

# The Apple Case: State Aid or Tax Policy to Fight Tax Avoidance by Multinational Companies?

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## Outline

1. State Aid in the EU
2. Apple: Economic Activities and Tax Payments
3. Why does the Commission want Apple to pay 13 bn Euros?
4. Conclusions

# 1. State Aid in the EU

## Article 107 TFEU (ex Article 87 TEC)

1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which **distorts** or threatens to distort **competition** by favoring certain undertakings or the production of certain goods shall, **in so far as it affects trade between Member States**, be incompatible with the internal market.

## Issues

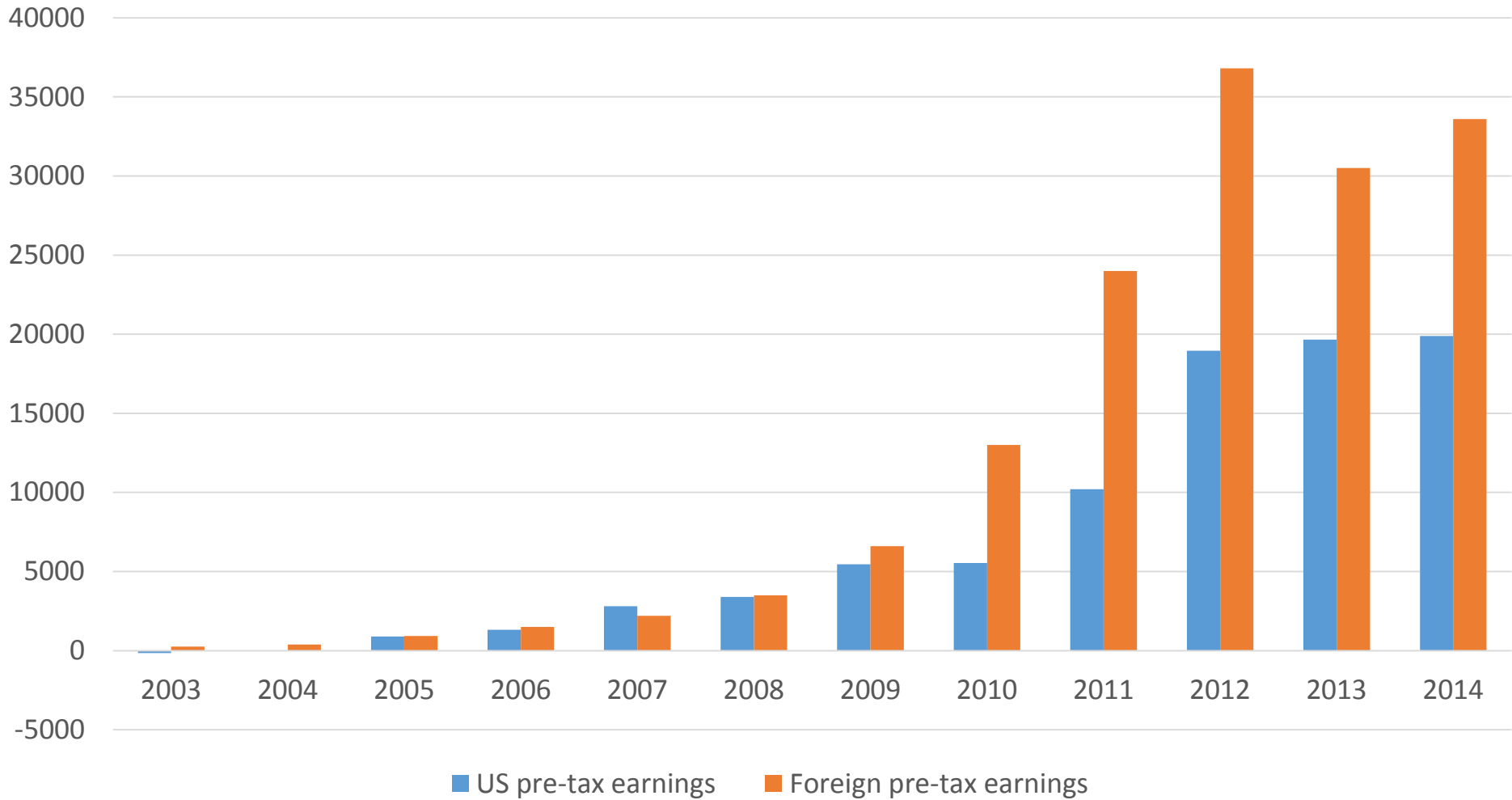
- Excise duties or subsidies can be equivalent to tariffs
- What are the limits of state aid control? In principle *any* difference in the tax system or other economic policy has the potential to distort competition and trade
- What is state aid in taxation? Requires ‚reference tax system‘ without elements of state aid

## Issues

- Is the Apple tax ruling state aid?
- Irish tax rulings are not public
- Criterion of selectivity (‘factual’ selectivity)
- Issues: Are the tax rulings selective?

