

Tax fraud charges against Apple in Italy (what the...!)

Today the Italian **Agenzia delle Entrate** (inland revenues) and the public prosecutor office of Milan have formalized charges for **tax fraud** against the CEOs and CFOs of **Apple Italia Srl** and Apple sales International Inc (Ireland) (see → [here](#)). The charges stand on the circumstance that sales generated by the Italian based retail network, whose revenues go to Ireland (ca. 1.000M€), while the Italian branch serves only as a local market consultant (revenues ca. 30M€), would actually be generated by an Italian “shadow structure”, made of the same retail network, hence the revenues generated by sales in Italy -by the Irish bases company- should be taxed in Italy as the “shadow structure” would in fact be a permanent establishment of Apple sales in this Country.

The charge is awkward. Many companies, especially in the tech domain, operate (or seek to operate) with similar structures, in Italy and [elsewhere](#). It is a consequence of the notion of “permanent establishment” accepted under [OECD model conventions](#) on double taxation avoidance. The case of Apple, however, is particularly evident, since it (re)establishes the (claim to the) principle that national fiscal jurisdiction prevails over international (tax) treaties. A weird result in the European community. The [EU commission action announced in the last days heading to a regular disclosure programme on national tax rulings](#) offered to multinational companies seems to be an appropriate answer. For hideous and wealth-protecting as my opinion may seem, this trial is in fact a battle fought by Italy and Ireland on the life (or rather, the money) of Apple: on the one hand, Ireland has attracted Apple to establish on its territory, being perfectly aware of the Apple sales model; on the other hand, Italy seeks to waive the application of OECD conventions -with Ireland- as it holds

(not without reason) that their application induces a depletion of the taxable basis of Apple in Italy. The judiciary outcome of this battle will in any case set a heavy precedent in Italy and in the whole Eurozone. Stay tuned.

PS. I'm writing this note on a secon-hand Macbook pro: I hope the inland revenues will not try extend to users any charge of conspiracy (gosh!!)