The Tax Code and Class Warfare

Folks, as this reading shows, in a capitalist democracy, like this one, the tax code is one of the many devices used by the superrich to get richer at the expense of the rest of society (meaning you and I). In other words, the tax code is a weapon of class warfare used by the superrich (in this case corporate capital [big business]). A question for you to ponder: what *political* mechanism allows them to do this? Will the U.S. Congress do anything about this unfairness? Most likely not. Question: Why?

Section One

Apple's Tax Dodging: Bigger Scandal Is Congress Knew About It Says David Cay Johnston

By Henry Blodget | Daily Ticker May 21, 2013

Apple (AAPL) CEO Tim Cook is going to get raked over the coals by Congress for the company's spectacular tax-dodging techniques.

No one is suggesting that any of these techniques are illegal.

No one is suggesting that Apple is doing anything that any number of other massive multi-national companies aren't doing.

And no one is suggesting that companies should voluntarily pay more taxes than they absolutely have to pay. According to tax expert David Cay Johnston, the Supreme Court "says a company or an individual has an absolute right to pay the minimum in tax the law requires." (But just because you can doesn't mean that it's proper, he adds).

But boy are Apple's tax-dodging techniques effective.

And, boy, do they make clear that the United States (and, ideally, other world governments) have to get together to simplify corporate tax policies. Or else this highly sophisticated tax-dodging will continue to become a bigger and bigger source of corporate profitability.

In preparation for the televised Congressional grilling, Congress has released a document laying out what it contends are some of Apple's tax-dodging techniques.

Apple has released its own testimony, in which it points out that it is one of the largest U.S. taxpayers and explains that it does not resort to some of the "gimmicks" that other companies use to avoid U.S. taxes.

These positions, importantly, are not mutually exclusive. And the respective arguments will give you a sense of how complex this issue is.

Here's what Congress says Apple has been doing to dodge taxes:

- Using a so-called cost sharing agreement to transfer valuable intellectual property assets offshore and shift the resulting profits to a tax haven jurisdiction.
- Taking advantage of weaknesses and loopholes in tax law and regulations to "disregard" offshore subsidiaries for tax purposes, shielding billions of dollars in income that could otherwise be taxable in the United States.
- Negotiating a tax rate of less than 2 percent with the government of Ireland – significantly lower than that nation's 12% statutory rate – and using Ireland as the base for its extensive network of offshore subsidiaries.

That's the standard stuff. And here's where it gets really impressive:

In addition to those standard multinational tactics, Apple established at the apex of its offshore network an offshore holding company that it says is not tax resident in any nation. That subsidiary, Apple Operations International, has no employees and no physical presence, but keeps its bank accounts and records in the United States and holds its board meetings in California. It was incorporated in Ireland in 1980, and is owned and controlled by the U.S. parent company, Apple Inc. Ireland asserts tax jurisdiction only over companies that are managed and controlled in Ireland, but the United States bases tax residency on where a company is incorporated. Exploiting the gap between the two nations' tax laws, Apple Operations International has not filed an income tax return in either country, or any other country, for the past five years. From 2009 to 2012, it reported income totaling $30 billion.

A second Irish subsidiary claiming not to be a tax resident anywhere is Apple Sales International which, from 2009 to 2012, had sales revenue totaling $74 billion. The company appears to have paid taxes on only a tiny fraction of that income, resulting, for example, in an effective 2011 tax rate of only five hundreds of one percent.

In addition to creating non-tax resident affiliates, Apple Inc. has utilized U.S. tax loopholes to avoid U.S. taxes on $44 billion in otherwise taxable offshore income over the past four years, or about $10 billion in tax avoidance per year. A third subsidiary, Apple Operations Europe, also has no tax residency, according to Apple.

Wouldn't you like to have no country of tax residency even as you live and do business in many countries?

So would we!

Johnston tells Aaron Task and I in the above clip that the U.S. needs a system that recognizes cross border transactions.

"We have a tax system that is very well defined for the economy of the 20th century but this is the 21st century," he argues. "We need to fundamentally revise our tax system."

Now, in its defense, Apple says the government is misconstruing its non-resident legal entities, which, Apple says, exist for business reasons, not tax reasons. Apple further says that it does not use any tax "gimmicks" at all.

- Apple pays an extraordinary amount in US taxes. Apple is likely the largest corporate income tax payer in the US, having paid nearly $6 billion in taxes to the US Treasury in FY2012. These payments account for $1 in every $40 in corporate income tax the US Treasury collected last year. The Company's FY2012 total US federal cash effective tax rate was approximately 30.5%.1 The Company expects to pay over $7 billion in taxes to the US Treasury in its current fiscal year. In accordance with US law, Apple pays US corporate income taxes on the profits earned from its sales in the US and on the investment income of its Controlled Foreign Corporations ("CFCs"), including the investment earnings of its Irish subsidiary, Apple Operations International ("AOI").
- Apple does not use tax gimmicks. Apple does not move its intellectual property into offshore tax havens and use it to sell products back into the US in order to avoid US tax; it does not use revolving loans from foreign subsidiaries to fund its domestic operations; it does not hold money on a Caribbean island; and it does not have a bank account in the Cayman Islands. Apple has substantial foreign cash because it sells the majority of its products outside the US. International operations accounted for 61% of Apple's revenue last year and two-thirds of its revenue last quarter. These foreign earnings are taxed in the jurisdiction where they are earned ("foreign, post-tax income").

