



Apple - The Core Issues

Taxpayers in Ireland and in many other jurisdictions have come to terms with the European Commission's decision on alleged state aid to Apple.

While a definitive assessment, if any, cannot be made until the redacted text of the 150-page commission's decision is at hand, a letter dated June 11th, 2014, sent by the commission to the Irish Government, sets out the grounds for the state aid investigation.

The first assertion is that the commission investigation went beyond its regulatory powers. Not so, the European Commission has had core competence under EU treaties (since the 1951 treaty establishing the

European Coal and Steel Community) and EU regulations to investigate alleged breaches of state aid that confer a competitive advantage on one or more undertakings.

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There is also a logic that Ireland has been singled out for attention. Not so, since 2013, the commission has been investigating the tax ruling practices of all member states and has

done so with the express approval of Ireland. For example, in October 2015, the commission concluded that Luxembourg and the Netherlands had granted selected tax advantages to Fiat and Starbucks, respectively. In January 2016, the commission concluded that selective tax advantages granted by Belgium to at least 35 multinationals, mainly from the EU, under its "excess profit" tax

scheme, were illegal under state aid rules and that €700 million in taxes should be recovered. The commission is also investigating two Luxembourg cases involving Amazon and McDonald's. There is also the argument that the commission should not apply retrospective rules as this would affect multinationals' investment decisions. Not so. Article 15 of EU regulation number 659/1999 on the procedural rules involving state aid gives the commission powers to seek the recovery of state aid over a period of 10 years, which in this case begins 10 years prior to 2013, when the commission first requested information from Ireland.

The Government argues that there is an attempt to force Ireland to increase the current rate of corporation tax. Not so; unless Ireland wants to make such a link. There is a huge difference between alleged corporate tax avoidance and the setting of Ireland's headline rate of corporation tax. These issues should be dealt with quite separately; otherwise, multinationals may get an impression that the two are somehow linked.