European Commission - Press release

State aid: Ireland gave illegal tax benefits to Apple worth up to €13 billion

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Commissioner Margrethe Vestager, in charge of competition policy, said: *"Member States cannot give tax benefits to selected companies – this is illegal under EU state aid rules. The Commission's investigation concluded that Ireland granted illegal tax benefits to Apple, which enabled it to pay substantially less tax than other businesses over many years. In fact, this selective treatment allowed Apple to pay an effective corporate tax rate of 1 per cent on its European profits in 2003 down to 0.005 per cent in 2014."*

Following an in-depth state aid investigation launched in June 2014, the European Commission has concluded that two tax rulings issued by Ireland to Apple have substantially and artificially lowered the tax paid by Apple in Ireland since 1991. The rulings endorsed a way to establish the taxable profits for two Irish incorporated companies of the Apple group (Apple Sales International and Apple Operations Europe), which did not correspond to economic reality: almost all sales profits recorded by the two companies were internally attributed to a "head office". The Commission's assessment showed that these "head offices" existed only on paper and could not have generated such profits. These profits allocated to the "head offices" were not subject to tax in any country under specific provisions of the Irish tax law, which are no longer in force. As a result of the allocation method endorsed in the tax rulings, Apple only paid an effective corporate tax rate that declined from 1% in 2003 to 0.005% in 2014 on the profits of Apple Sales International.

This selective tax treatment of Apple in Ireland is illegal under EU state aid rules, because it gives Apple a significant advantage over other businesses that are subject to the same national taxation rules. The Commission can order recovery of illegal state aid for a ten-year period preceding the Commission's first request for information in 2013. Ireland must now recover the unpaid taxes in Ireland from Apple for the years 2003 to 2014 of up to €13 billion, plus interest.

In fact, the tax treatment in Ireland enabled Apple to avoid taxation on almost all profits generated by sales of Apple products in the entire EU Single Market. This is due to Apple's decision to record all sales in Ireland rather than in the countries where the products were sold. This structure is however outside the remit of EU state aid control. If other countries were to require Apple to pay more tax on profits of the two companies over the same period under their national taxation rules, this would reduce the amount to be recovered by Ireland.

Apple's tax structure in Europe

Apple Sales International and **Apple Operations Europe** are two Irish incorporated companies that are fully-owned by the Apple group, ultimately controlled by the US parent, Apple Inc. They hold the rights to use Apple's intellectual property to sell and manufacture Apple products outside North and South America under a so-called 'cost-sharing agreement' with Apple Inc. Under this agreement, Apple Sales International and Apple Operations Europe make yearly payments to Apple in the US to fund research and development efforts conducted on behalf of the Irish companies in the US. These payments amounted to about US$ 2 billion in 2011 and significantly increased in 2014. These expenses, mainly borne by Apple Sales International, contributed to fund more than half of all research efforts by the Apple group in the US to develop its intellectual property worldwide. These expenses are deducted from the profits recorded by Apple Sales International and Apple Operations Europe in Ireland each year, in line with applicable rules.

The taxable profits of Apple Sales International and Apple Operations Europe in Ireland are determined by a **tax ruling granted by Ireland in 1991**, which in **2007** was replaced by a similar second tax ruling. This tax ruling was terminated when Apple Sales International and Apple Operations Europe changed their structures in 2015.

Apple Sales International

Apple Sales International is responsible for buying Apple products from equipment manufacturers around the world and selling these products in Europe (as well as in the Middle East, Africa and India). Apple set up their sales operations in Europe in such a way that customers were contractually buying products from **Apple Sales International** in Ireland rather than from the shops that physically sold the products to customers. In this way Apple recorded all sales, and the profits stemming from these sales, directly in Ireland.

The two tax rulings issued by Ireland concerned the internal allocation of these profits within Apple Sales International (rather than the wider set-up of Apple's sales operations in Europe). Specifically, they endorsed a split of the profits for tax purposes in Ireland: Under the agreed method, most profits were internally allocated away from Ireland to a "**head office**" within Apple Sales International. This "head office" was not based in any country and did not have any employees or own premises. Its activities consisted solely of occasional board meetings. Only a fraction of the profits of Apple Sales International were allocated to its **Irish branch** and subject to tax in Ireland. The remaining vast majority of profits were allocated to the "head office", where they remained untaxed.