## 2. Apple: Economic Activities and Tax Payments

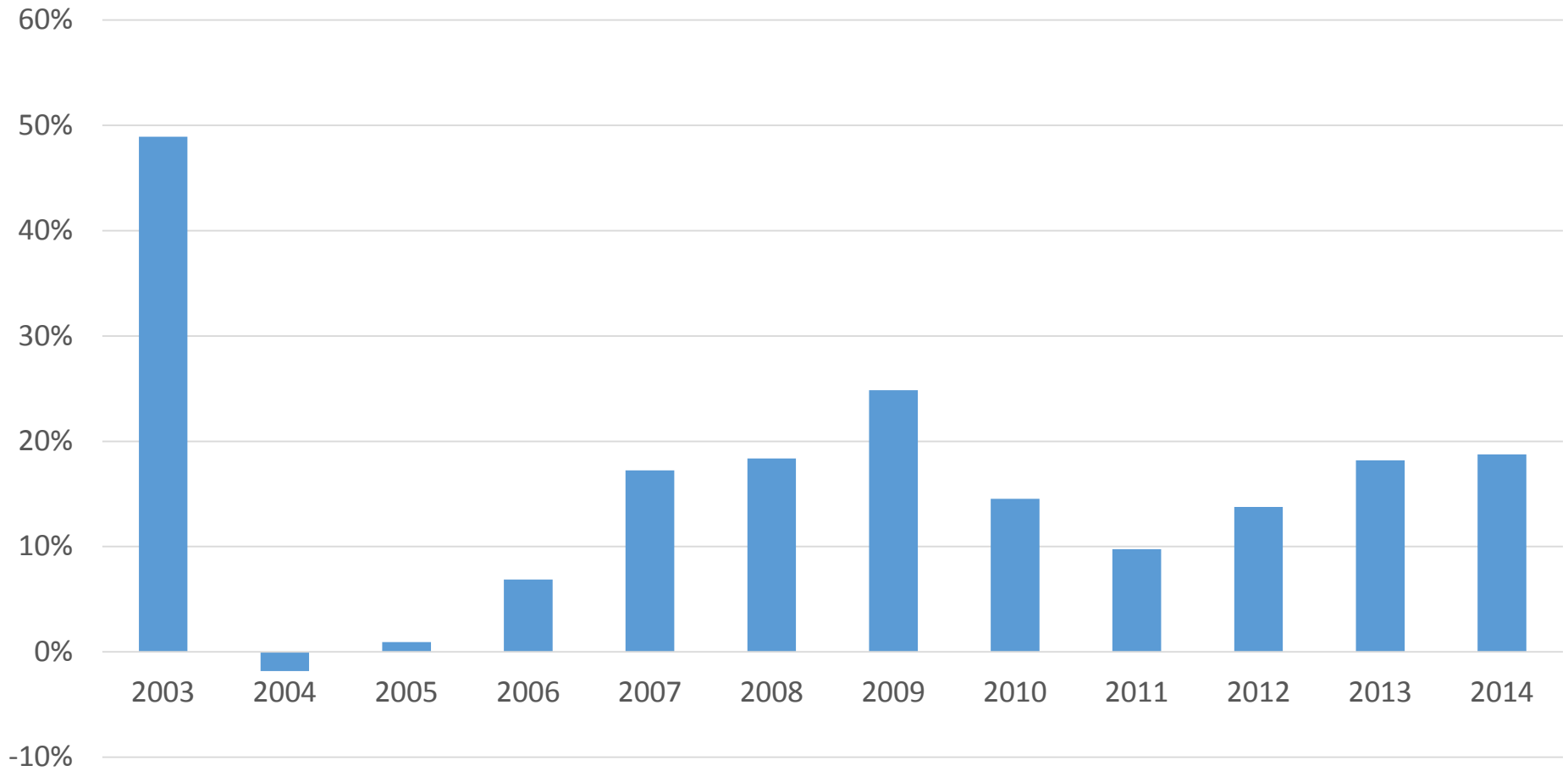
## Apple: US and Foreign Pre Tax Earnings (2003-2014, million USD)



