



Robert W. Wood

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If Apple's 2% Irish Tax Deal Is Illegal, Fines Could Be Billions

The U.S. isn't the only country on the hunt for tax cheats. As part of the EU's investigation into tax deals in the Netherlands, Ireland and Luxembourg, the EU has singled out Apple and Ireland over a sweetheart deal it says is downright illegal. It's not clear if the EU is more mad at Apple or Ireland, but it's a safe bet that Apple will take more heat. The [21-page report](#) is sobering even though not conclusive.

The EU says Apple's backroom Dublin deals were illegal state aid. And what Apple did in Ireland, Fiat did in Luxembourg, the Commission alleges. Both Apple and Ireland are saying they did nothing wrong. Still, Ireland's corporate tax rate is 12.5%, while Apple manages to pay only 2%. That's because of its clever routing of overseas sales through its subsidiaries.

Ireland's flexible approach to tax is designed to attract investment and jobs to the country. But other European countries say their treasuries are losing out, as corporations funnel profits through companies registered in Ireland that are stateless for tax purposes.



Apple's Chief Financial Officer, Luca Maestri, told the Financial Times that there was no state aid from Ireland, no [illegal Irish tax deal](#), and that Apple pays all the tax it owes. There's no backroom deal, the Apple CFO claims. Apple just follows the law. But exactly what law is a good question.

Under EU law, state financing for individual companies is heavily restricted. Tax arrangements, on the other hand, may not count. Yet the opening of an official investigation suggests Apple may have to endure an in-depth investigation. After all statements are collected, the Commission may turn to the EU to collect money if the decision is indeed that Apple took illegal grants of Irish state aid.

And the amounts of potential fines against the tech company could total billions of euros, assuming the benefits Apple received are found to be illegal. Preliminary findings from the [European Commission's investigation](#) into Apple call what the company accepted from Ireland's authorities illegal. And there's history galore since Apple has operated in Ireland since 1980.

But there's no state aid, claims Apple. It echoes what CEO Tim Cook said. In May 2013, the Senate Permanent Subcommittee on Investigations said [Apple avoided \\$9 billion](#) in U.S. taxes in 2012 alone via offshore units with no tax home. Apple's CEO Tim Cook [testified](#) that Apple did nothing illegal. Still, shifting billions of dollars to international subsidiaries with no declared tax residency seemed hard to square with the "we pay all tax we owe" mantra of good citizenship.

Now, Apple may get to prove it all. The EU investigation will reach back to 1991, and that could hurt. Of course, Apple isn't the only target. Brussels is also [investigating similar deals](#) between Starbucks and the Dutch government, and Fiat with Luxembourg.

For Apple, there's no question Apple has scrimped on taxes and played a savvy game, perhaps the savviest of all time. The biggest question may simply be whether Apple negotiated special tax deal that other companies in Ireland do not. If it did—or is found to have done so by the European Commission—the bill could be big.

Authorities in Brussels have far-reaching powers to recover illegal support stretching back 10 years. Although the Commission has not yet reached its decision or made a precise calculation of improper support, it is expected to reach billions of euros. In effect, it could be payback for all the Irish taxpayers who got shorted for all those years.

Apple and the Irish tax authorities go way back, with the company opening there in 1980. After 11 years, when there was a change in the law, Apple struck a deal with Ireland. That 1991 agreement is said to be key. It may have had the force of law, but if it gave Apple special treatment, it could be illegal. Legal or not, the deal lasted until 2007 when another was struck.

For Apple and for others, this may be a bitter and disillusioning episode. And it isn't likely to be quick.

You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.