

# The Silicon Six

**and their  
\$100 billion global tax gap**



**December 2019**



We  Fair Tax

## About the Fair Tax Mark

The Fair Tax Mark certification scheme was launched in the UK in 2014, and seeks to encourage and recognise organisations that pay the right amount of corporation tax at the right time and in the right place. Tax contributions are a key part of the wider social and economic contribution made by business, helping the communities in which they operate to deliver valuable public services and build the infrastructure that paves the way for growth.

More than fifty businesses have now been certified in the UK, including FTSE-listed PLCs, co-operatives, social enterprises and large private business – which between them have over 7,000 offices and outlets. We operate as a not-for-profit social enterprise and believe that companies paying tax responsibly should be celebrated, and any race to the bottom resisted.

To date, the Fair Tax Mark's activities have been focused on the UK; however, a new suite of international standards is now under development. These would enable the Fair Tax certification of businesses that have their ultimate holding company situated outside of the UK. There is a pressing need for this given:

- the Fair Tax Mark is now being regularly approached by businesses from outside of the UK seeking accreditation;

- regulators, investors and municipalities across the globe have expressed a desire to support Fair Tax Mark accreditation (or equivalent) in their jurisdictions;
- there is in many parts of the world an ongoing international race to the bottom on tax, and this creates a downward pressure on standards everywhere (including in the UK); and
- if no action is taken by civil society, unscrupulous accounting and auditing entities will step into the vacuum and propagate low-bar tax kitemarks.

Further information at:

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*The research underpinning this Report was kindly supported by a grant from Funding for Social Change Limited. Research was assisted by Ethical Consumer Research Association Ltd.*

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# 1 Summary of findings

## **This Report questions whether the Silicon Six are paying their way on tax.**

*Facebook, Apple, Amazon, Netflix, Google and Microsoft* are some of the world's biggest companies, and together have a combined market capitalization of \$4.5 trillion. They are worth more than the 1,000 companies listed on the London Stock Exchange.

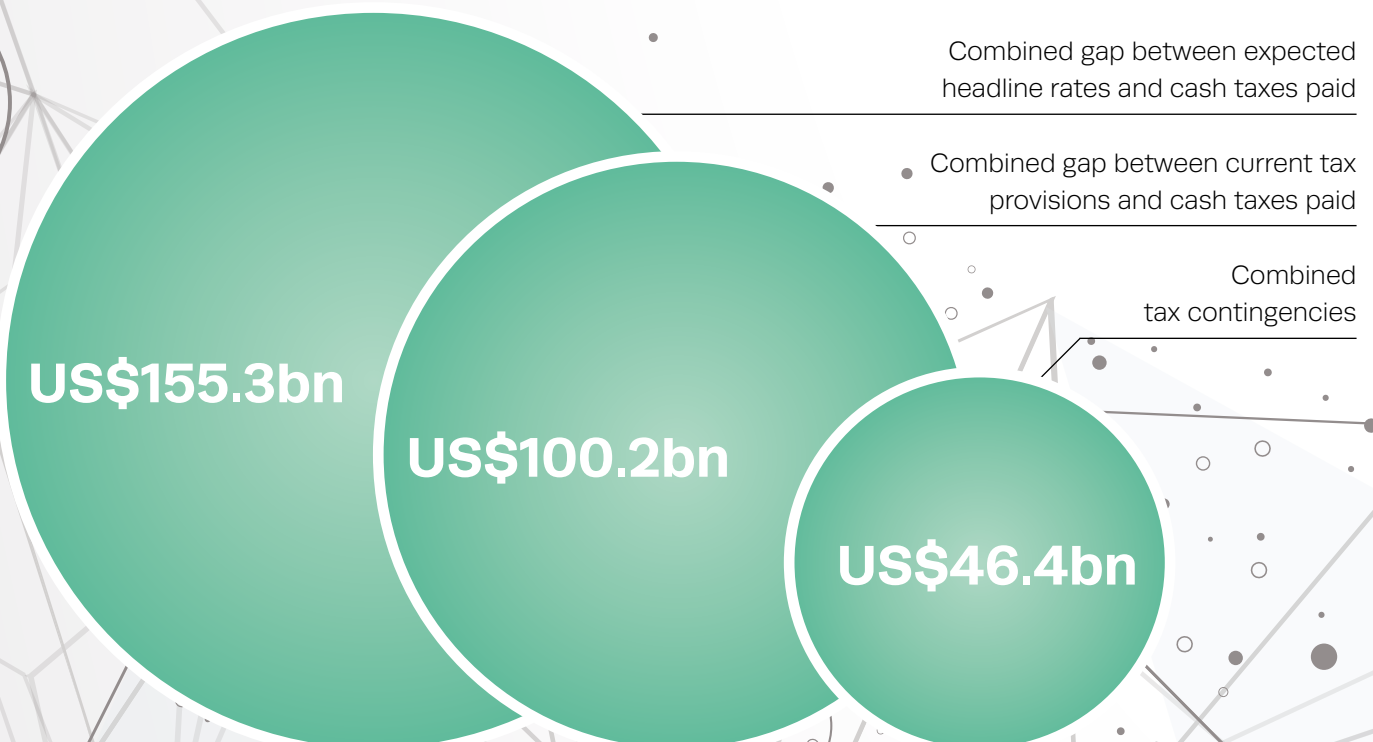
In this Report we look at the enormous scale and impact of the Six, examine their collective tax conduct over the period 2010 to 2019, rank them individually on their tax conduct and end with a couple of suggested remedies.

We concentrate on the information contained in the Form 10-K annual filings in the United States, where they are incorporated. We have also selectively reviewed Form 10-Q quarterly filings and the company accounts of various European and UK subsidiaries. We focus our attention on the cash taxes paid (as opposed to the total tax and / or current tax provisions, which are predominantly the focus of media analysis and policy consideration to date).

Our analysis of the long-run effective tax rate of the Silicon Six over the decade to date has found that there is a significant difference between the cash taxes paid and both the expected headline rate of tax and, more significantly, the reported current tax provisions. We conclude that corporation tax paid is much lower than is commonly understood. Over the period 2010 to 2019:

- the gap between the expected headline rates of tax and the cash taxes actually paid was \$155.3bn
- the gap between the current tax provisions and the cash taxes actually paid was \$100.2bn

The bulk of the shortfall almost certainly arose outside the United States, given this 'foreign' activity accounts for more than half of booked revenue and two-thirds of booked profits. 10-K filings do not breakdown cash taxes paid, but it is noteworthy that the foreign current tax charge was just 8.4% of identified foreign profits over this period (which is a third of the consolidated current tax charge, at 25.3%).



Profits continue to be shifted to tax havens, especially Bermuda, Ireland, Luxembourg and the Netherlands.

We have also looked at reported Unrecognized Tax Benefits (UTBs), or tax contingencies. These have rocketed in recent years, increasing fourfold from \$8.9bn at the end of 2010 to \$41.6bn in the most recent suite of 10-K filings. They have even continued to increase post-2017 and the implementation of the US Tax Cuts and Jobs Act, which indicates that historic aggressive tax avoidance is not only unresolved but still growing. In addition to the combined \$41.6bn of uncertain tax positions, the Six have accrued a further \$5.7bn in connected interest and penalties. Put another way: the Six have a combined \$47bn of unrealised net income due to aggressive tax positions. Moreover, a review of the latest Form 10-Q quarterly filings (in the autumn of 2019) reveals a further \$4.81bn of UTBs growth and provides further proof that the Silicon Six's historic tax avoidance is very much a matter of current concern.

In terms of ranking, none of the Six is an exemplar of responsible tax conduct. However, the degree of irresponsibility and the relative tax contribution made does vary. *Amazon* has paid just \$3.4bn in income taxes this decade, whilst *Apple* has paid \$93.8bn and *Microsoft* has paid \$46.9bn. This is a staggering variance, especially as *Amazon's* revenue over this period exceeded that of *Microsoft's* by almost \$80bn.

The international tide is turning on the acceptability of corporate tax avoidance. The idea of countering the profit-shifting of Big Tech multinationals via the introduction of digital sales taxes has taken root in many countries. They are being considered or progressed in, for example: Austria, Czech Republic, France, India, Italy, New Zealand, Spain and the UK. We believe that investors need to look afresh at the future impact that this will have on company valuations and income flows. This is not least because the OECD is now leading multilateral efforts to address the tax challenges from digitalisation of the economy, and is looking to ensure that profitable multinationals "pay tax wherever they have significant consumer-facing activities and generate their profits". This might even include a fundamental rewriting of the rules that determine where and how much tax multinational corporations pay tax around the world: with new global anti-base erosion rules that would ensure companies pay at least a minimum rate of tax, even when they are operating in low-tax jurisdictions.



# Ranking of poor tax conduct

1

**Amazon.** Stands out as the business with the poorest tax conduct, having paid just \$3.4bn in income taxes this decade. The cash tax paid was 12.7% of profit over the decade, at a time when the federal headline rate of tax in the United States was 35% for seven of the eight years under examination. The company is growing its market domination across the globe on the back of revenues that are largely untaxed, and can unfairly undercut local businesses that take a more responsible approach. The situation is unlikely to reverse soon given the \$9.3bn of operating loss carryforwards available to offset against future profits and taxes.

2

**Facebook.** The cash tax paid as a percentage of profit was just 10.2% over the period of study (the lowest of any of the Silicon Six) at a time when the federal headline rate of tax in the United States was 35% for seven of the eight years under examination. Has the lowest foreign current tax charge ratio of the Silicon Six over the decade, at just 5% of profits. Reported contingencies for uncertain tax positions have quadrupled over the last six years, and now stand at a significant \$7.16bn.

3

**Google.** In June 2019, sought to put the record straight on their tax conduct and asserted that: "Google's overall global tax rate has been over 23% for the past 10 years, in line with the 23.7% average statutory rate across the member countries of the OECD." In fact, the cash tax paid as a percentage of profit was just 15.8%. The trend of low current tax provision in connection with foreign profits continues in 2018, with just \$1.25bn booked on \$19.1bn of foreign profit, giving a booked current tax rate of just 6.5% - this is less than the company's already low average for the decade, which is 7.1%.

4

**Netflix.** Proved to be the most difficult to rank. The cash tax paid as a percentage of profit was just 15.8% (the same as *Google*). Operate thin margins (just 5.3%) and as a result the cash taxes paid as a percentage of revenue are a tiny 0.8% – which is less than a fifth of the ratio generated by *Microsoft*, *Apple* and *Google*. Reported foreign profit margin is even slimmer, at 4.3%.

