Business Roundtable

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Her Excellency Angela Merkel
Federal Chancellor of Germany
Federal Chancellery – Bundeskanzlerin
Willy-Brandt-Straße 1
10557 Berlin
Germany

Dear Chancellor Merkel:

I write to you as President of Business Roundtable regarding the recent decision of the European Commission (EC) ordering Ireland to recover from Apple up to €13 billion, plus interest, for alleged illegal state aid.

In the interest of all countries that respect the rule of law, this decision must not be allowed to stand. The precedent set by this decision, if upheld, would increase uncertainty significantly with a consequent adverse effect on foreign investment in Europe, making this decision a grievous self-inflicted wound for the European Union (EU) and its citizens. Absent reversal, other countries outside the EU will interpret the decision as acceptable governmental behavior and will put all companies with cross-border investments – including EU-headquartered companies – at risk of having their assets expropriated by foreign governments seeking extra revenue or seeking to punish a successful foreign competitor. I urge you to work with your colleagues to overturn this decision and seek an end to the use of state aid investigations that override the ability of your country and other EU member states to determine and interpret their own tax laws.

Business Roundtable is an association of chief executive officers of leading U.S. companies working to promote sound public policy and a thriving U.S. economy. Business Roundtable CEO members lead U.S. companies with $7 trillion in annual revenues and nearly 16 million employees. Our member companies invest billions of euros and employ millions in the European Union member states.

Business Roundtable's interest in this matter is for respect of the rule of law and the promotion of the legal certainty necessary for businesses to commit to large scale, cross-border investments in research, plant and equipment, and other infrastructure. These investments create the jobs needed to maintain these operations. Cross-border investment has provided for innovation, enhanced standards of living, and productive employment opportunities for hundreds of millions of workers around the globe, including in the EU.

Commercial success is uncertain for any business endeavor, but companies should have complete confidence that sovereign countries are committed to honoring their laws and agreements and have the authority to do so. This is fundamental. Unfortunately, unless set aside, this EC decision sets a precedent that EU member states do not control their tax affairs and it raises questions as to whether member states have the capacity to enter into and honor their treaty commitments. While businesses acknowledge that expectations can be altered by legislative changes, the expectation is that those changes will be prospective. The retroactive nature of the EC decision means that a business can never have certainty even on its past tax liability *unless or until* the EC chooses to decide accordingly.

Commissioner Vestager stated in her press conference announcing the decision that “if you want legal certainty, then you need a commission decision.” This is clearly inconsistent with each member state having retained sovereign rights with respect to taxation.

Ironically, the tax rulings under investigation by the EC were issued by member states for the express purpose of providing certainty to businesses in exchange for full transparency by companies to the governments of their operations. No special favors were granted by such rulings; they merely provide an advance determination of how a country’s laws apply to the particular factual situation to be addressed. To reach its decisions, the EC relies on its own vision of the appropriate tax law rather than national laws and historically rooted international and OECD principles.

The OECD and G20 have launched a joint project this year to enhance tax certainty in order to promote investment and trade and thereby make further progress in achieving sustainable and balanced growth. The EC’s actions are in striking contrast – *they promote tax uncertainty* – and unless overturned they will disrupt trade and investment, with the most direct consequences to be borne directly by EU countries and their citizens.

America’s business leaders do not favor building walls between our countries. The progress of the past half century in expanding trade and cross-border investment has raised global living standards. We must continue on this path. Together our nations are stronger.

Business Roundtable looks forward to your support to work actively to overturn this EC decision and put an end to the use of state aid investigations that will hamper economic growth by undermining cross-border investment.

Sincerely,

John Engler

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C: EU heads of state or government (sent individually to all leaders of the member states)
German Federal Minister of Finance Dr. Wolfgang Schäuble
President of the European Council Donald Tusk
President of the European Commission Jean-Claude Juncker
European Commissioner for Competition Margrethe Vestager
U.S. Secretary of State John Kerry
U.S. Secretary of Treasury Jacob Lew
U.S. Secretary of Commerce Penny Pritzker