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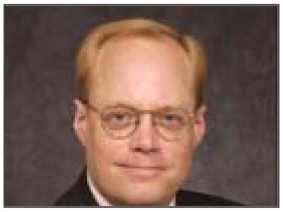

Robert W. Wood

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SEC Clears Apple Taxes---SEC Thinks Different Too

Image via CrunchBase

What does it mean that Apple has been cleared? In the SEC's eyes, Apple accounts for taxes in accordance with generally accepted accounting principles. The vaunted Securities and Exchange Commission has been stirring the pot of Apple's complex finances for months now. And as TaxProf Paul Caron notes, the SEC approves Apple's overseas tax strategies.

The SEC review was a worry on one level, especially after Senator Carl Levin (D-Mich.) lambasted the tech giant as "the Holy Grail of tax avoidance." For a company and CEO as cool as Apple and Tim Cook, respectively, this was presumably not a huge worry. The SEC, after all, as not Senator Levin on a tax witch hunt.

Now the SEC has closed the book, finding that all is well. The SEC even went so far as to write this letter that it would take no action. Whatever you think of the U.S. tax system and the lengths to which companies go to pay less, the SEC's action—or lack thereof—clearly makes sense.

Sure, the Senate Permanent Investigations Subcommittee's report on Apple painted a grim picture. But Apple is less aggressive than many others. In his

Senate testimony, CEO Tim Cook distanced Apple from tax gimmicks like IP offshoring.

Apple's income sourcing? Probably fine, despite outrage from Senators McCain and Levin. Lawfully reducing taxes is, well, lawful. And sourcing much outside the U.S. isn't illegal. A key issue is Apple's Irish subsidiary, Apple Operations International. Another is whether Apple fairly attributes income in what amounts to corporate forum shopping. Apple sells huge volumes—and keeps substantial cash—outside the U.S.

Repatriating the funds to the U.S. would trigger a 35% tax to the IRS. And that means it is cheaper for Apple to borrow. Apple opted to raise billions in debt financing to fund share repurchases and dividends rather than simply repatriating its overseas cash. Under U.S. tax law, Apple can return capital to shareholders using debt at lower cost than through repatriating its own money. Go figure.

Of course, Apple is a big target and in some respects is aggressive. But in September 2012, the Senate Permanent Investigations Subcommittee examined tax avoidance strategies of Microsoft and Hewlett-Packard. There's a long list of similar companies and similar tax plans. Senators Levin and McCain claim that Apple skirted U.S. taxes on $44 billion over the last four years, yet the IRS audits Apple continuously.

If the IRS could change much of this, it would. U.S. tax laws need a major overhaul, as even Tim Cook testified. But with all of the more imminent problems in Washington, comprehensive tax reform is probably not likely to come along soon. And that means companies like Apple, Google, HP, Facebook and others will continue doing what they do.

The SEC found Apple's disclosures to be sufficient, particularly now that it has agreed to provide investors with more information about its foreign cash, tax policies and plans for reinvestment of foreign earnings.

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.