5

**Apple.** Presents itself as “the world’s largest taxpayer” and it certainly makes the largest tax contribution of the Silicon Six, having paid \$93.8bn in income taxes this decade (albeit on profits of \$548.7bn and revenue of \$1,888.0bn). However, cash tax paid as a percentage of profit over the decade is still a relatively low 17.1%. The trend of low current tax provision in connection with foreign profits continues in 2019, with just \$3.9bn booked on \$44.3bn of foreign profit, giving a booked current tax rate of just 8.9%.

6

**Microsoft.** Our analysis suggests that *Microsoft*, by a slim margin, has the least aggressive approach to tax avoidance of the Six. Makes the second largest tax contribution of the Silicon Six, having paid \$46.9bn in income taxes this decade (on profits of \$278.5bn and revenue of \$882.5bn). However, the cash tax paid as a percentage of profit is still a relatively low 16.8%. *Microsoft*’s tax contingencies continued their annual growth through to 2019, to hit a significant \$13.1bn – and were the highest of the Silicon Six for most of the decade.



## 2 Introduction: who are we talking about and why?

*Facebook, Apple, Amazon, Netflix, Google*<sup>i</sup> and *Microsoft* are some of the world's biggest companies, and constitute a significant portion of the United States stock market. In 2013, when this group of Big Tech companies included only *Facebook, Amazon, Netflix* and *Google*, it was nicknamed by CNBC's Jim Cramer as FANG, later extended to FAANG with the addition of *Apple*. Wall Street analysts have continued to group these companies together with an acronym to capture the significant collective impact that they have on the markets. However, given *Microsoft's* market capitalization passed \$1 trillion in June 2019, we consider a broader grouping is merited as below.

*Facebook, Apple, Amazon, Netflix, Google* and *Microsoft* are also all regularly linked to tax avoidance in the media, at a time when digitalisation of the world economy is exacerbating international corporate tax avoidance.<sup>1</sup>

This Report therefore focuses on *Facebook, Apple, Amazon, Netflix, Google* and *Microsoft*, and in the absence of a widely accepted group name, we collectively refer to these giants as the Silicon Six.

We look at the enormous scale and impact of the Six, examine their collective tax conduct over the period 2010–19 (as at October 2019<sup>ii</sup>), rank them individually on their tax conduct and end with some possible solutions.

We focus on the information contained in the Form 10–K annual filings and Form 10–Q quarterly filings to the US Securities and Exchange Commission (SEC) in the United States, where they are incorporated.<sup>2</sup> This offers at best a high–level view of proceedings. Not

<sup>i</sup> The company *Google* was rebranded as Alphabet in 2015, and a bespoke *Google* subsidiary created. However, given its familiarity and the dominant size of the *Google* subsidiary, we continue to use the term *Google* for the parent entity.

<sup>ii</sup> The most recent annual accounts of *Apple* run to end September 2019. *Microsoft* run to end June 2019. *Amazon, Google, Netflix* and *Facebook* run to end December 2018.

only is a country–by–country view of income, profits and taxes paid not discernible, there is not even a meaningful list of subsidiaries provided.

We have also looked selectively at the accounts of European and UK subsidiaries. However, the information available here is often even more restricted – with no information provided on cash taxes paid or even current tax provisions in some instances (e.g., Luxembourg filings).

In an ideal world, public country–by–country reporting of financial data would be available (as called for by the tax justice movement across the world, as well as the European Parliament and European Commission). Just one example of why this is needed is provided by *Apple*. The Paradise Papers leak of 2017 revealed that Jersey plays a significant role in *Apple's* new Irish tax setup; however, searching for *Apple* in Jersey's company register proves fruitless.<sup>3</sup> The same goes for a key subsidiary in the Cayman Islands.

The Fair Tax Mark embarked on this research project with the belief that aggressive tax avoidance is not systematic in business per se on either side of the Atlantic, but that there are a significant minority of businesses that are hard–wired to dodge paying taxes whenever and wherever they can. This needs to be exposed and challenged – not least as it creates an unfair playing field for the large number of other businesses that embrace responsible tax conduct.

Moreover, given that the international tide is turning on the acceptability of corporation tax avoidance, we believe that investors need to look afresh at the future impact that this will have on company valuations and income flows. This is not least because the OECD is now leading multilateral efforts to address the tax challenges from digitalisation of the economy, and is looking to ensure that profitable multinationals “pay tax wherever they have significant consumer–facing activities and generate their profits”.<sup>4</sup> This potentially



includes a fundamental rewriting of the rules that determine where and how much tax multinational corporations pay around the world and new global anti-base erosion rules that would ensure companies pay at least a minimum rate of tax, even when they are operating in low-tax jurisdictions.<sup>5</sup>

## **A note on the Impact of the Tax Cuts and Jobs Act, 2017**

By way of background, it is important to note that for most of the past decade, the United States (theoretically at least) operated a 'worldwide tax system'; unlike the 'territorial system'<sup>iii</sup> that operates in most of the world. As a result, a corporation headquartered in the United States in theory paid corporate income tax on all its income at a federal rate of 35%, regardless of whether it is earned there or overseas. However, the overseas element of this tax was only paid when the foreign earnings were "repatriated" to the United States (and this was avoided by many businesses). To prevent double taxation, corporations could claim tax credits to offset their foreign income taxes, if and when they were repatriated.

From 2018 and the implementation of The Tax Cuts and Jobs Act (TCJ Act), the United States changed its tax system. It now operates a reduced headline tax rate of 21% and a system that is a hybrid between territorial and worldwide. Repatriated dividends will no longer be taxed, but there is a one-off transition tax on accumulated foreign earnings of 15.5% for cash (and equivalents) and 8% for illiquid assets. There will be expanded taxation of income accrued within Controlled Foreign Corporations (CFCs) and the introduction of a tax on global intangible low-taxed income (GILTI).

Supporters of the TCJ Act argued that the influx of repatriated cash would lead to a surge in employee recruitment and remuneration, together with markedly increased capital expenditure. Neither has happened.<sup>6</sup> Instead there has been an unprecedented explosion in share buybacks: with *Apple*<sup>iv</sup> leading the way among the Silicon Six (with \$172.5bn of stock repurchases over 2017–19), followed by *Microsoft* (\$42.0bn over 2017–19), *Facebook* (\$14.9bn over 2017–18) and *Google* (£13.9bn over 2017–18).

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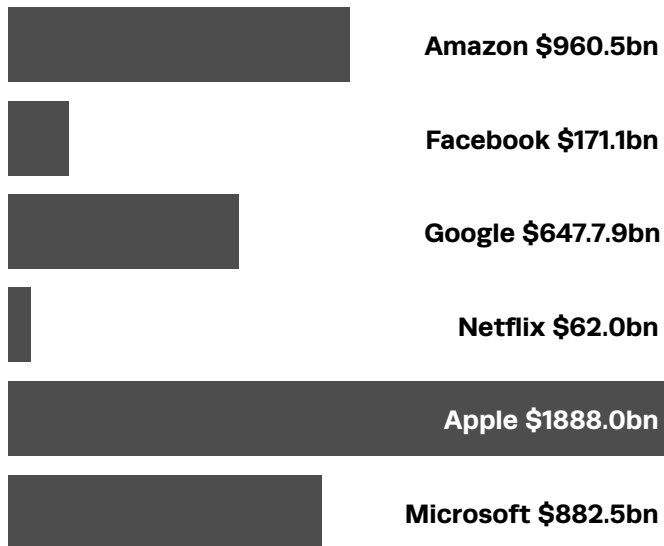
iii A system that taxes only the portion of a corporation's income originating within the country's borders.

iv In fact, *Apple* has been described as the "all-time champ" of buybacks. *Fortune* (20th August 2019). More than half of all stock buybacks are now financed by debt. Here's why that's a problem. <https://fortune.com/2019/08/20/stock-buybacks-debt-financed/>

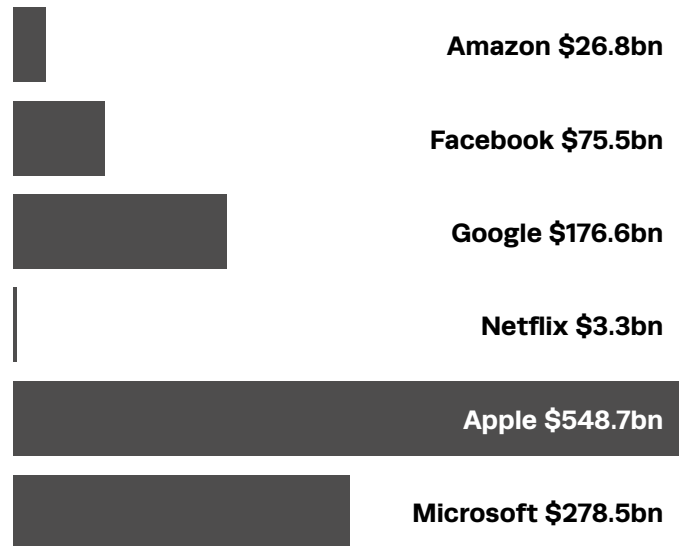
The United States, China and Japan are the only countries to have an economy larger than the combined market capitalization of the Silicon Six

