

# Did Apple do anything wrong?

By Paul McNeil

2 October 2016



(Image via @vicpelt)

**Paul McNeil discusses the murky issue of tax avoidance and whether Apple and other corporations are actually to blame.**

MAYBE APPLE'S TAX avoidance was completely by the book. Maybe not.

With Republican presidential candidate Donald Trump claiming he was actually "smart" not to pay taxes for many years, the question that comes to mind is did Apple do anything wrong in avoiding billions in taxes in Europe?

Apple claims to have abided all the rules and regulations of the European Commission, and the U.S. government has found itself involved in a dispute with the European Union. There are also experts saying the EC is actually over-reacting and over-reaching in this regard.

## The case

To understand this issue in depth one has to dig

into the past. The European Commission had issued an original ruling in this regard and there have also been prior rulings in such cases involving a series of other major international companies.

Even the U.S. treasury department has published a white paper in relation to the EC's actions. One can reach a wide variety of conclusions on this subject and it is extremely important from what perspective the entire ordeal is weighed.

The real "taxed nots". Apple's Double Dutch Irish Sandwich with a side of tax avoidance [@IndependentAus](https://t.co/bhSsyLJkhT)

— Michelle Pini (@vmp9) [September 4, 2016](#)

## Is the EC too greedy?

One viewpoint argues the EC has adopted an over-reaching policy and the decision they have made on Apple is taking them one step too far. Apple enjoying "unlawful" state aid from Ireland is the basis of the argument put forward by the EC. However, to make such an accusation, the EC is first required to prove that the certain advantage Apple received in Ireland was not provided to other companies and that Apple enjoyed a biased discount.

While there are signs that Ireland strangely provided special leisure and other types of unprecedented access to Apple, the fact is that any company seeking a similar relationship with Dublin is free to file a request. And many have and continue to do

so.

One example can be found in what is described as advanced pricing agreements, of which up to 750 different cases were requested across the board of the European Union member states. So the EC cannot argue the benefits Apple enjoys in Ireland are “selective” in nature. Furthermore, this is not a specific characteristic of Ireland and its laws, or the methods put into practice by Apple.

### How does it affect Australia?

Such tax cases have also been witnessed in Australia, with examples seen in American Express Australia [avoiding](#) taxes on \$8 billion in revenues. The company has instead enjoyed \$3.3 million in tax benefits. A global firm is able to find ways to pay less in taxes while an attendant working in McDonalds cannot. The list of such companies includes Chevron, Facebook, Glencore, Google, News Corp, Pfizer, Shell, William Hill and so on and this is only the beginning.

Apple and Ireland will argue that the EU kept them in the dark during a tax probe <https://t.co/rBLC3iGMak>

— Apple World Today (@AppleWorldToday) [September 30, 2016](#)

A professionally blueprinted [article](#) by Michael West sheds important light and provides information important for all Australians. Unfortunately, our country is bleeding from billions vanishing each year into mysterious Caribbean banks.

Foreign multinationals with branches in Australia are easily able

to take advantage of the lack of visibility and transparency in our tax policies. Various loopholes and glitches can be found as the statistics of numerous accounts are suspicious to say the least, disclosures continue to face myriad failures and a long slate of various other missteps in companies failing to abide by accounting standards – or lack thereof – in Australia.

### So who is to blame?

Despite the legitimate aspects of Apple’s case in this regard and its refusal to budge on paying a whopping \$14.5 billion in taxes, the legitimate question is what responsibilities does Apple bear in this regard? If such practices of placing billions in earnings in foreign banks allows major corporations to avoid paying taxes, how will ordinary and small business be convinced of the ethics behind all this? And how can we expect them to pay their taxes, while the much more powerful companies are creatively avoiding theirs?

Good get on the tax avoidance of American Express yesterday [@MichaelWestBiz](#). <http://t.co/vEk2bOVyqk>

— Tim Beshara (@Tim\_Beshara) [June 11, 2015](#)

In the EU, the truth is that each member state has the right to implement its own tax policy, making it very difficult to reach a consensus on such matters.