Apple adds that it would be happy to pay more taxes if Congress would simplify tax rates and lower corporate income taxes.

Johnston says cutting rates would be even worse than our current system. He wants lawmakers to eliminate the corporate income tax and replace it with single company accounting. He explains: "For tax purposes you should be seen as a single company. You should not be able to draw money out of your American pocket and transfer it to your offshore pocket and get a deduction for it."

The biggest scandal may not be Apple's tax dodges but Congress' implicit approval of Apple's behavior, says Johnston.

"We don't how much Apple lobbied to get provisions that allowed this," he notes. "Congress has known about these things for years and hasn't acted on them. Congress can fix this and ought to do that."

Source for this section:

http://finance.yahoo.com/blogs/daily-ticker/apple-tax-dodging-bigger-scandal-congress-knew-says-133333028.html?vp=1

Section Two

Subcommittee to Examine Offshore Profit Shifting and Tax Avoidance by Apple Inc.

Monday, May 20, 2013

WASHINGTON – Apple Inc. has used a complex web of offshore entities – including three foreign subsidiaries the company claims are not tax resident in any nation – to avoid paying billions of dollars in U.S. income taxes, a bipartisan investigation by the Senate Permanent Subcommittee on Investigations has found.

The subcommittee will spotlight Apple's extensive tax-avoidance strategies at a Tuesday hearing. Witnesses will include Apple CEO Tim Cook, other Apple executives, Treasury Department officials and outside experts. Sen. Carl Levin, D-Mich., and Sen. John McCain, R-Ariz., subcommittee chairman and ranking member, respectively, will also issue a 40-page memorandum with findings and recommendations.

The subcommittee, which previously explored tax avoidance by other multinational corporations using offshore subsidiaries, found similar practices at Apple. In addition, the subcommittee review discovered an unusual tax scheme: Apple's claim that two key offshore companies are not tax residents of Ireland, where they are incorporated, or of the United States, where Apple executives manage and control the companies. One of those Irish subsidiaries has paid no income taxes to any national tax authority for the past five years.

"Apple wasn't satisfied with shifting its profits to a low-tax offshore tax haven," said Sen. Levin. "Apple sought the Holy Grail of tax avoidance. It has created offshore entities holding tens of billions of dollars, while claiming to be tax resident nowhere. We intend to highlight that gimmick and other Apple offshore tax avoidance tactics so that American working families who pay their share of taxes understand how offshore tax loopholes raise their tax burden, add to the federal deficit and ought to be closed."

"Apple claims to be the largest U.S. corporate taxpayer, but by sheer size and scale, it is also among America's largest tax avoiders," said Sen. McCain. "A company that found remarkable success by harnessing American ingenuity and the opportunities afforded by the U.S. economy should not be shifting its profits overseas to avoid the payment of U.S. tax, purposefully depriving the American people of revenue. It is important to understand Apple's byzantine tax structure so that we can effectively close the loopholes utilized by many U.S. multinational companies, particularly in this era of sequestration."

Sen. McCain added: "I have long advocated for modernizing our broken and uncompetitive tax code, but that cannot and must not be an excuse for turning a blind eye to the highly questionable tax strategies that corporations like Apple use to avoid paying taxes in America. The proper place for the bulk of Apple's creative energy ought to go into its innovative products and services, not in its tax department."

Tuesday's hearing is the subcommittee's second examining the tax-avoidance strategies of multinationals. A September 2012 hearing explored how Microsoft and Hewlett-Packard used dubious strategies to avoid billions in U.S. taxes. Similar practices at Apple include:

- Using a so-called cost sharing agreement to transfer valuable intellectual property assets offshore and shift the resulting profits to a tax haven jurisdiction.
- Taking advantage of weaknesses and loopholes in tax law and regulations to "disregard" offshore subsidiaries for tax purposes, shielding billions of dollars in income that could otherwise be taxable in the United States.
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In addition to those standard multinational tactics, Apple established at the apex of its offshore network an offshore holding company that it says is not tax resident in any nation. That subsidiary, Apple Operations International, has no employees and no physical presence, but keeps its bank accounts and records in the United States and holds its board meetings in California. It was incorporated in Ireland in 1980, and is owned and controlled by the U.S. parent company, Apple Inc. Ireland asserts tax jurisdiction only over companies that are managed and controlled in Ireland, but the United States bases tax residency on where a company is incorporated. Exploiting the gap between the two nations' tax laws, Apple Operations International has not filed an income tax return in either country, or any other country, for the past five years. From 2009 to 2012, it reported income totaling $30 billion.

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The Levin-McCain memorandum offers recommendations to close those offshore corporate tax loopholes. They include strengthening U.S. transfer pricing rules, and reforming the so-called "check-the-box" and "look-through" loopholes that enable multinationals to shield offshore income from U.S. taxes.

Tuesday's hearing will take testimony from three witness panels:

- Harvard Professor Stephen Shay and Villanova Professor J. Richard Harvey;
- Apple Chief Executive Officer Tim Cook, Chief Financial Officer Peter Oppenheimer, and Tax Operations Head Phillip Bullock; and
- Mark Mazur, Treasury Assistant Secretary for Tax Policy, and Samuel Maruca, IRS Director of Transfer Pricing Operations.

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Source of this section:

News from the office of Carl Levin, U.S. Senator from Michigan

http://www.levin.senate.gov/newsroom/press/release/subcommittee-to-examine-offshore-profit-shifting-and-tax-avoidance-by-apple-inc-/?section=alltypes