

欧盟的国家援助案例持续引发
众多跨国企业的震惊和担忧

The release this week by the European Commission (EC) of its decision in the high-profile European Union (EU) State aid case against Apple has shocked many around the world, especially those outside the EU, despite indications for months that this ruling would involve a significant tax assessment. The magnitude of the judgment – an astonishingly high US\$14.5 billion (EUR 13B), plus interest – has created a seismic wave of uncertainty for taxpayers investing into the EU who have, for years, felt they knew what their tax outcomes would be.

关于针对苹果公司的备受瞩目的欧盟国家援助一案，欧盟委员会于上周发布的裁决可谓震惊全球业界，尤其令那些欧盟之外的企业一片哗然。尽管前几个月的迹象一直表明该裁决将涉及巨额的税款征收，然而高达 145 亿美元（约合 130 亿欧元）再加上利息的天价罚单，对那些在欧盟拥有投资的纳税人而言，仍然不啻为一颗重磅炸弹，震碎了他们多年来一直认为顺理成章的税收待遇。

EC Decision

欧盟委员会的裁决

The EC has made targeted efforts in connection with State aid cases since 2013, which is the year in which Apple was first notified of the EC's investigations. On August 30, the EC released a detailed press release describing its decision that Apple had received an unfair advantage over other businesses by the terms of its Irish tax rulings. As the EC is only permitted to order recovery of illegal State aid for the 10 years preceding the date of first inquiry, the EC found that, from 2003 to 2013, Apple had been given preferential State aid in the form of its tax rulings from Ireland.

欧盟委员会自 2013 年起就开始关注国家援助案件并开展了有针对性的工作，也就是在这一年，苹果公司首次收到有关的欧盟调查通知。欧盟委员会在其于 8 月 30 日发布的、意在对该裁决进行详述的新闻稿中声称，苹果公司利用爱尔兰对其的税收裁定获取了相对于其他企业的不公平优势。由于在调查非法国家援助案件中最多只有十年追溯期（自首次质询之日起），因此欧盟委员会认定，在 2003 年至 2013 年期间，苹果公司享受了爱尔兰通过税收裁定的方式给予的特惠性国家援助。

The press release highlights the facts contributing to what the EC perceives to be a lack of economic substance, but is largely silent regarding how preferential treatment was provided to Apple over other companies. The EC's mandate is to ensure equal treatment of taxpayers by EU members such that no preferential treatment is provided and competition remains fair. Because the press release emphasizes substantive tax issues, like "economic substance" rather than elements of preferential treatment, there is concern the EC might be substituting its tax policy judgment for that of a member state. This could threaten EU members' ability to use tax policy as an instrument to grow their local economies by attracting investment.

该新闻稿突出了导致欧盟委员会认为缺乏“经济实质”的一些事实，却闭口不提相较于其他企业的特惠待遇是如何提供给苹果公司的。欧盟委员会的职责是确保欧盟成员国的纳税人得到平等对待，以排除特惠待遇并维护公平竞争环境。由于新闻稿着重强调了大量诸如“经济实质”的税收问题，而非特惠待遇的要素，所以一些担忧的声音认为欧盟委员会可能正在以它对税收政策的判断来取代成员国自身的判断。这可能会威胁到欧盟成员国利用税收政策的手段来吸引投资和发展当地经济的能力。

We will have to wait until the full 130-page report detailing the decision in the Apple case is released by the EC in order to better understand the analysis. In the meantime, we can only assume that the EC considered the size of the judgment in light of Apple's strong financial position.

我们只有等到欧盟委员会发布详述苹果案裁决的 130 页完整报告后才能更好地理解和分析。眼下，我们只能假设欧盟是根据苹果公司雄厚的经济实力来考量其裁定金额的。

Reactions by Ireland and the US

爱尔兰与美国的反应

Ireland

爱尔兰

Operating in Ireland since the 1980s, Apple has hired a significant number of employees over the years. At current count, Apple reportedly has approximately 6,000 employees who are contributing to the Irish economy, and they have recently made a commitment to hire even more employees in Ireland. Apple is just one of many companies that have established substantive operations in Ireland and helped to build a thriving local economy.

