Corporate Tax Alliance

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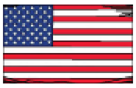
Lessons learned from Apple's tax policy



by Tony Malik (Schwartz International)

In the wake of dwindling government coffers globally, the tax-planning strategies of well-known multinational companies as Starbucks, Google, Amazon and Apple are subject to a heated public debate. Recently the U.S. Congress has been publicizing the tax saving efforts of technology giant Apple Inc. The Permanent Subcommittee on Investigations of the U.S. Senate did not find any evidence that Apple engaged in any illegal activity intended to reduce or eliminate taxes. Government officials are looking, however, to have more expanded discussion focusing on systemic problems in the U.S. tax code.

A lengthy examination by Senate Investigators found that Apple materially reduced income tax liability to any single national government in spite of earning revenues of tens of billions of dollars. Apple legally accomplished this by arbitraging differences in international tax laws particular to distinct sovereign jurisdictions. The two jurisdictions that constituted the focal point of the Senate panel's report were the U.S. and Ireland.

Specifically, Apple redesigned its legal ownership structure to proactively use tax residence rules, among others, to reduce global tax. Apple's units in Ireland have long been the base for the global giant's operations in Europe, the Middle East, India, Africa, Asia and the Pacific. Because the profits were not repatriated to the U.S. and due to specific U.S. anti-deferral rules, profits generated by these units are generally free from U.S. taxation. Ireland on the other hand, prescribes to a different concept of residence, treating corporate entities as Irish residents to the extent that they are managed and controlled within Ireland.

> "Ideally tax reform leads to true simplification, not complex fixes"

The U.S. Senate's contention is not that Apple is evading or otherwise illegally avoiding taxes. Rather the Senate panel seems most interested in discussing tax reforms designed to encourage different corporate behavior. The prevailing rhetoric seems most to promote the idea of profit repatriation, a financial maneuver that many U.S. multinationals are very reluctant to pursue given the high rates of U.S. taxation that repatriated profits are immediately subjected to. Given the sluggish U.S. economy's demand for cash infusion and the possibility for U.S. tax authorities of collecting even modest amounts of revenues from U.S. multinationals' overseas income, the U.S. Senate has begun serious discussions ultimately headed towards working out the details required to execute the policy shift.

The irony of course is that it is Congress that created the complex U.S. tax rules in the first place. Any true reform should start there. Let's see less grandstanding and more policymaking. Ideally we would see true simplification, not simply the complex 'fixes' we've seen since 1987.

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