Therefore, only a small percentage of Apple Sales International's profits were taxed in Ireland, and the rest was taxed nowhere. In 2011, for example (according to figures released at US Senate public hearings), Apple Sales International recorded profits of US$ 22 billion (c.a. €16 billion[1]) but under the terms of the tax ruling only around €50 million were considered taxable in Ireland, leaving €15.95 billion of profits untaxed. As a result, Apple Sales International paid less than €10 million of corporate tax in Ireland in 2011 – an effective tax rate of about 0.05% on its overall annual profits. In subsequent years, Apple Sales International's recorded profits continued to increase but the profits considered taxable in Ireland under the terms of the tax ruling did not. Thus this effective tax rate decreased further to only 0.005% in 2014.

Apple Operations Europe

On the basis of the same two tax rulings from 1991 and 2007, **Apple Operations Europe** benefitted from a similar tax arrangement over the same period of time. The company was responsible for manufacturing certain lines of computers for the Apple group. The majority of the profits of this company were also allocated internally to its "head office" and not taxed anywhere.

Commission assessment

Tax rulings as such are perfectly legal. They are comfort letters issued by tax authorities to give a company clarity on how its corporate tax will be calculated or on the use of special tax provisions.

The role of EU state aid control is to ensure Member States do not give selected companies a better tax treatment than others, via tax rulings or otherwise. More specifically, profits must be allocated between companies in a corporate group, and between different parts of the same company, in a way that reflects economic reality. This means that the allocation should be in line with arrangements that take place under commercial conditions between independent businesses (so-called "**arm's length principle**").

In particular, the Commission's state aid investigation concerned two consecutive tax rulings issued by Ireland, which endorsed a **method to internally allocate profits** within Apple Sales International and Apple Operations Europe,two Irish incorporated companies. It assessed whether this endorsed method to calculate the taxable profits of each company in Ireland gave Apple an undue advantage that is illegal under EU state aid rules.

The Commission's investigation has shown that the tax rulings issued by Ireland endorsed an artificial internal allocation of profits within Apple Sales International and Apple Operations Europe, **which has no factual or economic justification**. As a result of the tax rulings, most sales profits of Apple Sales International were allocated to its "head office" when this "head office" had no operating capacity to handle and manage the distribution business, or any other substantive business for that matter. Only the **Irish branch** of Apple Sales International had the capacity to generate any income from trading, i.e. from the distribution of Apple products. Therefore, the sales profits of Apple Sales International should have been recorded with the Irish branch and taxed there.

The "head office" did not have any employees or own premises. The only activities that can be associated with the "head offices" are limited decisions taken by its directors (many of which were at the same time working full-time as executives for Apple Inc.) on the distribution of dividends, administrative arrangements and cash management. These activities generated profits in terms of interest that, based on the Commission's assessment, are the only profits which can be attributed to the "head offices".

Similarly, only the **Irish branch** of Apple Operations Europe had the capacity to generate any income from trading, i.e. from the production of certain lines of computers for the Apple group. Therefore, sales profits of Apple Operation Europe should have been recorded with the Irish branch and taxed there.

On this basis, the Commission concluded that the tax rulings issued by Ireland endorsed an artificial allocation of Apple Sales International and Apple Operations Europe's sales profits to their "head offices", where they were not taxed. As a result, the tax rulings enabled Apple to pay substantially less tax than other companies, which is illegal under EU state aid rules.

This decision does not call into question Ireland's general tax system or its corporate tax rate.

Furthermore, Apple's tax structure in Europe as such, and whether profits could have been recorded in the countries where the sales effectively took place, are not issues covered by EU state aid rules. If profits were recorded in other countries this could, however, affect the amount of recovery by Ireland (see more details below).

The infographic is available in high resolution here.