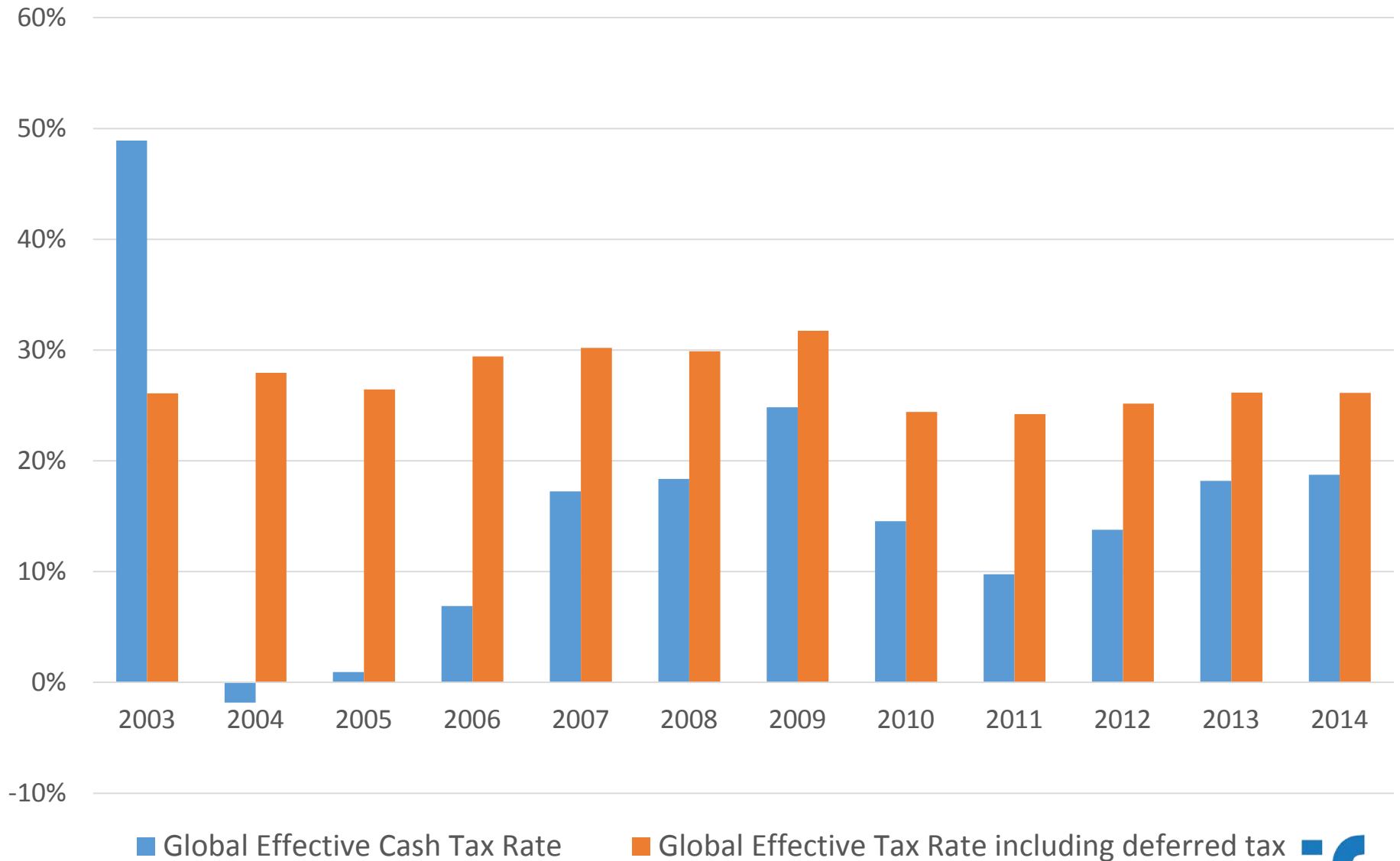


# Overall Profit Taxes Paid

## Apple: Global Cash Taxes Paid in % of Income

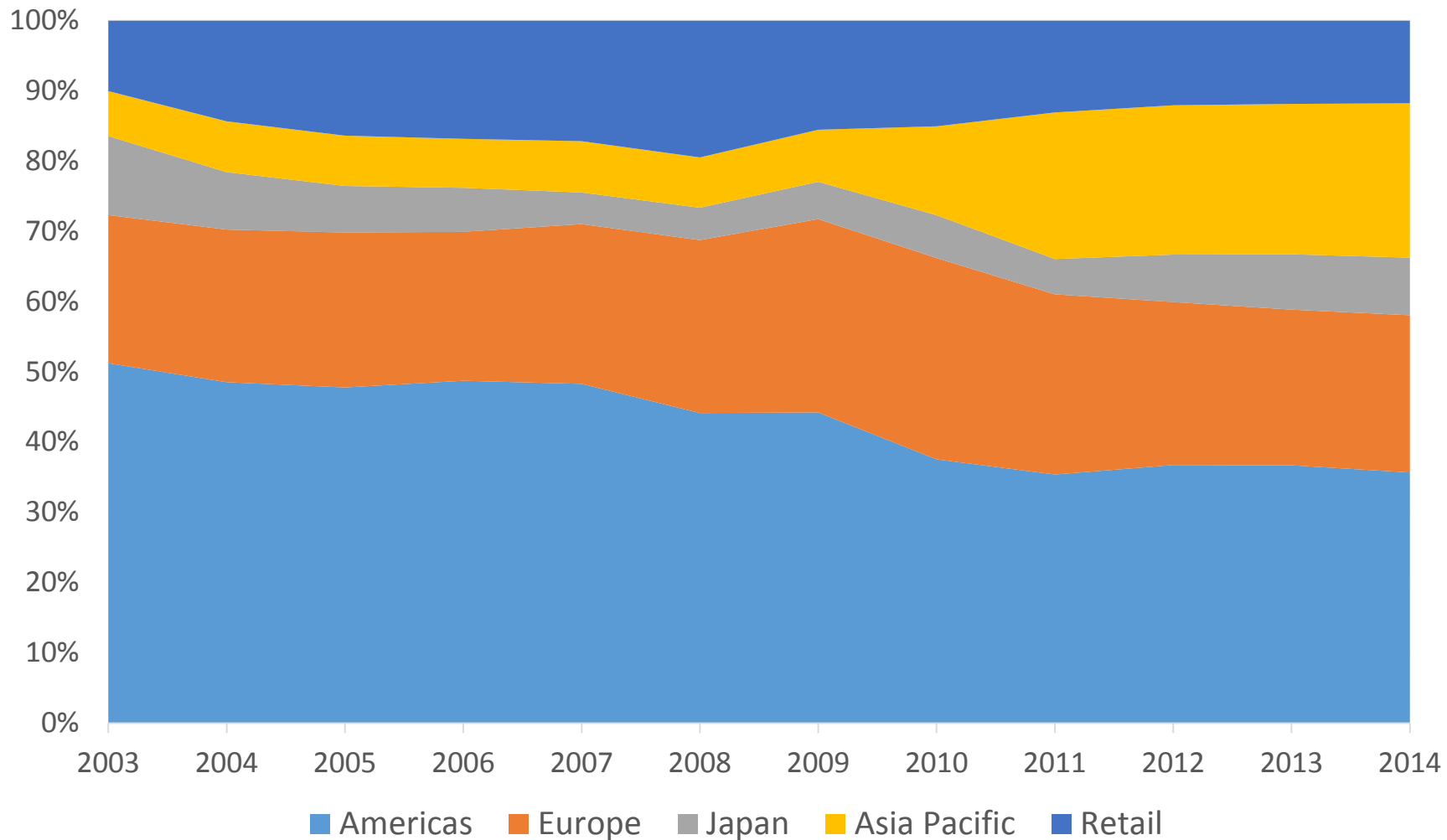