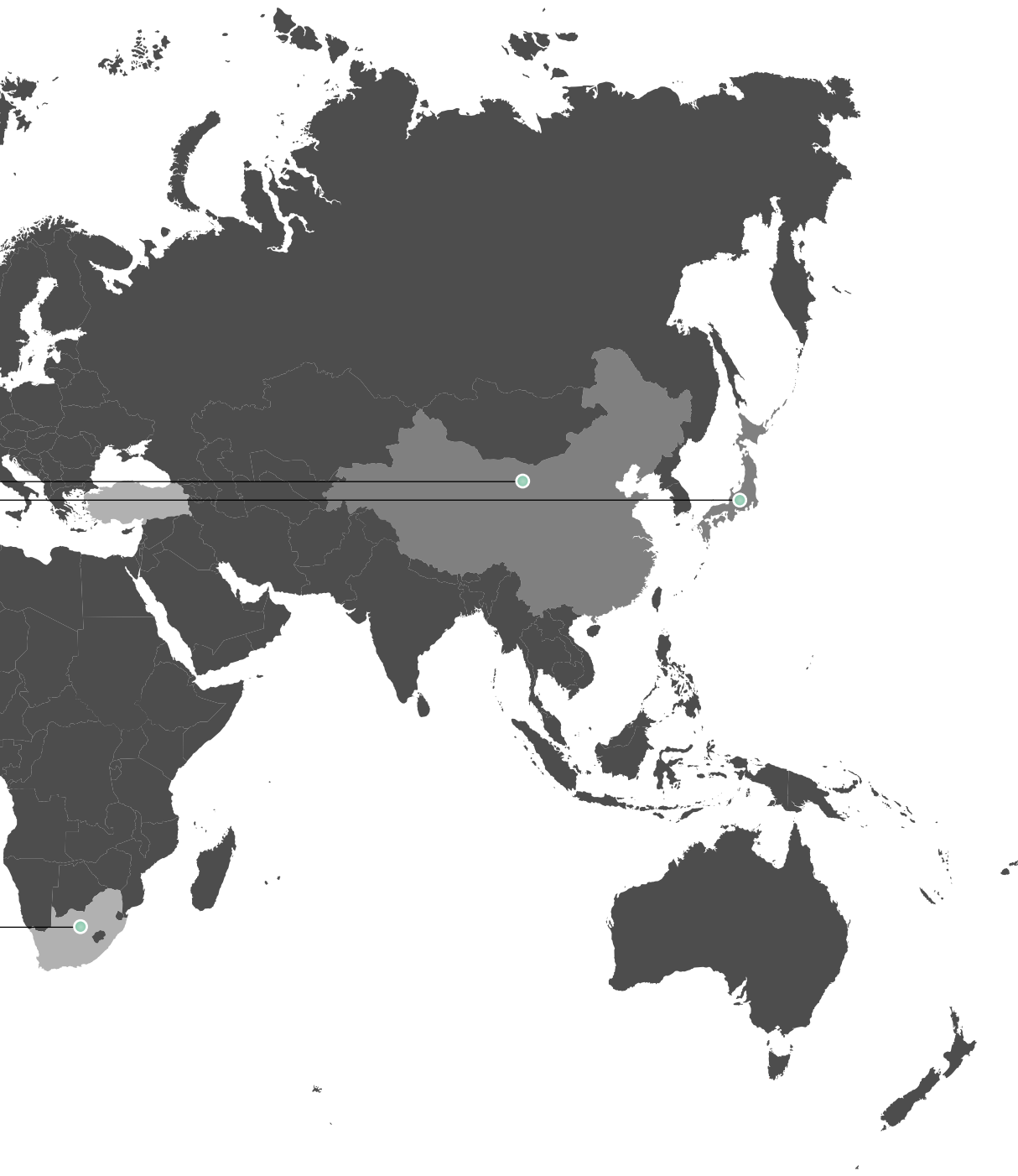
Microsoft and Apple have a market capitalization on par with the economies of G20 countries such as Turkey or South Africa

**Revenue (2010–19)**

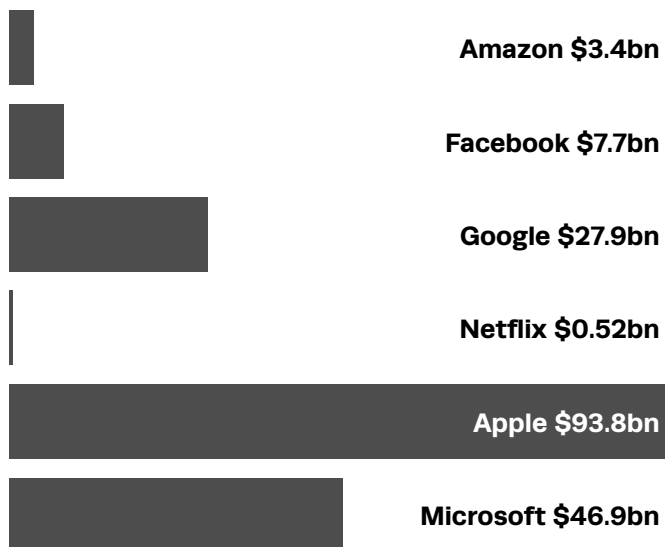


**Profit (2010–19)**

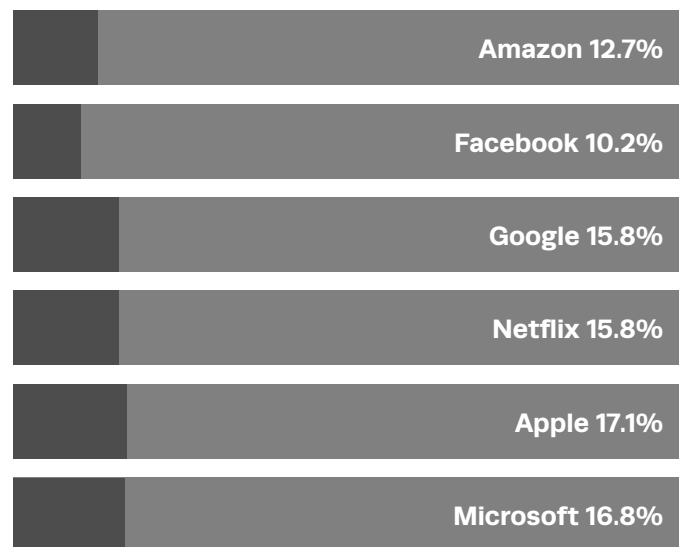




**Cash tax paid (2010-19)**



**Cash tax paid as percentage of profit**



# 3 Incredible impact of the Silicon Six

## a) Enormous market worth

The Silicon Six giants are significant for several reasons. The first is their enormous market worth.

In August 2018, *Apple* became the first public company to have a stated market worth in excess of \$1 trillion, followed by *Microsoft* in June 2019. Previously, economic impact of this scale had only been achieved by state-owned oil exploration and production companies, such as PetroChina and Saudi Aramco, or by colonial monopolies, such as the Dutch East India Company<sup>7</sup>. These corporate giants of old significantly re-shaped the economic, social and physical world, just as the Silicon Six are doing today.

In the autumn of 2019<sup>v</sup>, these six companies had a combined market capitalization of \$4.5 trillion and made up nearly 15% of the value of all listed equities on the New York Stock Exchange, the world's largest financial market.

Both *Microsoft* and *Apple* currently have market capitalizations in excess of \$1 trillion, with *Amazon* (\$885bn) and *Google* (\$870bn) not far behind. *Facebook* and *Netflix* are the smallest of the Six, with market capitalizations of \$542bn and \$129bn respectively. However, even *Facebook* is on a par with the likes of JP Morgan Chase, Exxon Mobil and Berkshire Hathaway, all of which are colossal enterprises that been around for very much longer.

The \$4.5 trillion market worth of the Silicon Six is now so large that it is difficult to grasp the size of the numbers involved. By way of comparison:

- The combined worth of the Silicon Six is greater than the economies of Germany, India, France, the UK and the whole of Africa – in fact, only the US, China and Japan are larger.<sup>8</sup>

- The market capitalization of the likes of *Apple* and *Microsoft* is individually similar to the economic activity of G20 nation states such as Turkey and South Africa.
- The Six are worth more than the 1,000 companies listed on the London Stock Exchange, which have a combined value of c.\$3.75 trillion.<sup>9</sup>
- A stack of 4.5 trillion dollar bills would reach to the moon (and laid end-to-end they would reach to the sun and back).<sup>10</sup>

## b) Domination of markets

As well as being major players on the stock markets, the Silicon Six have a dominating influence on a number of consumer markets. Three examples are provided below.

**Advertising.** In 2019, digital advertising is expected to grow to around half of the global advertising market and the United States and Netherlands will join the UK, China, Norway and Canada as countries where digital is now the dominant medium<sup>11</sup>. The value of the global market is expected to increase to \$333bn. *Google* is the top seller of digital advertising with 31% of the market (\$104bn); followed by *Facebook*, with 20% (\$67bn).

The dominance of the *Google* and *Facebook* duopoly is even more pronounced in the UK: while globally these companies account for 51% of the digital ad market, in the UK this figure is 63% (of a £14.73bn market) and is set to rise<sup>12</sup>. However, as we note in section 5 of this Report, much of this income is apparently still not meaningfully tax resident in the UK.

**Data management.** *Amazon* is the leader in this sector, with its Web Services division accounting for 32% of the global cloud computing market, at end 2018.<sup>13</sup> On the consumer side, many influential social

v As at 17th October 2019.



media and digital content platforms use AWS (Spotify, Pinterest, Reddit, Soundcloud, Tumblr and Vimeo). The Guardian uses it to host its web app and *Netflix* uses it to host its streaming service.<sup>14</sup> AWS also provides services to governments and associated agencies. Since 2017 it has provided services to the UK's tax authorities,<sup>15</sup> and in January 2019 it was announced that AWS had been chosen as the cloud provider of a UK government portal enabling government departments and local councils to procure goods and services online.<sup>16</sup>

*Microsoft* and *Google* are also major players, with 16% and 9% market share, respectively. Building on its office computing ubiquity, *Microsoft's* Azure service is growing market share and the company was named as a leader in Gartner's influential Magic Quadrants.<sup>17</sup> The *Google* Drive service for sharing and simultaneously editing documents now has over a billion users.<sup>18</sup>

**Streaming.** The clear leader in this market is *Netflix* with over 151 million paid streaming customer memberships in over 190 countries worldwide.<sup>19</sup> Competitors *Amazon* Prime and Hulu (Disney) are gaining ground, plus a new recently launched *Apple* TV+ service. The CNBC All-American Economic Survey 2018 found that 57% of Americans use a paid streaming service: *Netflix* was market leader with a market share of 51%, and *Amazon* Prime was second with 33%.<sup>20</sup>

In 2018, *Netflix* had 70% penetration of the UK video on demand market, followed by *Amazon* Prime Video with 44%.<sup>21</sup> *Amazon* Prime Video is included in the general *Amazon* Prime Video subscription, which also gives users preferential access to music, games, e-books, plus the original *Amazon* marketplace.

## c) Pervasive political influence

According to the US Center for Responsive Politics, the Silicon Six have collectively spent over \$257m on lobbying activities in the US over the last five years.<sup>vi</sup> 2017 and 2018 were the most active years, with \$59.5m and \$65m spent, respectively. *Google* has spent the most (\$78.9m) and *Netflix* the least (\$4.1m).