自20世纪80年代开始在爱尔兰经营以来，苹果公司在过去的这些年里已经在当地雇用了大量的员工。据报道，目前苹果已雇用了大约6,000名员工，对爱尔兰的经济做出了相应贡献，而且苹果近期还承诺会在爱尔兰雇用更多的员工。而苹果公司只是众多在爱尔兰建立实质性经营并因此促进当地经济发展的公司之一。

Ireland offers a 12.5% corporate tax rate for any company generating trading profits in Ireland. Previously, Ireland also offered the ability to further reduce this 12.5% rate by structuring involving a non-Irish resident entity, perhaps to less than 1%. As noted above, the EC's press release did not provide support for its position that Apple was treated differently than other similarly-situated companies. Accordingly, Ireland's government is adamant that it has not treated Apple differently than other companies establishing operations in Ireland. Michael Noonan, Ireland's Minister of Finance, has said that he will seek the Irish government's approval to appeal this ruling. The Irish government feels that defending itself as a stable choice for substantive investment is crucial to its continued economic success. The matter is far from certain, however, as there is already talk of using this unexpected tax revenue to fill some of Ireland's financial holes.

爱尔兰政府向所有在该国产生营业利润的公司征收12.5%的企业税。此前，爱尔兰还提出，通过在公司结构中引入非爱尔兰居民实体可进一步降低该12.5%税率，甚至可能低于1%。如上文所提到的，欧盟委员会的新闻发布中并没有提供关于苹果相较于其他类似情况的公司获得不同待遇的证据。相应地，爱尔兰政府坚称其没有将苹果公司与其他在爱尔兰经营的公司区别对待。爱尔兰财政部长Michael Noonan称，他将寻求爱尔兰政府批准对该裁决的上诉。爱尔兰政府认为，维护本国作为企业实体投资的稳定选择，对于该国经济的持续发展至关重要。然而，虽然事态如何发展还远无定论，却已出现了关于如何利用这笔意外的税收来填补爱尔兰财政漏洞的讨论。

The US

美国

The US continues to maintain its position that the EU State aid cases are unfairly targeting US multinationals. This complaint stems from the fact that a large number of the multinationals under investigation by the EC are US companies and, not surprisingly, the companies are all household names. One interpretation of events is that the EC may believe that painting these well-known companies as not paying their fair share of tax will convince the general public that tax reform is needed in many jurisdictions in order to get back to a level playing field where profits are taxed at similar rates and no country has an economic advantage simply because it is offering a low tax rate.

美国仍旧坚持其立场，认为欧盟的国家援助案件都是不公平地针对美国的跨国企业的。因为大多数被欧盟委员会调查的跨国企业都是美国企业，并且意料之中的是，这些美国企业都可谓家喻户晓。对此次事件的一种解读是，欧盟委员会可能认为，渲染这些知名企业未支付其应缴税收份额的行为，将会使普通大众相信在很多地区需要通过进行税制改革来重新回到一个公平的竞争环境，在这个环境中，企业利润都以相近的税率被征税，且没有一个国家可以仅因提供低税率就获得经济发展优势的。

In advance of the EC's decision, the US Treasury, in an unprecedented move, released a 26-page [whitepaper](#) outlining its concerns about the potential impact of the ruling. It is not surprising that US policymakers were swift to react to the EC's finding that Apple had received State aid in the form of its Irish tax ruling. According to the US Treasury, "we believe that retroactive tax assessments by the Commission are unfair, contrary to well-established legal principles, and call into question the tax rules of individual Member States...The Commission's actions could threaten to undermine foreign investment, the business climate in Europe, and the important spirit of economic partnership between the U.S. and the EU."

