

More comment on Apple and Ireland

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I have been asked by many people for more comment on [Apple and Ireland and what it might mean](#). I just wrote this and will share it:

Corporate taxes are based on tax adjusted profits and losses i.e. they start from accounting data and end up with a tax charge. There are numerous adjustments that can be made on the way, one of which relates to transfer pricing, which means that the profit at one end of a transaction is adjusted with the expectation that there should be a matching equal and opposite adjustment at the other end to ensure that profit is taxed only but in the right place. In this case there are a number of extraordinary omissions from this process. First, the accounts seem to have had little to do with the tax charge made. Second, there is no adjustment process as such to establish a 'transfer price' - the process for which the EU describe quite well at the beginning of their document. Third there seems very little chance that compensating adjustments were made for those made in Ireland. The result is that it is very hard to see how this process fits into any known basis for negotiating and an international tax advance pricing agreement for transfer pricing purposes: it was simply a price negotiation i.e. what Apple was prepared to pay Ireland. The basis for the allegation is, then, that Apple was not really in the Irish tax system at all and the advantage of being outside it was what constituted the value of state aid. I cannot see how there is any real defence to this allegation unless it can be shown that the same deal was offered to all companies in Ireland, and I am certain it was not. The EU do not need to rely on the OECD guidelines and whether they were in place or not in 1991 or 2007 to win, in other words. What the Irish press should be musing on is something much bigger, which is that if Apple lose will the EU ask for details of all other such deals from Ireland and ask for settlement there as well. And if so how many such deals are there, and how much is involved? That's the hornet's nest waiting to be opened.

Another point to make though: this does not apply outside Ireland, but it shatters the case that there is no action needed elsewhere, and that is its significance.

Is this a tipping point on these issues. Not by itself, but it's going to help the overall shift against abuse.

And for that reason the EU's actions are very welcome.