Between 2015 and 2019, *Microsoft* was the most active campaigner on the topic of tax, raising 124 specific issues. Taxes were the most raised topic in the lobbying activities undertaken by *Microsoft* and *Apple*, while for *Amazon* and *Facebook* it was second and third, respectively. There was a peak in activity in the second quarter of 2017, when it was reported that *Amazon*, *Apple* and *Google* spent record sums lobbying for changes to the tax code.<sup>22</sup> This lobbying paid dividends with the TCJ Act. The Act's cash repatriation provision (see section 2) mainly benefited big technology companies that had large overseas cash piles. The hope within the United States was that this cash would be used to boost employment and capital investment, but analysis from Bloomberg found it simply led to a 'splurge' in additional stock repurchases.<sup>23</sup>

The Silicon Six collectively spent around €20m on lobbying at the EU level between January 2017 and July 2019. The largest lobbying budgets belonged to *Google* and *Microsoft* (€6m and €5m, respectively), while *Netflix* brought up the rear, spending less than €1m. As would be expected, data protection and the future of the internet were recurring topics followed by many of the Big Tech companies, but also e-commerce, intellectual property and 'EU economic policies' in general.<sup>24</sup>

vi Total lobbying spend 2015–19: *Google* \$78.9m; *Amazon* \$56.3m; *Facebook* \$50.2m; *Microsoft* \$41m; *Apple* \$26.8m; *Netflix* \$4.1m. Center for Responsive Politics. [www.opensecrets.org](http://www.opensecrets.org)

# 4 Overview of Silicon Six's tax conduct

We have examined the Form 10-K annual filings of the Silicon Six in the United States from 2010 to date (as at October 2019).<sup>25</sup> We have also reviewed selective Form 10-Q quarterly filings. In Table 1 (p.16) we present their combined impact over this time, and also differentiate the periods before and after the Tax Cut and Jobs Act of December 2017 (TCJ Act) – which had a major impact, not least because of the permanent lowering of the top federal corporate income tax rate from 35% to 21% (from 2018) and the introduction of a repatriation tax on previously deferred foreign income at much reduced rates of between 8–15.5%.<sup>vii</sup>

We have also looked selectively at the accounts of European and UK subsidiaries. However, the information available here is often even more restricted – with no information provided on cash taxes paid or even current tax provisions in some instances (e.g., Luxembourg filings).

Reference to 'foreign' revenue, profit and current tax charges signifies activity booked outside of the United States, and that is labelled as such in the Form 10-K filings of the Six.

## a) Corporation tax paid is much lower than commonly understood

In this Report we have focused our attention on the cash taxes paid, not the reported total tax charge or current tax expense – which are items that most media analysis and commentary pays attention to<sup>viii</sup>.

We have done so because, when looked at over time, cash taxes paid (which have been termed as the 'long-run cash effective tax rate' in academic studies<sup>26</sup>) provide the best available data for tracking deviations

vii A further significant development was the 100% write-off for capital spending undertaken during the next five years.

viii Cash taxes paid will include: domestic, foreign and state and local. It will also include settlements from prior years, and we have tried to flag these up where possible.

from the expected headline rate of tax. Focussing on this issue also allows for a better understanding of factors that give rise to 'book-tax differences' over the period of study, such as employee stock options and movements in the tax contingency reserve<sup>27</sup>.

Our analysis of the long-run effective tax rate of the Silicon Six over the decade to date has found that there is a significant difference between the cash taxes paid and both the expected headline rate of tax and, more significantly, the reported current tax charges (as summarised in Figures 1 (opp.) and 2 (p. 17)).

These are, of course, all necessarily approximate tax gap calculations: on the one-hand they take no account of legitimate tax breaks that would reduce the levels of taxes payable; or conversely, the tax-boosting impact of one-off repatriations of foreign earnings. But they serve to illustrate, in absolute terms, the significant impact of the marked deviation from the expected headline rate of tax that has played out so far over this decade. As such, we believe that these tax gap calculations raise legitimate issues of concern that need to be addressed.

## I. Cash taxes paid: deviation from expected headline rate

**Overall, the Silicon Six paid just 15.9% of corporation tax (cash) on their declared profits over the period 2010 to 2017 inclusive, at a time when the headline rate was 35%<sup>ix</sup>.** The levels of tax paid are well below those paid by the majority of other businesses in the United States, which studies have found to be a mean of between 29.1% (1995–2004)<sup>28</sup> and 26% (2008–2014)<sup>29</sup>.

The tax gap between cash paid and that due at the expected headline rate equates to \$155.9bn over the years 2010 to 2017 inclusive. The bulk of the shortfall almost certainly arose outside the United States, given

ix 'Worldwide' basis.

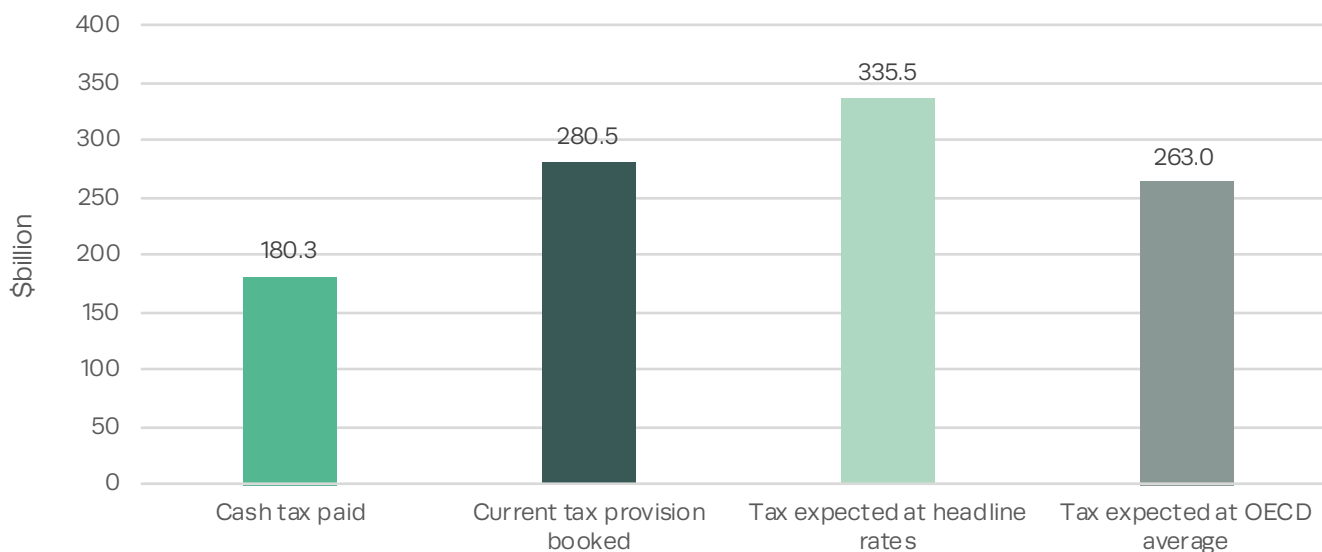


Figure 1 Silicon Six: taxes paid, booked and expected (2010–19)

that the current tax charge connected with foreign profits was just 7.3% over this period<sup>x</sup>, at a time when operations outside of the United States accounted for the majority of booked revenue (52.0%) and almost two-thirds of booked profits (64%).

**Over 2018 to 2019<sup>xi</sup>, the cash income tax paid increased to 17.2% of reported profits, likely as a result of the boost from the initiation of the repatriation of foreign earnings<sup>xii</sup>.** This was at a time when the headline rate for United States domestic profits began to fall to 21% and foreign profits became subject to lower rates depending on their form. Tax gap calculations over this period are very difficult due to the large settlements connected to prior year tax avoidance, but if we assume that the foreign portion of profits (some 60% of the total) is taxed at the GILTI maximum of 13.1%<sup>30</sup>, the difference between cash taxes paid and expected headline rates for 2018/19 is small at –\$0.7bn.

**This gives a total tax gap between cash paid and that due at the expected headline rates of \$155.3bn**

x There is no means to discern cash income tax paid on foreign revenue and profit, so we are forced to infer an indication of taxes paid from the foreign current tax charge.

xi Based on 2018 results of *Amazon, Google, Facebook, Netflix*; and 2018 and 2019 results of *Apple and Microsoft*. This data is therefore heavily over-weighted by *Apple and Microsoft*.

xii The expected headline rate of tax did not fall uniformly to 21% in 2018 for all businesses. *Microsoft* had an applicable blend of 28.1% and *Apple's* was 24.5%.

**over the years 2010–19 inclusive (as at October 2019).**

## II. Cash taxes paid: deviation from current tax charge

**There is also a significant \$100.2bn variance between the booked current tax reported (a combined \$280.4bn over the period 2017 to 2019 inclusive, or 25.8% of declared profits) and the cash income tax actually paid (\$180.2bn, or 16.2% of profits).**

At an individual level the difference can be even more substantial: for example, over the period 2010 to 2017, *Amazon's* booked current tax contribution is 37.1% of profits, whereas its cash contribution is a mere 15.3% (at a time when the federal tax rate was 35%).

This is perhaps the most surprising and significant finding of this Report. A deviation between cash taxes paid and the expected headline rate is to be anticipated, both annually and over time (albeit not at the level we found in this Report). But for such a significant deviation to persist between cash taxes paid and the current tax charge suggests a worryingly divergent approach between the financial reporting of corporations to their investors and their reporting to tax authorities. One consequence of this is the persistent growth in uncertain tax positions and tax contingencies, as discussed in section 4b.

	2010–17	2018–19	2010–19
Revenue	\$3,410.6bn	\$1,203.3bn	<b>\$4,613.9bn</b>
Booked profit	\$816.8bn	\$292.7bn	<b>\$1,109.5bn</b>
Current tax provision	\$180.5bn	\$99.9bn	<b>\$280.4bn</b>
Current tax provision / booked profit	22.1%	34.1%	<b>25.3%</b>
Cash income tax paid	\$129.9bn	\$50.3bn	<b>\$180.2bn</b>
Cash tax paid / booked profit	15.9%	17.2%	<b>16.2%</b>
Cash tax paid / revenue	3.8%	4.2%	<b>3.9%</b>

Table 1 Silicon Six: from revenue to cash tax paid (2010–19)

### III. Cash taxes paid: deviation from OECD average

**Alternatively, if one takes an approach favoured by Google<sup>xiii</sup>, and compares the global cash income tax actually paid (\$180.2bn) with the 23.7% average statutory rate across the member countries of the OECD, then a sizeable tax gap of £82.7bn still emerges** – although this self-serving approach ignores the fact that *Google* and the other Silicon Six have operated under the United States worldwide tax system over much, if not all, of the decade.

