

Illegal tax benefits in the EU: coffee and apples

TTN Conference Buenos Aires, 5 December 2016

Apple ordered to pay €13bn
after EU rules Ireland broke
state aid laws!

(the Guardian)

**Apple Owes \$14.5 Billion in
Back Taxes to Ireland, E.U.
says**

(the New York Times)

**The European Commission's huge
penalty against Apple opens up a
new front in the war on tax avoidance**

(the Economist)

Apple tax case: Tim Cook calls
state aid ruling “maddening”

(ITPro)

Apple holds Europe to ransom: Tech giant
threatens to cut jobs in EU after Brussels
orders it to pay back £11BILLION in tax
over 'illegal' sweetheart deal with Irish
government.

(Daily Mail)

EU hits Apple with \$14.5 billion Irish tax demand

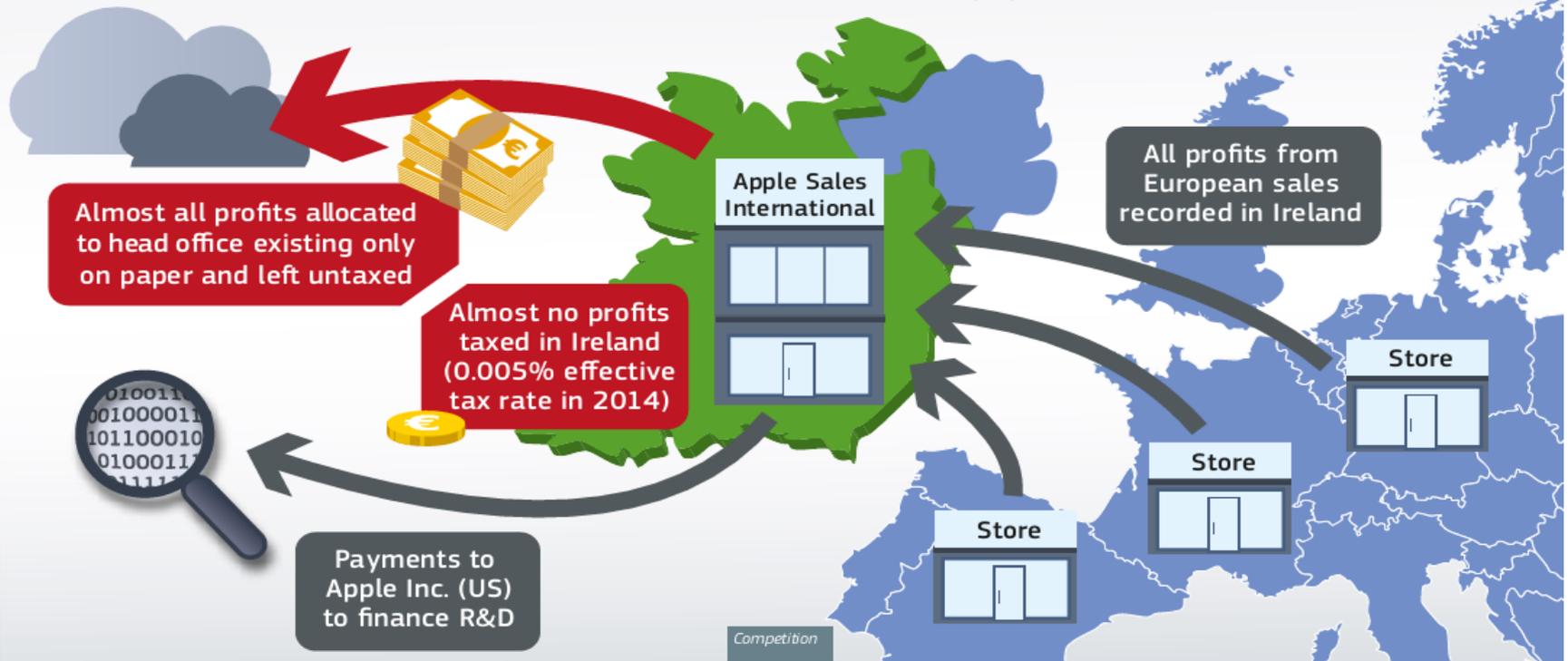
(Reuters)

- Articles 107-109 : Treaty on the Functioning of the European Union (TFEU)
- State Aid and Taxation
- 4 conditions for a measure in order to be considered State Aid:
 - A. An advantage;
 - B. that is selective;
 - C. granted and financed by the State;
 - D. that (potentially) distorts competition and affects intra-EU trade.

- Press release of the European Commission, 30 August 2016
 - “Ireland gave illegal tax benefits to Apple worth up to € 13 billion.”
 - “The 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.”
 - “The Commission concluded that the tax rulings issued by Ireland endorsed an artificial allocation of Apple’s (...) sales profits to their “head offices”, where they were not taxed. As a result the tax rulings enabled Apple to pay substantially less than other companies, which is illegal under EU state aid rules.”



State aid: Ireland gave illegal preferential tax treatment to Apple



- Requirements A & B require a ‘selective advantage’
- A summary from case law:

“A selective advantage exists if a tax measure derogates from a reference system in a way that it leads to a different treatment of undertakings that are – in light of the objective of the reference system – in a legally and factually similar position, unless justified.”

The question is, what is the reference framework?

The Impact of the European Commission's Actions on Rulings

- Tax rulings as such are perfectly legal
- Like formal tax law / regulations rulings can be used to give illegal tax benefits

So ?

The Impact of the European Commission's Actions on the Obtaining / Granting of Rulings

- There is an area of tension:
 - Tax authorities / countries wish to compete
 - Tax authorities / countries do not wish a slap on the wrist so wish to comply
 - Tax payers have a desire for certainty
 - Tax payers want to minimize tax costs
 - Rulings will be automatically exchanged

A Glance into the Future

PEREIRA

- Clear guidance required from the EC!
- Files for rulings will, to a certain extent, change
- Any impact on tax law ?

Contact details

- Frans Stam (partner)
 - frans.stam@pereiraconsultants.com
 - +31 70 75 70 117
 - +31 6 1093 6548
-
- Raamweg 46, The Hague, The Netherlands
 - www.pereiraconsultants.com