## Effective Tax Rate: Global Cash Tax vs Tax Provisions in % of Income



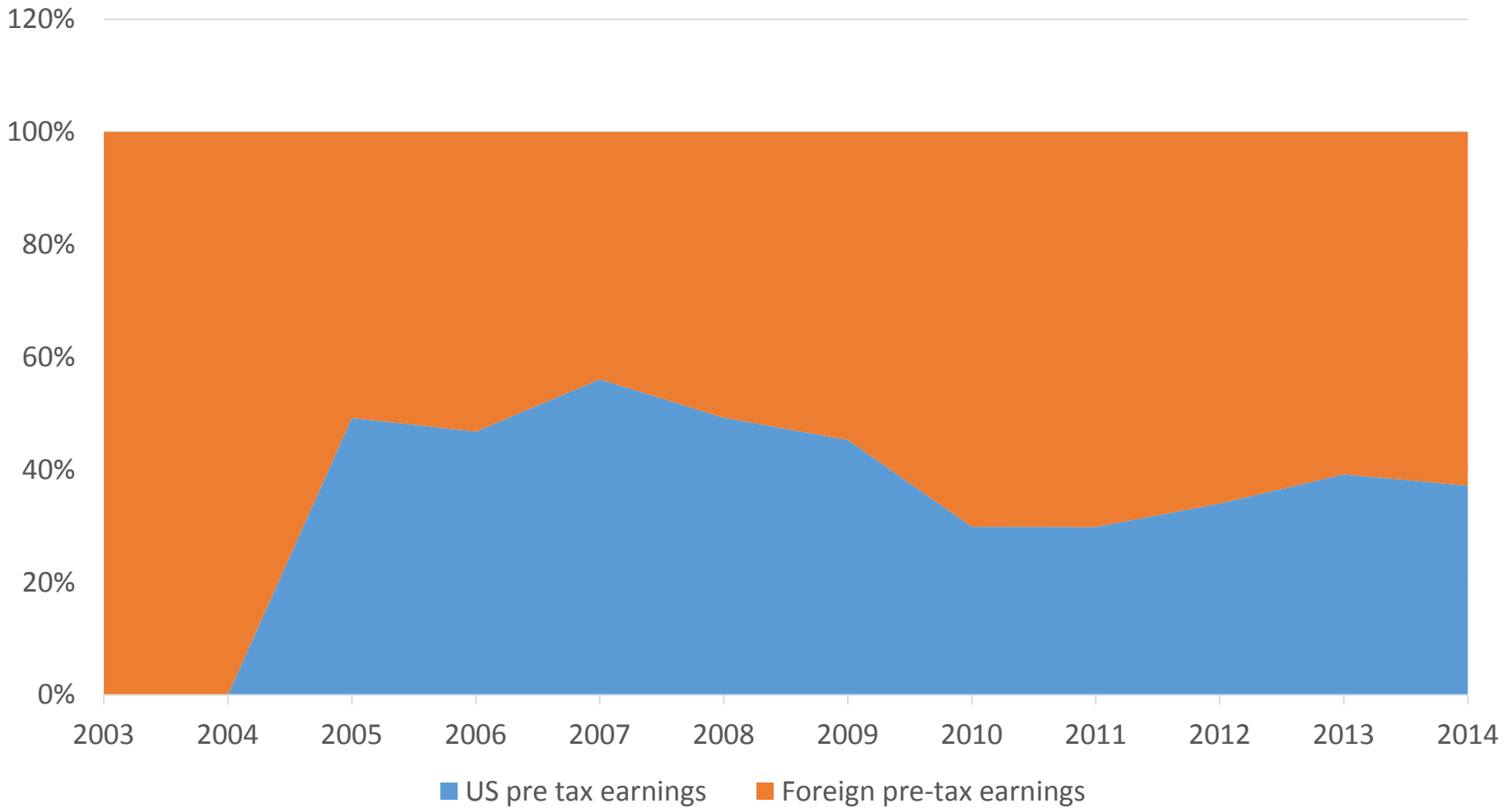
How are tax payments distributed  
across regions/countries?