在欧盟裁决之前，美国财政部史无前例地发布了一份26页的白皮书，概述其对裁决可能产生影响的担忧。美国的政策制定者对欧盟委员会关于苹果公司通过利用爱尔兰税收裁定的方式接受国家援助这一结论做出迅速反应，这并不意外。美国财政部称：“我们认为欧盟委员会溯及既往的征税是不公平的，是不符合众所周知的法律原则的，并且是对成员国税收规则的质疑……委员会的行为极可能有损外商投资、欧洲商业环境以及美国和欧盟之间经济伙伴关系的重要精神。”

Despite being away from Washington, DC for summer recess, US lawmakers from both parties and both Chambers of Congress were also critical of the EC in the wake of its most-recent decision. On the Senate side, current Senate Finance Committee Chairman Orrin Hatch (R-UT) criticized the ruling as “unfair,” while Senator Chuck Schumer (D-NY), who is expected to lead the Democratic caucus next Congress, expressed frustration that the EC was making a “cheap money grab” of “tax revenues that should go toward investment in the United States.” In fact, prior to the EC’s decision, and in a rare showing of bipartisan unity, Senators Hatch, Schumer, Ron Wyden (D-OR), and Rob Portman (R-OH) sent multiple letters to US Treasury Secretary Jack Lew urging the US to respond appropriately to the EU State aid cases.

尽管远离华盛顿且正值夏季休会期，美国两党的立法者以及参众两院也对欧盟最近的裁决提出了批评。参议院方面，现任参议院财政委员会主席Orrin Hatch（共和党-犹他州）批评这份裁决是不公平的，有望在下一届国会领导民主党党团的参议员Chuck Schumer（民主党-纽约州）表示对欧盟十分失望，他称欧盟正在“损人利己地攫取原本应该流向美国境内投资的税收资金”。事实上，在欧盟裁决之前，两党少见地团结一致，参议员Hatch、Schumer、Ron Wyden（民主党-俄勒冈州）以及Rob Portman（共和党-俄亥俄州）向美国财政部部长Jack Lew发送了多封信件，催促美国对欧盟的国家援助案做出适当回应。

On the House side of the US Congress, House Ways and Means Committee Chairman Kevin Brady (R-TX) called the EC’s decision a “predatory and naked tax grab,” and used the ruling as another opportunity to call for reforms to the US tax Code, which he said is driving businesses to keep profits offshore. Chairman Brady specifically called for action on the House Republicans’ tax reform “Blueprint,” which sets out the GOP’s vision for tax reform.

众议院方面，众议院赋税委员会主席Kevin Brady（共和党-德克萨斯州）将欧盟委员会的裁决称为“赤裸裸的税收掠夺”，并将这份裁决作为号召美国税法改革的又一个机会，因为他认为现行税法迫使企业将利润保留在境外。Brady主席特别呼吁采取行动制定众议院共和党人的税制改革“蓝图”，体现大老党的税收改革愿景。

To be sure, the EC’s decision in the Apple case will serve as yet another reminder to US policymakers that tax reform is needed. Until now, US tax policymakers have assumed those offshore profits would eventually be taxed in the US. This State aid ruling is the latest reminder that such an assumption might not be reasonable. While comprehensive tax reform is clearly the most effective way to achieve this, such reform still faces many obstacles. As such, the US government is examining various responses – including the potential to use section 891 of the US tax Code, which allows the President to double US taxes on individuals and corporations from countries that are deemed to have subjected US citizens and companies to “discriminatory or extraterritorial taxes.” Taking this route, however, also presents potential complications, including a tax war with the EU – something the US clearly wants to avoid. From a legislative perspective, it is rumored that one leading Congressional tax-writer may actually soon release legislation aimed at combatting EU State aid cases.