### IV. Cash taxes paid: comparing the Six

Among the Silicon Six, *Facebook* (10.2%) and *Amazon* (12.7%) paid the least cash tax as a percentage of declared profit over the period 2010 to 2019, and *Microsoft* (16.8%) and *Apple* (17.1%) the most. However, there is a wide variance in declared profit margins. Most significantly, *Amazon's* is a tiny 2.8% (i.e., – they have declared just \$26.8bn in profit on \$960.5bn of revenue over the period reviewed). **As a result, Amazon has paid just \$3.4bn in taxes during this decade, whilst Apple has paid \$93.8bn and Microsoft has paid \$46.9bn<sup>xiv</sup>. This is a staggering variance, especially as Amazon's revenue over this period exceeded that of Microsoft's by almost \$80bn.** Furthermore, *Amazon's* 10-K filings note that they apparently have \$9.3bn of operating loss

xiii As expressed in "It's time for a new international tax deal". (Alphabet, 27th June 2019). <https://www.blog.google/outreach-initiatives/public-policy/its-time-new-international-tax-deal/>

xiv It needs to be noted that *Apple* and *Microsoft* have both had ten reporting cycles so far this decade, compared with *Amazon's* nine. But even if we compare the first nine reporting cycles only (ie 2010–2018): then the difference is still marked, with *Apple* paying \$78.6bn and *Microsoft* paying \$38.5bn.

carryforwards available to offset against future profits and related taxes (although, as we explain in section 5, there seems to be a growing, if belated, recognition that many hitherto assumed tax benefits may not in fact materialise).

In terms of foreign activity (i.e., revenue and profits booked outside of the United States in their accounts), 10-K filings do not provide information on cash taxes paid, but merely note current year taxes booked; and, as previously demonstrated in section 4aii, the latter tend to be consistently higher than the former. Having said that, over the period 2010 to 2018, the booked current tax charge reported across the Six was just 8.4% of identified foreign profits, or \$59.6bn. **Markedly, the foreign current tax charge (8.4%) is a third of the consolidated current tax charge booked, which is 25.3%.** *Facebook* has the lowest foreign current charge ratio over the decade, at 5% of foreign profits.

Stock-option tax reliefs have a big impact at all of the Six, but feature particularly strong in the total tax reconciliation notes of *Amazon*, *Facebook*, *Google* and *Netflix*. Companies can deduct the cost of stock-based compensation from their taxable earnings in many parts of the world, even though it is not a cash expense to the company. In addition, when a company's share price rises, the value of the tax deduction rises. Following the TCJ Act, the standard exemption for performance payments was removed (i.e., they are no longer tax-deductible), but transition relief was granted to schemes agreed pre-TCJ Act – and so significant tax benefits still accrue. Several of the Six could be materially impacted by a recent court ruling, which challenged the tax treatment of stock options at the Intel corporation, Altera. The ruling would lead to the allocation of some of



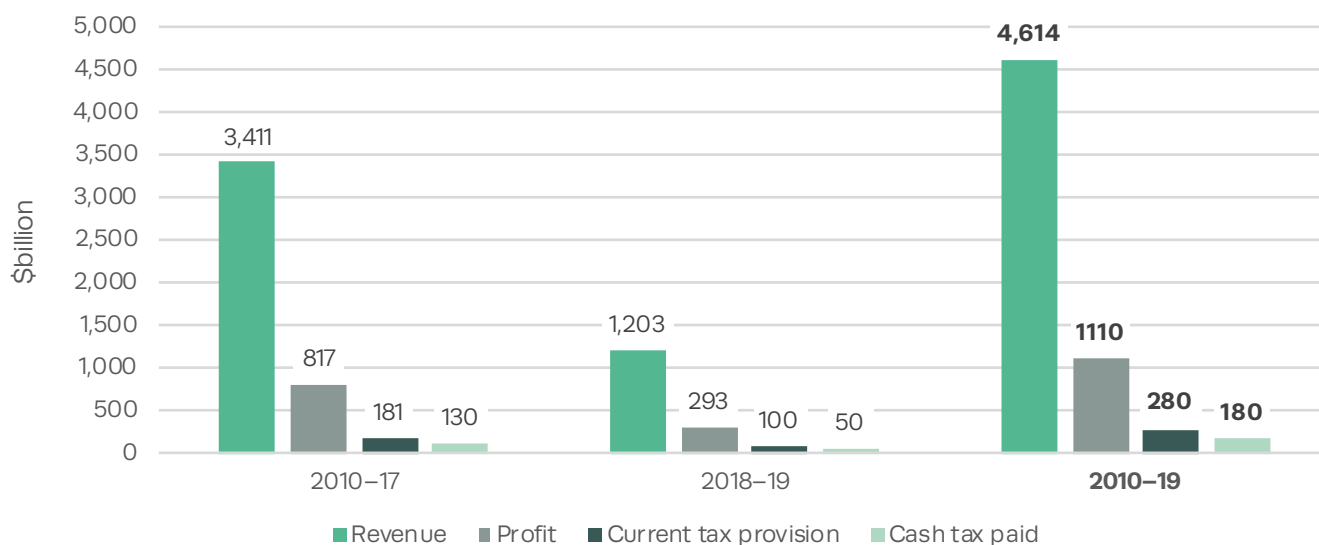


Figure 2 Silicon Six: from revenue to cash tax paid (2010-19)

the stock compensation expense to foreign subsidiaries, but where these are in tax havens then the deduction is all but worthless. In July, *Facebook's* 10-Q second quarter filing (to end June 2019) reported substantially increased tax contingencies and a new \$1.1bn income tax expense in connection with this.<sup>31</sup> In October 2019, *Google's* 10-Q third quarter filing reported that: "as a result of the Ninth Circuit court decision, our cumulative net tax benefit of \$418 million related to previously shared stock-based compensation costs was reversed in the three months ended June 30, 2019."

## b) Tax contingencies are high, growing rapidly and indicate continued tax avoidance

Since 2007, SEC registrants in the United States have been required to disclose estimates of their uncertain tax benefits (or UTBs, which are also sometimes referred to as tax contingencies).<sup>xv</sup> UTBs are essentially an estimate of tax positions that a business has taken with tax authorities (i.e., claimed on its tax returns)

xv Measurement and disclosure mandated via a rule known as FIN 48, and since codified as ASC 740. Before the advent of FIN 48, tax reserve amounts were variously measured and rarely separately disclosed. Crucially, unlike the previous contingency accounting guidelines (SFAS 5), FIN 48 requires accrual of the tax obligation based on the merit of the tax position without considering the likelihood of audit. Under FIN 48, firms are required to classify changes in tax reserves as a current expense. Gleason et al. (2018) found that the ability of GAAP tax expense to predict future tax cash flows incrementally improved under FIN48. [https://krannert.purdue.edu/academics/Accounting/bkd\\_speakers/papers/GMS.pdf](https://krannert.purdue.edu/academics/Accounting/bkd_speakers/papers/GMS.pdf)

that might suffer a better than evens chance of being overturned if and when they are audited. These sums are accounted for as a reserve for contingent tax liabilities in the accounts of the corporation. They act as a guide to the additional tax payments a business may need to make if their claimed tax benefits are subsequently disallowed. Long overdue analogous requirements have, thankfully, now been mandated by the International Accounting Standards Board under IFRIC 23, for fiscal years beginning after January 2019.<sup>32</sup> As such, they are now starting to appear in, for example, the annual report and accounts of large businesses incorporated in the UK.

It has recently been demonstrated (Hanlon et al., 2017)<sup>33</sup> that greater UTBs result in greater future cash tax outflows and are not merely a reserve accrual; and that firms hold larger cash balances when subject to greater tax uncertainty. Analysis of UTBs can, therefore, indicate the degree of tax avoidance that has taken place in a corporation given that they are, by definition, aggressive tax positions that are not likely to succeed—but which the company has pursued anyway. Moreover, the additional cash holdings that high tax uncertainty leads to should be seen as a costly 'real effect' of tax avoidance. Dechow et al. (2008)<sup>34</sup> argued some time ago that holding cash on the balance sheet is costly because of agency problems associated with large cash holdings and because retained cash is less valuable to the firm. It is also associated with declines in return on investment and is subject to mispricing by the market.

**The Silicon Six's tax contingencies have rocketed in recent years, increasing fourfold from \$8.9bn at the end of 2010 to \$41.6bn in their most recent annual 10-K filings.** They have even continued to increase post-2017 and the implementation of the TCJ Act, which indicates that historic aggressive tax avoidance is not only unresolved but still growing. It is noteworthy that the cumulative cash to assets ratio of the Six over the decade is 36.5%, which is virtually twice the average (19.8%) of American business found by Dechow et al. The UTBs to assets ratio of the Six is a combined 3.6%, which is more than three times the mean value (1%) of American business reported.

In addition, to the combined \$41.6bn of uncertain tax positions, the Six have accrued a further \$5.7bn in connected interest and penalties (i.e., these additional sums would become due if tax positions were overturned).

**Put another way: the annual 10-K filings of the Six detail a combined \$47bn of unrealised net income due to aggressive tax positions. Moreover, a review of the latest Form 10-Q quarterly filings (in the autumn of 2019) reveals a further \$4.81bn of UTB growth and provides further proof that the Silicon Six's historic tax avoidance is very much a concern of the present.**

*Apple* and *Microsoft* report the largest UTBs by far: at \$15.6bn and \$13.1bn, respectively.<sup>35</sup> As noted earlier, tax uncertainty (as measured by UTBs) is a significant predictor of increased cash holdings (which can be costly if cash is unavailable for deployment)<sup>36</sup>; this Report found that *Microsoft* had the highest average UTBs to assets ratio (5.6%) and the highest cash to assets ratio over the decade (at 51.8%); followed by *Facebook*, where the UTBs to assets ratio was 3.9% and cash to assets ratio was 44.6%.

### **c) Profits continue to be shifted to tax havens, especially Bermuda, Ireland, Luxembourg and the Netherlands**

The manner in which the Silicon Six shift revenue and profits around the world to avoid tax is not clearly perceptible in the 10-K filings. But, by combining analysis with a review of subsidiary company accounts and periodic media coverage, it is possible to discern

patterns of behaviour – not least because a common list of tax haven usage emerges again and again.