And one has to give credit to Ireland because they simply had not adopted any transfer pricing rules before 2010 — meaning the EC cannot place their case on any set of rules and accuse Dublin of practicing discrimination against other companies and playing nice with Apple.

To set everything straight, Irish authorities have made it clear that, after 2010, they have made it their priority to ensure that Apple followed the rules just like everyone else in allocating its profits.

### **The U.S. role**

Is the United States actually encouraging major international companies to place their huge revenues in foreign banks? If so, what do they have to gain? If not, why are they simply not changing the laws to have all the tax revenues pour in?

Being the world's leading economic power, the U.S. has a highly complex – and at times controversial – tax policy that has become the issue of intense political debates between [Democrats](#) and Republicans for decades. Under this policy, the United States taxes all the global income earned by U.S. corporations, without any regard to where the money is made.

What has made this entire ordeal even more

complicated is a deferral provision providing a delay on tax payments to companies regarding their foreign-based income. This allows these companies a "holiday" – if you could call it that – and has the U.S. government waiting until the money is one day repatriated home.

Super props to the EU. US is feckless.

Ireland gets an Apple windfall, but tackling tax avoidance just got harder

<https://t.co/ewbO3WyOpB>

— R. Bordoni (@rbordoni)  
[September 1, 2016](#)

Is there a timeframe on this? No.

Is there any method forcing or even asking these firms to repatriate money back to the U.S.?  
No.

Does this not provide a huge incentive to companies like Apple to actually channel more global income to foreign jurisdictions that enforce low taxes?  
Yes.

Ireland and Bermuda are two such examples — and Apple and other companies have no reason to move such huge stocks of money back to the U.S. anytime soon.

### **A window**

Understanding the important nature of this issue, the [Bush](#) administration ratified the [American Jobs Creation Act](#) back in 2004. The goal behind this new law was to provide a window of opportunity for U.S. multinational corporations to relocate their foreign-earned income. while enjoying an astonishing 85 per cent tax discount. This provided an opportunity for these companies to pay a mere 15 per cent of the normal taxes imposed in other circumstances.

This policy thus encouraged large international companies to forward their foreign cash and hopefully boost their domestic investments inside the U.S.. The result was more than \$300

billion returning to the U.S. thanks to the legislation.

However, there is hardly any sign of this enormous capital being invested significantly in the destinations hoped for by the U.S. government. The irony is that research shows this temporary window opened by the Bush administration has actually stimulated companies from all walks of life to pile larger amounts of foreign earned revenue outside of the United States, hoping Congress would provide yet another tax discount to take advantage of in the future.

Turnbull  
needs to  
tackle  
multinational  
tax  
avoidance to  
boost  
revenue  
<https://t.co/1SYh6AIEd9@IndependentAus>

— Ex Lord  
Mark of E (  
@edwardatp  
ort) [July 14, 2016](#)

## Looking down the road

Despite the many differences and arguments, there is a growing consensus that systems imposed in Europe and the U.S. are not working and are riddled with glitches and loopholes.

There is a need for political will to gain momentum in Canberra and implement fundamental reforms aimed at curbing the tax avoidance phenomenon plaguing the Australian economy. Firms should not be permitted to file financial statements of a “special purpose”

nature.

Instead, corporate regulators must stand firm and demand multinational subsidiaries stationed in Australia render full accounts of “general purpose”. Furthermore, while the income has been earned inside Australia, such companies should not be permitted to report their financial statements on their subsidiaries offshore.

Should the policy of providing “tax holidays” become a permanent practice? Should the U.S. and other governments start considering a widely supported territorial tax

policy?  
Should taxes  
imposed on  
corporations  
simply be  
lowered to  
bring an end  
to all this?

These are all  
issues  
currently  
being  
weighed by  
lawmakers  
on both  
sides of the  
Atlantic. For  
now, there is  
no  
agreement in  
sight.  
Apple's tax  
dispute with  
the EC will  
most likely  
take years to  
settle.

With the U.S.  
preparing for  
probably one  
of the most  
important  
presidential  
elections in  
decades, we  
may not see  
any  
measures  
taken in this  
regard for  
months, if  
not years.

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