

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!!)