Ireland plays a central role to the tax avoidance of four of the Silicon Six: *Apple*, *Facebook*, *Google* and *Microsoft*. In 2018, research from academics at the University California, Berkeley and the University of Copenhagen concluded that it was the biggest 'tax haven' in the world, with foreign multinationals shifting \$106bn of corporate profits to Ireland in 2015 alone.<sup>37</sup> One of the authors went on to say that this was still the case based on data from 2017, and that the effective tax rate in Ireland had reached a new low of 4.9%.<sup>38</sup> Ireland has pledged to close one of the most prominent loopholes utilised to shift profits and avoid taxes by 2020, the so-called 'Double Irish' arrangement<sup>xvi</sup>; but, Christian Aid have pointed out that this now being superseded by a new loophole, nicknamed the 'Single Malt'.<sup>39</sup>

In addition to Ireland, Bermuda (*Apple*, *Google* and *Microsoft*), Luxembourg (e.g., *Amazon* and *Microsoft*) and the Netherlands (e.g., *Google* and *Netflix*) also feature prominently as conduits of tax avoidance. In 2019, the Tax Justice Network's latest Corporate Tax Havens Index ranked Bermuda, the Netherlands and Luxembourg as second, fourth and sixth, respectively, among countries "that have done the most to proliferate corporate tax avoidance and break down the global corporate tax system".<sup>40</sup>

Often a business will use a combination of tax havens to shuffle money around the globe and exploit loopholes in the bilateral tax treaties between particular countries. So, for example, the 'Double Irish' can be combined with a 'Dutch Sandwich', with a zero-tax haven such as Bermuda as the final destination.

There is some anecdotal evidence<sup>41</sup> that some of the Silicon Six may be responding to public criticism and phasing out the use of no-tax regimes (such as Bermuda and the Cayman Islands), but only to concentrate activity in low-tax countries (such as Ireland, Singapore and the Netherlands).

xvi Involves a change in residency rules to require all companies registered in Ireland to also be tax-resident.

# 5 Ranking of poor tax conduct

**In this section we rank the Silicon Six on their tax conduct, based on their 10-K submissions and a selective analysis of European and UK filings. We have factored in cash income tax paid and current tax provisions booked, as well as tax contingencies, declared profit margins and the use of tax havens. We conclude that none of the Six is an exemplar of responsible tax conduct, for the reasons outlined below. However, the degree of irresponsibility and the relative tax contribution made does vary.**



# 1st – Amazon

**Amazon stands out as the business with the poorest tax conduct, having paid just \$3.4bn in income taxes this decade on \$960.5bn of revenue and \$26.8bn of profits.** Not only does *Amazon* have a far, far smaller tax contribution than the likes of *Apple* (\$93.8bn), *Microsoft* (\$46.9bn) and *Google* (\$27.9bn), but also *Facebook* (\$7.7bn) which generated just a fifth as much revenue over this time. The situation is unlikely to reverse soon given the \$9.3bn of operating loss carryforwards available to offset against future profits and related taxes.

**The cash tax paid was 12.7% of profit over the decade, at a time when the federal headline rate of tax in the United States was 35% for seven of the eight years under examination.** *Amazon's* payments for tax have increased somewhat in the last three years, and they now like to point out that they paid \$2.6bn in corporate income tax over the last three years,<sup>42</sup> whilst neglecting to point out that this was on \$20.7bn of profit and over half a trillion of revenue (\$546.7bn), and that they paid just \$839m over the six years preceding that.

*Amazon* does not seek to pay dividends and rarely engages in stock buybacks, and so can operate ultra-thin profit margins (2.8% over the last decade). **The company is growing its market domination across the globe on the back of revenues that are largely untaxed, and can unfairly undercut local businesses that take a more responsible approach.** Anti-competition concerns increased markedly this year following the introduction of free, next day delivery of \$1 items in the United States<sup>43</sup> – a loss-leading offer that the vast majority of other retailers can ill afford to match. Many<sup>44</sup> have previously observed that contrived financial arrangements are at the heart of *Amazon's* success, and this continues to be the case today.

Stock-based compensation tax reliefs have a major impact on *Amazon's* already thin total tax provision, reducing the tax charge by c.\$1bn in both 2017 and 2018. This impact is not confined to the United States. For example, in the UK, the total tax charge of *Amazon UK Services Ltd* was all but negated in 2018 and 2017 following adjustments in respect of share-based awards.

Their tax contingencies are curiously low relative to the likes of *Apple* and *Microsoft*, albeit they have increased by almost five-fold since 2014 and now amount to \$3.41bn – which is more than cash taxes paid over the years 2010–18/19. Their most recent 10-K filings notes: “we expect the total amount of tax contingencies will grow in 2019.” This has proven to be the case: with their most recent 10-Q quarterly filing (to end September 2019) disclosing that UTBs have risen to \$3.8bn.



## AMAZON

Revenue \$960.5bn

Profit \$26.8bn

Cash tax paid \$3.4bn

Cash tax paid as % of profit 12.7%

**Significantly, as of 2017, they are running a net deferred tax liability; largely as a result of a rapidly growing valuation allowance (now stands at \$5bn)** that relates “primarily to deferred tax assets that would only be realizable upon the generation of net income in certain foreign taxing jurisdictions and future capital gains.” This indicates a growing recognition that various tax benefits will not be realized. For example, they note that: “In Q2 2017, we recognized an estimated charge to tax expense of \$600m to record a valuation allowance against the net deferred tax assets in Luxembourg.”

*Amazon's* disclosures in relation to foreign revenue, profit and tax are virtually impenetrable. Over the decade to date, they report \$326bn of revenue and \$3bn of losses; but \$2.6bn of current tax charges. It is possible that the bulk of this charge is made up of tax contingency and share remuneration charges, but this cannot be determined with certainty.

## Europe and the UK

**Amazon regularly books losses in connection with its foreign operations.** This has led to the accumulation of sizeable operating loss carryforwards (\$7.8bn in 2018). In Europe, *Amazon* EU Sarl is based in Luxembourg, and reported a pre-tax €493m loss on €27.9bn of revenue for 2018, and a tax credit of €241m. In 2017, the European Commission ordered Luxembourg to recover unpaid taxes worth around €250m from *Amazon*, saying the country had granted *Amazon's* European arm “undue tax benefit” by allowing it to shift profits to a tax-exempt shell company. This matter has yet to be closed.

At a UK level, we know from the 10-K submission that some \$14.5bn of revenue was raised in the UK during 2018 (and \$75.8bn over the decade so far), but there is no way to discern the applicable corporation tax: be that total, current or cash paid. The two substantive UK subsidiaries (*Amazon* UK Services and *Amazon* Web Services UK) have combined current tax charges of just £83m over the decade, with the bulk of sales still booked via Luxembourg and *Amazon* EU Sarl – albeit this has a UK branch as of 2016. In September 2019, in anticipation of another round of negative headlines as to how little tax was being paid in the UK, *Amazon* released a statement lauding their total tax contribution in the UK, which they put at £220m for 2018.<sup>45</sup> However, they admitted that labour taxes, followed by business rates, constituted the largest items to make up this figure – and once again refused to disclose exactly how much revenue, profit and tax they generate in the UK.

There have as yet been no reports of the UK securing any back taxes from *Amazon*, unlike France (€200m)<sup>46</sup> and Italy (€100m)<sup>47</sup>.

# 2nd – Facebook

Facebook has paid \$7.7bn in income taxes this decade, on profits of \$75.5bn and revenues of \$173.1bn. **The cash tax paid as a percentage of profit was just 10.2% over the period 2010–18 (the lowest of any of the Silicon Six) at a time when the federal headline rate of tax in the United States was 35% for seven of the eight years under examination.**<sup>xvii</sup> It was 7.9% for the years 2010–17 inclusive. Excess tax benefits related to share-based compensation has a major impact on Facebook's total tax provision, reducing the tax charge by \$1.25bn and \$717m in 2017 and 2018, respectively.

The trend of low current tax provision in connection with foreign profits was maintained in 2018, with just \$1.0bn booked on \$16.5bn of foreign profit, giving a booked current tax rate of 6.2%. **Facebook has the lowest foreign current tax charge ratio of the Silicon Six over the decade, at just 5% of profits.**

Unlike *Apple* and *Microsoft*, Facebook do not disclose the exact amount of unrepatriated income. Nor do they provide an indication of how much tax this has been subjected to outside of the United States. However, their 2017 accounts indicate a \$2.53bn current income tax expense in connection with one-time transition taxes (which would suggest that unrepatriated foreign income was in the region of c.\$17.5bn). This leads to an increase in reported federal current tax provision (increase from \$2.4bn to \$4.5bn between 2016 and 2017); and a modest increase in the cash income tax paid, which increased from \$1.2bn to \$2.1bn. The improvement continued into 2018, when cash taxes paid as a percentage of profit increased to 14.8% – possibly as a result of repatriation tax payments progressing.

<sup>xvii</sup> Facebook 35% 2017; 21% 2018.

## FACEBOOK

Revenue \$171.1bn

Profit \$75.5bn

Cash tax paid \$7.7bn

Cash tax paid as % of profit 10.2%

### **Facebook's tax contingencies are significant at \$4.7bn, and have almost tripled in just five years.**

Tax uncertainty (as measured by UTBs) is a significant predictor of increased cash holdings (which can be costly if cash is unavailable for deployment, as described in section 4c). **Facebook currently has the highest UTBs to assets ratio, at 4.8%, in 2018.** Their 2018 accounts note that in July 2016 they received a Statutory Notice of Deficiency from the IRS related to transfer pricing with foreign subsidiaries, and that should this prevail they would incur an additional federal tax liability of c.\$5.0bn, plus interest and penalties. This is a substantial sum given *Facebook's* combined cash tax payments over the decade have been \$7.7bn. Moreover, the need for even larger tax contingency reserves has become apparent recently. In October 2019, *Facebook's* 10-Q third quarter filings (to end September 2019) reported that UTBs have increased further still, and now stand at \$7.16bn. Which raises the current UTBs to assets ratio further still, to 5.8%.

## Europe and the UK

The Republic of Ireland has been a key part of *Facebook's* tax avoidance strategies, especially for the sizeable European revenue that is booked directly in Ireland. In December 2017, it was reported that *Facebook* would start booking advertising revenue locally instead of re-routing it via its international headquarters in Dublin.<sup>48</sup> However, this has yet to impact as a significant increase in current tax provision, which remained low in 2018 at 6.2% of foreign profits.