### Global Distribution of Net Sales

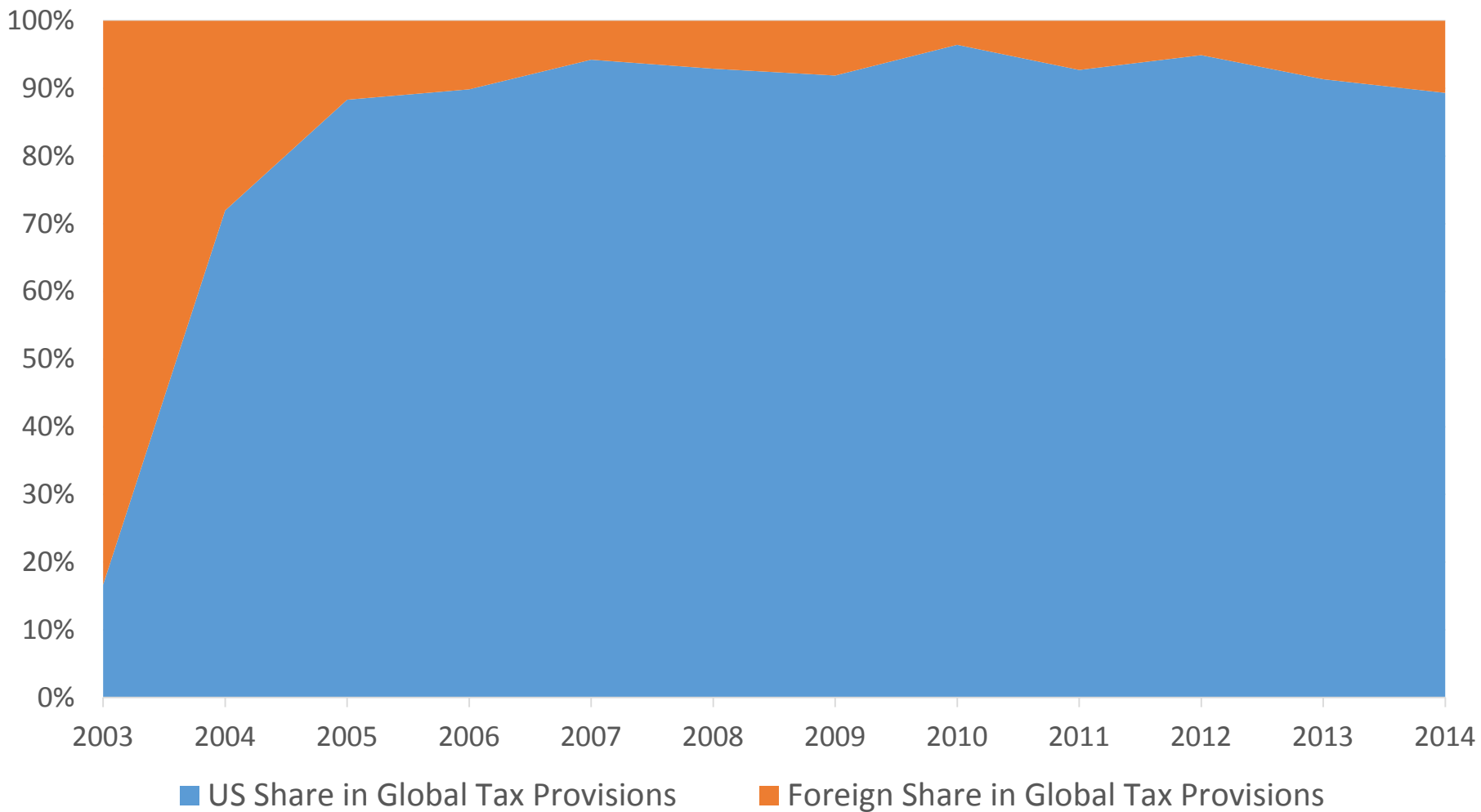


# Share of US and Foreign Earnings in Global