Recovery

As a matter of principle, EU state aid rules require that incompatible state aid is recovered in order to remove the distortion of competition created by the aid. There are no fines under EU State aid rules and recovery does not penalise the company in question. It simply restores equal treatment with other companies.

The Commission has set out in its decision the methodology to calculate the value of the undue competitive advantage enjoyed by Apple. In particular, Ireland must allocate to each branch all profits from sales previously indirectly allocated to the "head office" of Apple Sales International and Apple Operations Europe, respectively, and apply the normal corporation tax in Ireland on these re-allocated profits. The decision does not ask for the reallocation of any interest income of the two companies that can be associated with the activities of the "head office".

The Commission can only order recovery of illegal state aid for a ten-year period preceding the Commission's first request for information in this matter, which dates back to 2013. Ireland must therefore recover from Apple the unpaid tax for the period since 2003, which amounts to up to €13 billion, plus interest. Around €50 million in unpaid taxes relate to the undue allocation of profits to the "head office" of Apple Operations Europe. The remainder results from the undue allocation of profits to the "head office" of Apple Sales International. The recovery period stops in 2014, as Apple changed its structure in Ireland as of 2015 and the ruling of 2007 no longer applies.

The amount of unpaid taxes to be recovered by the Irish authorities would be reduced if other countries were to require Apple to pay more taxes on the profits recorded by Apple Sales International and Apple Operations Europe for this period. This could be the case if they consider, in view of the information revealed through the Commission’s investigation, that Apple's commercial risks, sales and other activities should have been recorded in their jurisdictions. This is because the taxable profits of Apple Sales International in Ireland would be reduced if profits were recorded and taxed in other countries instead of being recorded in Ireland.

The amount of unpaid taxes to be recovered by the Irish authorities would also be reduced if the US authorities were to require Apple to pay larger amounts of money to their US parent company for this period to finance research and development efforts. These are conducted by Apple in the US on behalf of Apple Sales International and Apple Operations Europe, for which the two companies already make annual payments.

Finally, all Commission decisions are subject to scrutiny by EU courts. If a Member State decides to appeal a Commission decision, it must still recover the illegal state aid but could, for example, place the recovered amount in an escrow account pending the outcome of the EU court procedures.

Background

Since June 2013, the Commission has been investigating the tax ruling practices of Member States. It extended this information inquiry to all Member States in December 2014. In October 2015, the Commission concluded that Luxembourg and the Netherlands had granted selective tax advantages to Fiat and Starbucks, respectively. In January 2016, the Commission concluded that selective tax advantages granted by Belgium to least 35 multinationals, mainly from the EU, under its "excess profit" tax scheme are illegal under EU state aid rules. The Commission also has two ongoing in-depth investigations into concerns that tax rulings may give rise to state aid issues in Luxembourg, as regards Amazon and McDonald's.

This Commission has pursued a far-reaching strategy towards fair taxation and greater transparency and we have recently seen major progress. Following our proposals on tax transparency of March 2015, Member States reached a political agreementalready in October 2015 on automatic exchange of information on tax rulings. This legislation will help to bring about a much greater degree of transparency and deter from using tax rulings as an instrument for tax abuse. In June 2015, we unveiled our Action Plan for fair and effective taxation: a series of initiatives which aims to make the corporate tax environment in the EU fairer and more efficient. Key actions included a framework to ensure effective taxation where profits are generated and a strategy to re-launch the Common Consolidated Corporate Tax Base for which a fresh proposal is expected later this year. The Commission launched a further package of initiatives to combat corporate tax avoidance within the EU and throughout the world on 27 January of this year. As a direct result, Member States have already agreed to tackle the most prevalent loopholes in national laws that allow tax avoidance to take place and to extend their automatic exchange of information to country-by-country reporting of tax-related financial information of multinationals. A proposal is also on the table to make some of this information public. All of our work rests on the simple principle that all companies, big and small, must pay tax where they make their profits.

The non-confidential version of the decisions will be made available under the case number SA.38373 in the State aid register on the DG Competition website once any confidentiality issues have been resolved. The State Aid Weekly e-News lists new publications of State aid decisions on the internet and in the EU Official Journal.

[1] Based on historical exchange rates

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