There is a UK subsidiary, but this has operated on extremely thin profit margins over the decade (2.6%, compared with 44% for the group as a whole) and posted substantial losses until 2016, when it was re-organised somewhat and began to record more of its UK revenues in country. **Current taxes booked over the decade are just £56m**, with the bulk of these booked in 2017 and 2018. **The advertising revenues booked through *Facebook UK* (£1.65bn in 2018) are still way below what industry analysts believe is actually raised in the UK, which is twice as much, at c.£3.4bn.**<sup>49</sup>

TaxWatch have estimated that *Facebook* has avoided £297m of taxes in the UK over the years 2012-2017 inclusive.<sup>50</sup>



# 3rd – Google

Google has paid \$27.9bn in income taxes this decade, on profits of \$176.6bn and revenue of \$647.7bn. **In June 2019, they sought to put the record straight<sup>51</sup> on their tax conduct and asserted that: “Google’s overall global tax rate has been over 23% for the past 10 years, in line with the 23.7% average statutory rate across the member countries of the OECD.” In fact, the cash tax paid as a percentage of profit was just 15.8%** at a time when the federal headline rate of tax in the United States was 35% for seven of the eight years under examination.<sup>xviii</sup> Excess tax benefits related to stock-based compensation expenses has a major impact on Google’s total tax provision, reducing the tax charge by \$1.6bn and \$1.5bn in 2017 and 2018, respectively.

<sup>xviii</sup> Google 35% 2017; 21% 2018.

A contributory factor to the shortfall is Google’s treatment of their foreign earnings and their offshoring in tax havens, which is particularly significant as these have been greater than domestic earnings in nearly every year this decade. Unlike Apple and Microsoft, Google do not disclose the exact amount of unrepatriated income or an indication of how much tax this has been subjected to outside of the United States. However, in anticipation of the forthcoming TCJA, their 2017 10-K filings report the precipitation of a \$10.2bn deemed repatriation tax payment (which would indicate that unrepatriated foreign income is in the region of c.\$70–75bn). This leads to a massive leap in reported federal current tax provision (increases from \$3.8bn to \$12.6bn between 2016 and 2017); and a more modest increase in the cash income tax paid, which increased from \$1.6bn to \$6.2bn.

**The trend of low current tax provision in connection with foreign profits continues in 2018, with just \$1.25bn booked on \$19.1bn of foreign profit, giving a booked current tax rate of just 6.5% – this is less than the company’s already low average for the decade, which is 7.1%.**



GOOGLE

Revenue \$647.7bn

Profit \$176.6bn

Cash tax paid \$27.9bn

Cash tax paid as % of profit 15.8%

*Google's* tax contingencies are significant at \$4.7bn, although they have reduced on the 2016 peak of \$5.4bn as "a result of the resolution of a multi-year U.S. audit" (which seems to have contributed to a sizeable UTB reduction in 2017, together with an increase in income taxes payable). However, they go on to note that: "Our 2016 and 2017 tax years remain subject to examination by the IRS for U.S. federal tax purposes, and our 2011 through 2017 tax years remain subject to examination by the appropriate governmental agencies for Irish tax purposes." Moreover, in October 2019, *Google's* 10-Q third quarter filings (to end September 2019) reported that UTBs are growing again and have reached \$4.9bn. As of 2018, they are, like *Amazon*, running a net deferred tax liability and have seen the growth of sizeable valuation allowances.

## Europe and the UK

In 2004, *Google* transferred its search and advertising technologies to a subsidiary in Ireland that was actually tax resident in Bermuda.<sup>52</sup> For many years, *Google* operated a "Double Irish" tax dodge to shift profits from Europe (and other countries) to Ireland, and from there on to Bermuda. With the Netherlands and a "Dutch Sandwich" involved to maximise tax avoidance (and move €20bn in 2017 alone<sup>53</sup>). Which goes some way to explain why they had just a 6.5% current tax rate on their foreign earnings in 2018 (and likely even lower rates of cash taxes paid).

*Google* operate a UK subsidiary. In January 2016, it was reported that a deal had been agreed with British tax authorities to pay £69m in back taxes (in connection with a tax audit settlement in respect of prior periods) and would now pay tax based on revenue from UK-based advertisers.<sup>54</sup> The deal was said to cover a decade of underpayment of UK taxes, and was widely viewed as being far from assertive, especially given the more substantial back taxes and penalties of some €965m subsequently secured by France.<sup>55</sup> **The advertising revenues booked through *Google UK* (£1.4bn in 2018) are still well below what industry analysts believe is actually raised in the UK, which is some four times greater, at c.£5.5bn.**<sup>56</sup>

TaxWatch have estimated that *Google* has avoided £1.3bn of taxes in the UK over the years 2012–2017 inclusive.<sup>57</sup>

# 4th – Netflix

*Netflix* proved to be the most difficult of the Six to rank. They have paid \$520m in income taxes during this decade (on profits of \$3.3bn and revenue of \$62bn).

**The cash tax paid as a percentage of profit was just 15.8%** (the same as *Google*) at a time when the federal headline rate of tax in the United States was 35% for seven of the eight years under examination.<sup>xix</sup> **They operate thin margins (just 5.3%) and as a result the cash taxes paid as a percentage of revenue are a tiny 0.8% – which is less than a fifth of the ratio generated by *Microsoft, Apple and Google*.** Their reported foreign profit margin is even slimmer, at 4.3%.

*Netflix* has a very high foreign current tax charge ratio over profits, some 38% over the decade. However, their accounts of 2016 report a cumulative total of \$121.1m of unrepatriated foreign earnings, and this appeared to have been subject to no taxation whatsoever (given the unrecognized deferred income tax liability related to these earnings was given as \$42.4m). Their 2017 filings report a much increased \$485m of cumulative foreign earnings and a related \$32.2m income repatriation tax provision for the year.

Stock-based compensation tax reliefs have a major impact on *Netflix*'s already thin total tax charge: reducing it by \$191m in 2018 (when the reported total tax charge was \$15m) and by \$158m in 2017 (when there was a total tax credit of \$74m).

*Netflix*'s valuation allowances have increased progressively over the last four years: growing from zero to £125m – which, as per *Amazon*, indicates a growing recognition that various tax benefits will not be realized. This may relate to the fact that they are under examination by the IRS, the state of California and the UK for the years 2016–2017, 2014–2015 and 2015–16, respectively. Their 2018 filings indicate that their modest UTBs may be set to increase markedly: "Given the potential outcome of the current examinations as well as the impact of the current examinations on the potential expiration of the statute of limitations, it is reasonably possible that the balance of unrecognized tax benefits could significantly change within the next twelve months."

<sup>xix</sup> *Netflix* 35% 2017; 21% 2018.

## NETFLIX

Revenue \$62bn

Profit \$3.3bn

Cash tax paid \$0.52bn

Cash tax paid as % of profit 15.8%

## Europe and the UK

The Netherlands is a key part of *Netflix's* tax avoidance strategies, especially for the sizeable European revenue that is booked there. In October 2019, it was reported that Italian prosecutors have opened an investigation into alleged tax avoidance, arguing that *Netflix* should pay taxes locally because the digital infrastructure it uses to stream content (cables and computer servers) to 1.4 million users in the country constitutes a 'physical presence'.<sup>58</sup>

A UK subsidiary was established in 2014, but *Netflix Services UK* has booked just €630,000 of current tax charges in total over its four full years of trading. This is in part because it utilises tax reliefs connected with film/ tv production from elsewhere in the Group. Their 10-K filing for 2018 reveals that they are being audited by the UK's tax authorities in connection with years 2015 and 2016. It has been estimated that they generate in the region of £800m of subscriber fees in the UK per annum, which are banked directly in the Netherlands.<sup>59</sup>



# 5th – Apple

*Apple* presents itself as “the world’s largest taxpayer”<sup>60</sup> and it certainly makes the largest tax contribution of the Silicon Six, having paid \$93.8bn in income taxes this decade (albeit on profits of \$548.7bn and revenue of \$1,888.0bn). **However, the cash tax paid as a percentage of profit is still a relatively low 17.1% at a time when the federal headline rate of tax in the United States was 35% for seven of the nine years under examination.**<sup>xx</sup> It was 16.6% over the years 2010–17 inclusive.

A major contributory factor to the shortfall is *Apple*’s treatment of foreign earnings and their offshoring in tax havens (which is particularly significant as these have been greater than domestic earnings through the decade). The Institute on Taxation and Economic Policy (ITEP)<sup>61</sup> noted in 2017 that *Apple* had the largest reported store of unrepatriated income in the United States, an enormous \$252.3bn; and that this appeared to have been subject to negligible taxation to date (a meagre 3.9%). *Apple*’s 10–K filings of 2017 note that repatriation of these earnings at the then 35% federal tax rate would have induced a federal charge

of some \$78.6bn.<sup>xxi</sup> **The repatriation of overseas profits at the reduced rates allowed by the TCJ Act (c.15.5%) likely makes *Apple* the largest corporate beneficiary of the Act by far, with savings of approximately \$44bn being likely.**

**The trend of low current tax provision in connection with foreign profits continues in 2019, with just \$3.9bn booked on \$44.3bn of foreign profit, giving a booked current tax rate of just 8.9%.**

*Apple*’s 2018 10–K filings (which relate a period that is post the TCJ Act) report a shrunken deferred tax liability in relation to the earnings of foreign subsidiaries and the precipitation of a \$37.3bn deemed repatriation tax payment (that is presented as being both an estimate and to be paid in instalments). This leads to a massive leap in reported federal current tax provision (increase from \$7.8bn to \$41.4bn between 2017 and 2018). **In the 2019 Form 10–K filings, this manifested as increased cash tax payments, which reached \$15.2bn for the year.**<sup>xxii</sup>

xx *Apple* 35% 2017; 24.5% 2018.

xxi Deduced from a combination of the recognized (\$36.4bn) and unrecognized (\$42.2bn) deferred tax liability.

xxii The TCJ Act allows for interest-free payment over eight years.

## APPLE

Revenue \$1888.0bn

Profit \$548.7bn

Cash tax paid \$93.8bn

Cash tax paid as % of profit 17.1%

It is noteworthy that in 2018, *Apple's* tax contingencies continued their pattern of growing annually, to hit a significant \$9.7bn. This indicates that a number of significant aggressive tax avoidance issues are still in play. The 10-K filings for 2019 showed that they had increased further still, to \$15.6bn.

