

**Illegal Tax Benefits in the EU:
Life as we know / knew it**

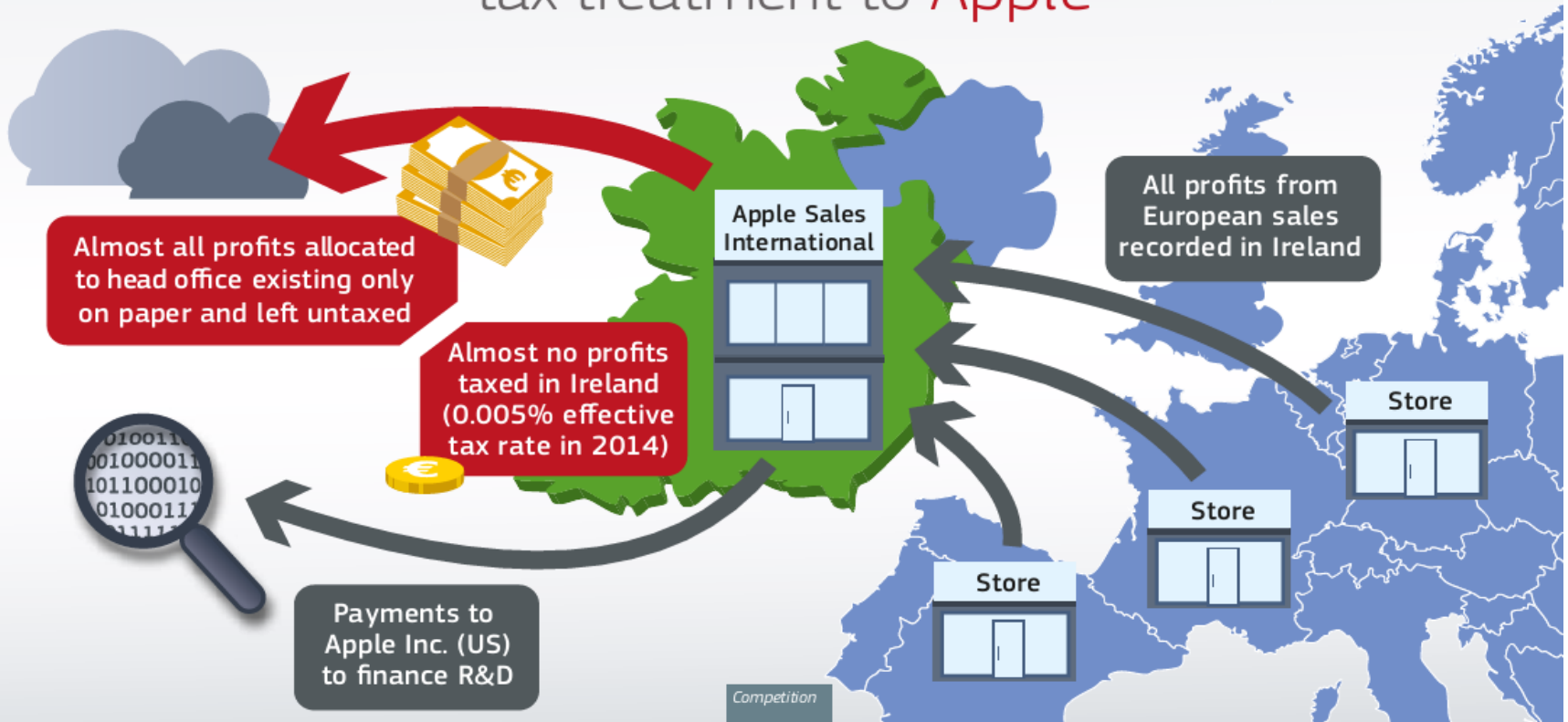
TTN Conference Lisbon, 23 September 2016

- 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 change
- Any impact on tax law ?