诚然，欧盟委员会对苹果案的裁决将又一次提醒美国的政策制定者有关税制改革的必要性。至今他们仍然认为那些美国企业的海外利润最终会在美国征税，而这一有关国家援助的裁定则提醒了他们这种假设可能并不合理。虽然综合性的税制改革显然是最有效的方法，却也面临众多阻碍。因此，美国政府将考量各种对策，包括可能使用美国税法第891条。该条规定，当美国公民和企业在一国被课征“歧视性或域外税收”时，总统有权对来自该国的个人或企业在美国双倍征税。但是这个方法也可能会引发包括和欧盟的税收战在内的副作用，而这显然是美国想要避免的。在立法方面，据传某位主要的国会税收立法者可能会很快发布旨在对抗欧盟国家援助案件的法规。

Though exactly what policy solution the US will turn to in the short term remains unclear, it is certain that the EC’s decision in the Apple case – and others that may follow – will not go unanswered.

虽然短期内美国具体会采取怎样的政策措施仍不明朗，但可以确定的是，美国绝不会对欧盟委员会的苹果案裁决以及后续可能接踵而至的类似事件置之不理。

Process of Collection and Appeal

征收和上诉过程

Now that the EC has determined that Apple was the recipient of unlawful State aid, Ireland has an obligation to begin recovery efforts of the US\$14.5 billion assessment, plus interest, even if Ireland decides to appeal the decision. During the appeal, any amounts recovered would be held in escrow pending the outcome of the appeal process.

由于欧盟已经裁定苹果公司是非法国家援助的受益者，因此即使爱尔兰决定就此提出上诉，其仍有义务启动对该笔高达145亿美元加上利息的税款的征收程序。上诉期间将对已追回的款项进行托管，待上诉结果明确之后再行处理。

Conclusion

结论

In addition to triggering a potential US\$14.5 billion tax bill for Apple, this latest EU State aid ruling may further erode confidence in the robustness and stability of each EU member state's system of tax administration, including specifically well-established tax rulings and clearances. Reversing established tax rulings on which a taxpayer has relied for all of its global tax filings, and presumably also its financial statements, might not only give pause to those seeking such rulings, but may also affect how multinational enterprises view the EU as a whole when planning for global expansion. Squire Patton Boggs can assist companies as they begin to think about how this decision will impact their own operations and planning in light of the current and anticipated regulatory and legislative responses of policymakers worldwide.

除了对苹果公司开出这张价值145亿美元的天价税单之外，这项最新出炉的有关欧盟国家援助的裁决还可能会进一步削弱外界对欧盟各成员国税收管理制度稳健性和稳定性的信心，特别是对已长期确立和实施的税收裁定和清缴而言。颠覆已长期确立且纳税人在进行全球税务申报甚至财务报表工作时所信赖的税收裁定，这样的行为不仅可能令那些正在寻求此等待遇的企业望而却步，还有可能影响跨国公司在规划全球扩张时将欧盟作为一个整体来对待的考量。

美国翰宇国际律师事务所可帮助企业评估这一决定对其运营的影响，以及如何根据当前和预期的监管环境及全球决策者们的立法回应进行相应规划。

Contacts

/联系人

Linda Pfatteicher

Partner, San Francisco

合伙人，旧金山

T +1 415 954 0347

E linda.pfatteicher@squirepb.com

Mitch Thompson

Partner, Cleveland

合伙人，克利夫兰

T +1 216 479 8794

E mitch.thompson@squirepb.com

Tim Jarvis

Partner, Leeds

合伙人，利兹

T +44 113 284 7214

E timothy.jarvis@squirepb.com

Wolfgang Maschek

Partner, Brussels

合伙人，布鲁塞尔

T +322 627 11 04

E wolfgang.maschek@squirepb.com

Don Moorehead

Partner, Washington DC

合伙人，华盛顿特区

T +1 202 457 5212

E donald.moorehead@squirepb.com

Brandon Roman

Associate, Washington DC

律师，华盛顿特区

T +1 202 457 5330

E brandon.roman@squirepb.com