## Europe and the UK

The Republic of Ireland (and more recently Jersey) is a key part of *Apple's* tax avoidance strategies, especially for the sizeable European revenue that is booked directly in Ireland. The Paradise Papers revealed that the income flowing through Ireland was even stateless for a time, from a tax point of view.<sup>62</sup> Five of the nine 'significant' subsidiaries recognised in *Apple's* 10-K filings are Irish incorporations. In a landmark case, in August 2016, the European Commission concluded that Ireland (to where *Apple* directs the vast bulk of its foreign earnings) had granted the company undue tax benefits of up to €13bn. This sum, plus interest of €1.2bn, presently sits in an escrow account pending appeal resolution.

### **In the UK, *Apple's* subsidiaries have recently been forced to pay additional tax following tax audits.**

In January 2018, it was reported that both *Apple* (UK) Ltd and *Apple* Europe Ltd (which is UK incorporated) would pay £81.3m<sup>63</sup> and £137m<sup>64</sup> respectively in additional taxes to HMRC in relation to years prior to 2015, and much more tax thereafter.

### **Previously, the *Apple Europe Ltd* subsidiary (which is incorporated in the UK) had a transfer pricing arrangement in place that resulted in the provision of zero current tax year after year.**

As with *Google*, this settlement was widely viewed as being modest, especially given the much more substantial back taxes secured by France subsequently, amounting to €500m.<sup>65</sup>

TaxWatch have estimated that *Apple* has avoided £2.6bn of taxes in the UK over the years 2012-2017 inclusive.<sup>66</sup>



# 6th – Microsoft

Our analysis suggests that *Microsoft*, by a slim margin, has the least aggressive approach to tax avoidance: *Microsoft* makes the second largest tax contribution of the Silicon Six, having paid \$46.9bn in income taxes this decade, on profits of \$278.5bn and revenue of \$882.5bn.<sup>xxiii</sup> **However, the cash tax paid as a percentage of profit is still a relatively low 16.8% at a time when the federal headline rate of tax in the United States was 35% for seven of the nine years under examination.**<sup>xxiv</sup> It was 16.6% over the years 2010–17.

A contributory factor to the shortfall is *Microsoft's* treatment of their foreign earnings and their offshoring in tax havens (which is particularly significant as these have been greater than domestic earnings through the decade). In 2017, *Microsoft* was reported to have the second largest store of unrepatriated income in the United States, at \$142bn; and that this appeared to have been subject to negligible taxation (a meagre 3.3%). *Microsoft's* filings of 2017 note that repatriation of these earnings at the then 35% federal tax rate would have induced a federal charge of some \$45bn. So reluctant were *Microsoft* in the past to see this

cash taxed at the headline federal rate, they preferred to borrow money in 2016 to finance the acquisition of LinkedIn (which also had the added bonus of interest payments being tax deductible, which further reduced the future tax bill).<sup>67</sup> The repatriation of overseas profits at the reduced rates allowed by the TCJ Act (c.15.5%) likely makes *Microsoft* the second largest corporate beneficiary of the Act by far, with savings of approximately \$25bn. It also precipitates the emergence of a new \$30bn liability on the balance sheet in connection with 'long-term income taxes'.

*Microsoft's* 2018 10-K filings (which relate to a period post the TCJ Act) report the precipitation of a \$17.9bn deemed repatriation tax payment. This leads to a massive leap in reported federal current tax provision (increases from \$2.7bn to \$19.8bn between 2017 and 2018). In 2018, the reported current tax charge was 69% of profits, whilst the actual cash paid was just 15% (in a year when their blended statutory federal tax rate was 28.1%). In 2019, the contribution was much improved, with cash income tax paid at 19.2% of profits (albeit, this is likely to include repatriation tax payments).

xxiii *Microsoft* had nine reporting cycles at the time of compilation of this report, not eight as per other businesses. The first eight cycles produced a cash income tax contribution of \$38.5bn (16.4%) on \$235bn profit and \$757bn revenue.

xxiv *Microsoft* 35% 2017; 28.1% 2018; 21% 2019.

## MICROSOFT

Revenue \$882.5bn

Profit \$278.5bn

Cash tax paid \$46.9bn

Cash tax paid as % of profit 16.8%

**Microsoft's tax contingencies continued their annual growth through to 2019, to hit a significant \$13.1bn – and were the highest of the Silicon Six for most of the decade.** *Microsoft* note that: "We remain under audit for tax years 2004 to 2013. We expect the IRS to begin an examination of tax years 2014 to 2017 within the next 12 months... As of June 30, 2019, the primary unresolved issues for the IRS audits relate to transfer pricing, which could have a material impact on our consolidated financial statements when the matters are resolved." As set out in section 4b, tax uncertainty (as measured by UTBs) is a significant predictor of increased cash holdings (which can be costly if cash is unavailable for deployment).<sup>68</sup> **This Report found that Microsoft had both the highest level of UTBs and the highest cash to assets ratio over the decade (at 51.8%).** The latest 10-Q quarterly filing from *Microsoft* (to end September 2019) cemented this position; noting that UTBs have leapt further still, to reach \$15.7bn.

## Europe and the UK

The Republic of Ireland is a key part of *Microsoft's* tax avoidance strategies (along with Singapore and Puerto Rico), especially for the sizeable European revenue that is booked in Ireland. Over 2001 to 2006, *Microsoft* shifted the rights to software code and other assets from the United States to subsidiaries in these countries, leading to tax savings of billions of dollars.<sup>69</sup> Ireland's importance will increase further still in the future given the recent announcement that *Microsoft* moved \$50bn of assets from Singapore and its Asian trading operation to there in 2018.<sup>70</sup>

**Microsoft has a UK subsidiary, and this has a reasonably high average current tax rate (24.6%) but reports a much lower profit margin than then the group as a whole (9%, compared with 32%) and this depresses the current tax expense booked to an average of £22.5m per annum over the decade to date.** Significantly, UK sales of products such as *Microsoft* Office and LinkedIn are still collected in Ireland.

TaxWatch have estimated that *Microsoft* has avoided £622m of taxes in the UK over the years 2012–2017 inclusive.<sup>71</sup>

# 6 Moving forward

There are many and various solutions to tackling tax avoidance. Below we have outlined two that we think are particularly important with regard to the Silicon Six

## a) Urgent need for public country-by-country financial reporting

Multinational businesses should be required to report on revenue, profit, tax and employee investment, on a public country-by-country basis (pCBCR).<sup>xv</sup> Comprehensively implemented pCBCR would significantly increase corporate tax transparency and enable citizens worldwide to see if a business is paying the right amount of tax in the right place at the right time. Public scrutiny is useful for researchers, investigative journalists, investors and other stakeholders to properly assess risks, liabilities and opportunities to stimulate fair entrepreneurship.<sup>72</sup> In Europe, some pCBCR requirements already exist for the banking sector and for the extractive and logging industries.

This would be a business-friendly measure. The OECD and European Commission have both identified the competitive advantage certain multinational companies have over domestic rivals and SMEs, given that the latter frequently only operate in one country and are not able to engage in profit-shifting between tax jurisdictions to reduce their taxes, and as a consequence face a higher tax bill compared to their competitor multinationals.

pCBCR has been shown to drive increased tax revenues. A University of Cologne study recently found that European multinational banks increased their tax expenses (relative to unaffected other banks) after public country-by-country reporting became mandatory. Moreover, they found a pronounced response of those banks that were particularly exposed to the new transparency due to significant activities in tax havens.<sup>73</sup>

<sup>xv</sup> More specifically (but not limited to): the number of employees; net turnover (including related party turnover); profit or loss before tax; taxes paid (total, deferred, current and cash taxes).

In addition, as suggested by ITEP, the SEC should require the Silicon Six and other listed companies to publicly disclose a full list of their subsidiaries, rather than just those deemed to be “significant.” This is already a requirement in places such as the UK.

Both pCBCR and subsidiary disclosure (together with tax residency) are core requirements of the Fair Tax Mark accreditation scheme.

## b) Digital Sales Taxes to be encouraged until such a time as more fundamental change can be realised via the OECD Inclusive Framework

The idea of countering the profit-shifting of Big Tech multinationals via the introduction of digital sales taxes has taken root in many countries. They are being considered or progressed in, for example: Austria, Czech Republic, France, India, Italy, New Zealand, Spain and the UK. They range from 2% (the UK) to 7% (Czech Republic) of sales. Some focus on digital advertising revenue (e.g., France), but others are broader and look to capture the sale of user data as well (e.g., Italy). These new digital taxes focus on corporate sales, not corporate profits – not least to circumvent bilateral nation-to-nation tax treaties that may exist.

Such a myriad of unilateral measures is not an ideal way to reach a global solution, but these initiatives have combined to pressure G20 nations (including the United States) to accept that urgent actions are needed, which has in turn newly empowered the OECD to consider and progress radical solutions. Most significantly, via the Inclusive Framework launched in January 2019.<sup>74</sup>

Ultimately, as set out in the G20 St Petersburg Declaration of 2013, ‘profits should be taxed where economic activities occur and value is created’. This means taxing multinationals on the basis of their global consolidated profits, with taxing rights being allocated between governments based on an agreed formula and supplemented by a minimum effective tax

rate. However, this may take time manifest; so in the meantime, the pressure brought to bear by unilateral digital sales taxes is to be welcomed and encouraged.

Tax justice campaigners have long called for a unitary taxation system – whereby a multinational group would be approached as a single taxable unit, rather than the individual subsidiaries in different countries being treated as separate taxable entities. Current international tax rules are based on the latter type of separate entity accounting; with transfer-pricing mechanisms used to establish the taxable profit that each entity within the multinational group might earn if it was operating at arm's length (i.e., independently) from each other entity in the group. However, this process allows for gross abuses, with huge volumes of revenue and profit shifted from where they arise into low- or no-tax jurisdictions – as seen in this Report.

Unitary tax recognises that, in reality, profits are maximised at a group level. 'Formulary apportionment' is the name for the process that would allocate global profits between the different countries where the multinational has real economic activity (using employment and final customer sales by location, for example) The OECD Base Erosion and Profit Shifting (BEPS) process of 2013–2015 had the single, agreed goal of reducing the misalignment between where profits are declared, and where multinationals' real economic activity takes place. BEPS failed in many areas because OECD countries could not agree to move beyond the arm's length principle. But the new reforms now being negotiated, sometimes dubbed BEPS 2.0, start from an explicit acceptance of the need to move beyond arm's length pricing. Each of the proposals under consideration includes aspects of unitary taxation, of which the proposal from the G24 group of countries is the most comprehensive.



# 7 Endnotes

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