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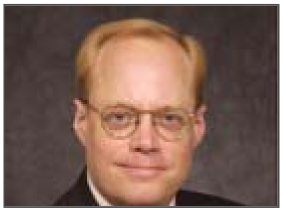

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Twitter Follows Apple, Google And Facebook To Irish Holy Grail

The IRS seeks new ways to pursue "stateless" income. Meanwhile, Ireland is backpedaling over claims it enables tax cheats. Pre-IPO Twitter is trying to get in on Irish loopholes like Apple, Google, HP and Facebook before it's too late. Such is the push-me-pull-you of global tax "planning."

(Photo credit: ToddMorris)

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 it was nothing illegal. But Ireland hates being called a facilitator of tax cheats and says it's pulling up the ladder on tax gimmicks.

Apple isn't the only one to grab the luck of the Irish, something Senator Carl Levin called the "holy grail of tax avoidance." The Senate claimed Apple saved billions by claiming companies registered in Ireland are not tax resident in any country. Google and Facebook use Ireland too.

Facebook flipped more than $700 million to the Cayman Islands as part of a "Double Irish" tax reduction strategy. Recall that former Zuckerberg pal and co-founder Eduardo Saverin took considerable heat when he exited the U.S. for Singapore. Sure, Facebook Funneled Nearly Half a Billion Pounds Into the Cayman Islands Last Year, yet Facebook's technique may not be overly aggressive.

Google used the Double Irish and the Dutch Sandwich, saving billions in U.S. taxes. The Double Irish involves forming a pair of Irish companies to turn payments on intellectual property into tax-deductible royalty payments. The U.S. parent company forms a subsidiary in Ireland. The parent signs a contract giving European rights to its intangible property to the new company.

In return, the new subsidiary agrees to market or promote the products in Europe. Thus, all the European income—that previously would have been taxed in the U.S.—is taxed in Ireland instead. Then the Irish company changes its headquarters to Bermuda. No Irish tax, no Bermuda tax, and no U.S. tax.

Finally, the parent forms a second Irish subsidiary that elects to be treated as disregarded under U.S. tax law—by filing a one-page form. The first Irish company (now in Bermuda) can license products to the second Irish company for royalties. The net result is one low 12.5% Irish tax compared to 35% in the U.S.

Even this tax can be reduced, since the royalties going to the Bermuda company are deductible. Some of these steps are circuitous, but tax treaties allow them. And the Dutch Sandwich is even more complex.

Start with a Double Irish, but add a third subsidiary in the Netherlands. Instead of licensing the parent's products directly to the second Irish subsidiary, the Bermuda-based subsidiary grants them to the Dutch subsidiary, which pays the third subsidiary. Fortunately, Ireland does not tax money as it moves between European countries.

The Netherlands collects a small fee on monies moving from the Netherlands company to the Bermuda subsidiary. In the end, there is virtually no tax. And while Ireland's Parliamentary hearings are reviewing Ireland's tax rules, it seems unlikely it will all change overnight, if at all. Irish Finance Minister Michael Noonan has said he plans to make it illegal for a company registered in Ireland to have no tax domicile.

Yet even if this happens companies are likely to be able to list any country as their tax residence, including zero tax jurisdictions such as Bermuda. Google and Microsoft have cut their overseas tax rates to single digits by establishing Dublin-registered subsidiaries, which they have designated as tax resident in Bermuda. Google and Apple have Irish-registered and tax resident subsidiaries that make sales to customers.

They pay large, tax-deductible royalties to their Bermuda tax-resident affiliates. In the end, profits wind up in zero-tax jurisdiction. The IRS isn't alone in not liking Apple, Starbucks and Hewlett-Packard plopping income where it can't be taxed. The OECD advises the G20 on tax and economic policy, and it says existing national tax enforcement regimes just don't work. See G-20 Nations 'Fully Endorse' OECD Action Plan on Tax Evasion.

The OECD plan claims that companies like Apple and Google avoid billions in taxes. The G20 is made up of 19 leading world economies plus the European Union. It too has voiced support for a fundamental reassessment of the rules on taxing multinationals.

As for Twitter, it will go public on the NYSE in November. But it seems to be planning for the time when it will have income that could be taxed. See Like Everyone Else, Twitter Hides from U.S. Taxes in Ireland. At least Twitter's Irish outpost employs 100 Dubliners, and is looking to expand.

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.