Reported Earnings

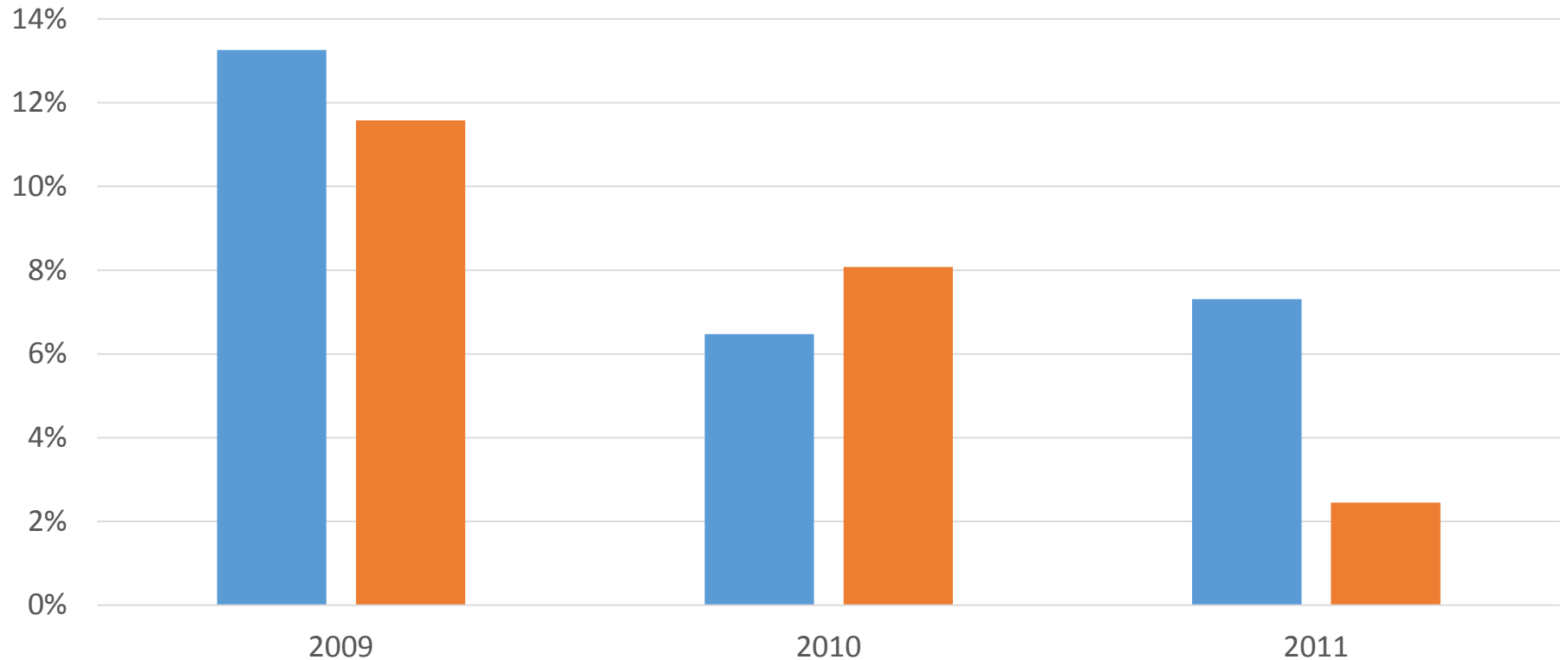
(Only Positive Earnings, 2003 and 2004: Domestic Losses)



