500. Economists estimate Apple's Cork operation pumps around 16 billion euros ($17 billion) annually in salaries, tax and investment into the Irish economy.

"The purpose of the state aid rules is to tackle state interventions which confer a selective advantage. The state aid rules by their nature cannot remedy mismatches between tax systems on a global level," the Department of Finance brief argued as it contested the EU's contention that Apple got benefits denied to other companies based here.

The Irish reply sets the stage for a titanic legal battle from Brussels to California and beyond that has implications for more than 600 U.S. multinationals based in Ireland and thousands more using tax-avoidance vehicles globally. Apple Inc. chief executive Tim Cook already has denounced the EU judgment, disputes its calculations, and says the company will pursue its own legal challenges expected to last years.

Ireland, an EU member since 1973, for decades has charged a headline rate on corporate taxes of 12.5 percent —less than half the European norm and nearly a third the U.S. rate of 35 percent—and has facilitated the complex use of shell companies that help Apple and scores of other high-tech global enterprises, including social media and pharmaceutical leaders, to pay far less on non-U.S. sales of goods and services.

The Department of Finance has pledged to close its shell company-focused rules, but that move is expected to create no obstacle to global companies, which can shift the same accounting strategies to other countries beyond the EU's wrath.

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