## US and Foreign Shares in Income Tax Provision



## US and foreign cash tax paid as a share of US and Foreign income



Source: US Senate, Apple Financial Reports, Own Calculations

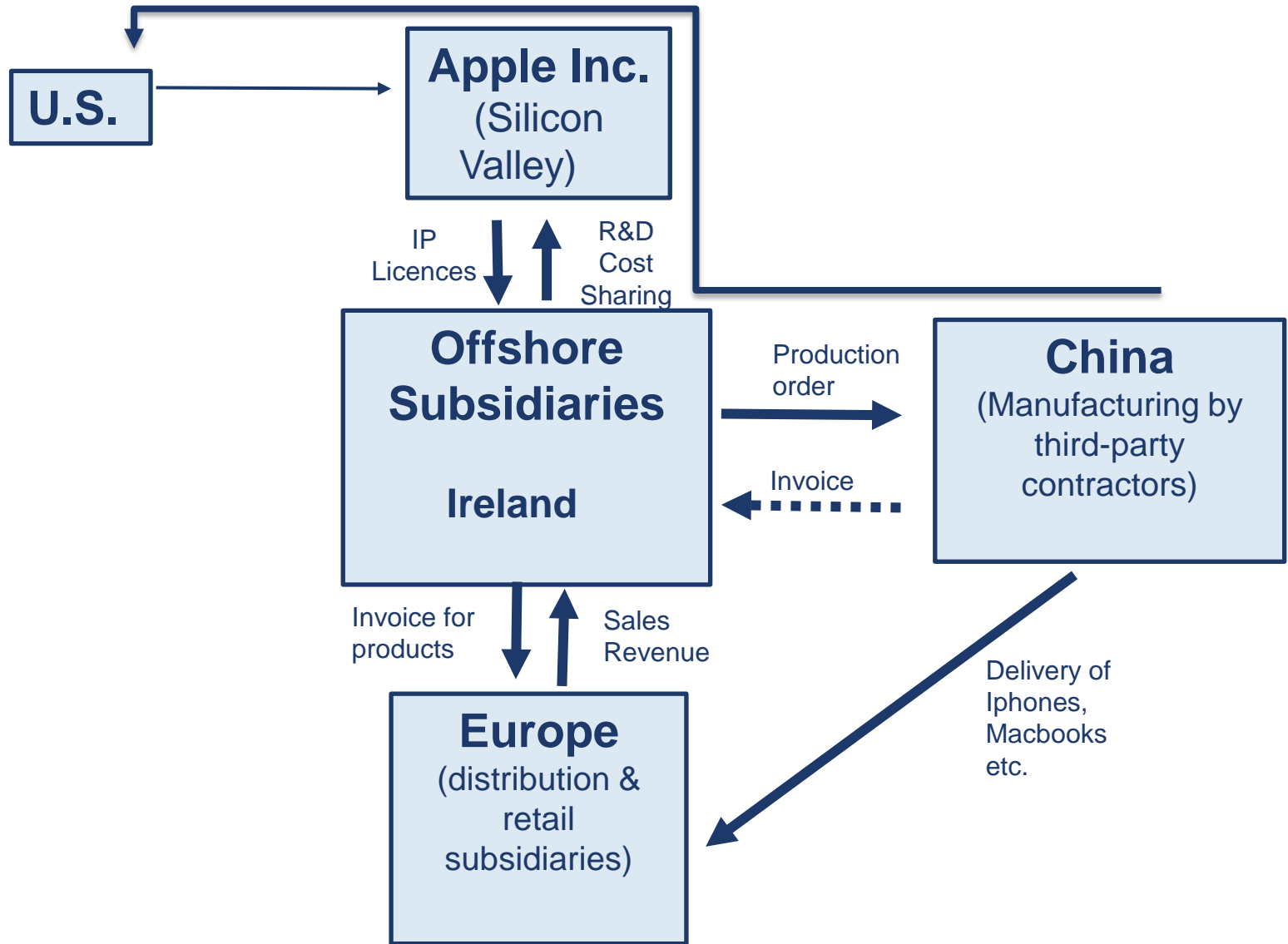
■ US tax paid as a share of domestic income ■ Foreign tax paid as a share of foreign income



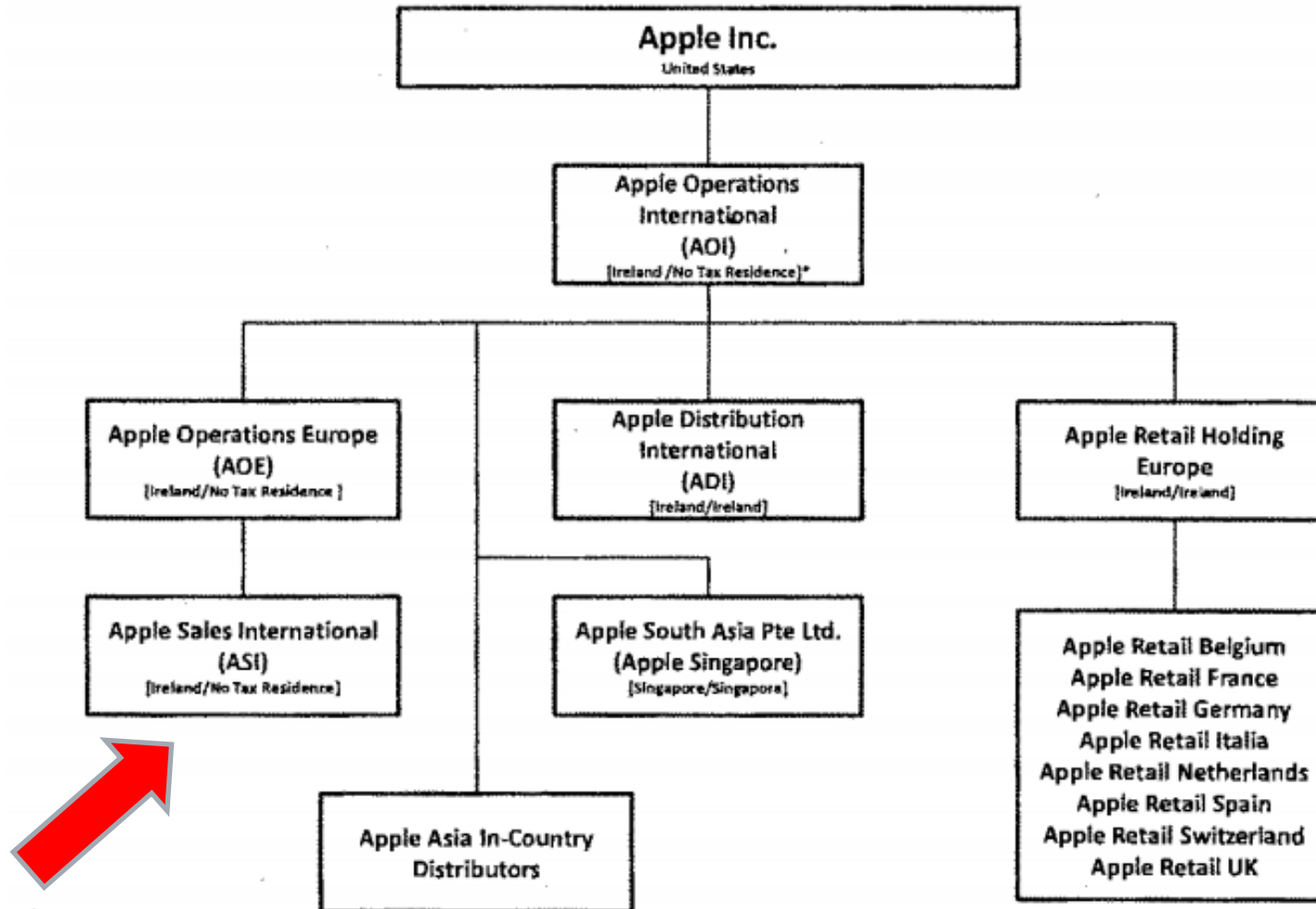
## August 30, 2016 A Message to the Apple Community in Europe:

Taxes for multinational companies are complex, yet a fundamental principle is recognized around the world: A company's profits should be **taxed in the country where the value is created.**

**In Apple's case, nearly all of our research and development takes place in California, so the vast majority of our profits are taxed in the United States... the Commission is now calling to retroactively change those rules.**



## Apple's Offshore Organizational Structure



\*Listed countries indicate country of incorporation and country of tax residence, respectively.

## Apple Sales International

- Company registered in Ireland but no tax residency (only branch)
- Makes appr. 90% of all NON-US profits

### Global Taxes Paid by ASI, 2009-2011

	2011	2010	2009	Total
<b>Pre-Tax Earnings</b>	\$ 22 billion	\$ 12 billion	\$ 4 billion	\$ 38 billion
<b>Global Tax</b>	\$ 10 million	\$ 7 million	\$ 4 million	\$ 21 million
<b>Tax Rate</b>	0.05%	0.06%	0.1%	0.06%

Source: Apple Consolidating Financial Statements, APL-PSI-000130-232 [Sealed Exhibit]

3. Why does the Commission want Apple to pay 13  
bn Euros?

## Why 13 bn Euros?

- Overall foreign profits 2003-2014: 151 bn USD
- Share ASI (average 2009-2011): 91,6 per cent, 139 bn
- Convert to Euros (0,765 Euro per USD): 106 bn Euros
- Multiply by 12,5% (Irish corporate tax rate): **13 bn Euros**
- **Note:** These are 90% of Apple's global, not European foreign profits



## 4. Conclusions

- Apple is a good example of multinational tax planning made possible by the existing system
- To a large extent the Apple case is a conflict between countries for taxing rights, less multinational company vs governments
- Reform is necessary, but distribution of taxing rights is controversial – country of IP production? Country of final consumption?
- ‚Ryan-Trump Corp. Tax‘ would be effective as a means against tax avoidance (if applied internationally)

- For state aid control Apple is a borderline case: profit allocation rules as factual selectivity?
- The 13 bn Euros are based on 90% of Apple's European but partly also non European foreign profits
- Clarification regarding scope of state aid is necessary, issue of uncertainty for investors is relevant

**Thank you very much**