Panel says Apple uses firms outside US to avoid taxes (Update)

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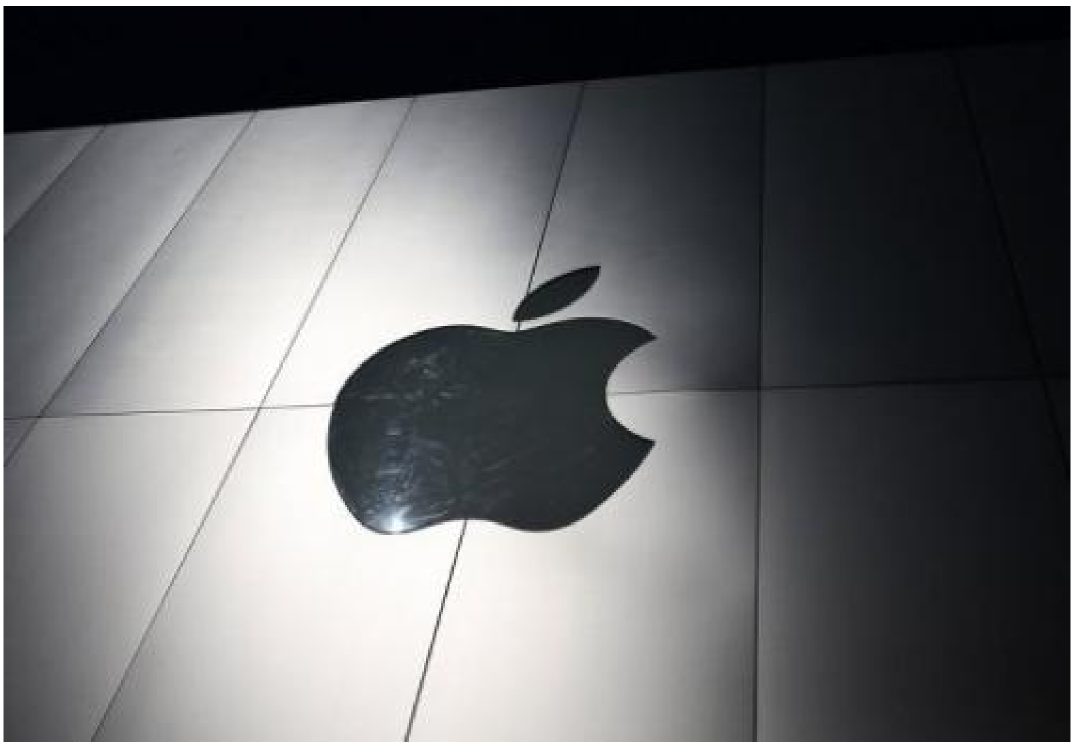

Apple avoided paying taxes on tens of billions of dollars in profits through a complex network of subsidiaries, many with "no declared tax jurisdiction," a US Senate panel has concluded.

The world's most valuable company, Apple Inc., employs a group of affiliate companies located in Ireland to avoid paying billions of dollars in U.S. income taxes, a Senate investigation has found—and its CEO will be questioned Tuesday.

Apple is holding overseas some $102 billion of its $145 billion in cash, and an Irish subsidiary that earned $22 billion in 2011 paid only $10 million in taxes, according to the report issued Monday by the Senate Permanent Subcommittee on Investigations.

The strategies Apple uses are legal, and many other multinational corporations use similar tax techniques to avoid paying U.S. income taxes on profits they reap overseas. But the report found that Apple uses a unique twist, and lawmakers are raising questions about loopholes in the U.S. tax code.

While Apple claims to be the biggest U.S. corporate taxpayer, it is also "among America's largest tax avoiders," said Sen. John McCain, the panel's senior Republican.

Apple CEO Tim Cook, the company's chief financial officer and its tax chief are scheduled to testify and explain the company's tax strategy Tuesday at a subcommittee hearing. Apple spokesmen didn't immediately respond to a request for comment Monday.

The spotlight on Apple's tax strategy comes at a time of fevered debate in Washington over whether and how to raise revenues to help reduce the federal deficit. Many Democrats say the government is missing out on collecting billions because companies are stashing profits abroad and avoiding taxes. Republicans want to cut the corporate tax rate of 35 percent and ease the tax burden on money that U.S. companies make abroad, saying the move would encourage companies to invest at home.

The subcommittee's members could hold up Apple as an example of a powerful company using its privileged position to avoid taxes while ordinary Americans must pay them. The subcommittee last year derided executives from other technology giants over similar allegations.

Apple refuted the subcommittee's assertions in testimony prepared for Tuesday's hearing and released to the public Monday evening. Apple said it pays "an extraordinary amount" in U.S. taxes, citing the roughly $6 billion it paid in fiscal 2012.

"Apple does not use tax gimmicks," the statement says.

Apple has made clear that given current U.S. tax rates, it has no intention of repatriating its overseas profits to the U.S.

The report estimates that Apple avoided at least $3.5 billion in U.S. federal taxes in 2011 and $9 billion in 2012 by using the strategy. The company, based in California, paid $2.5 billion in federal taxes in 2011 and $6 billion in 2012.

The subcommittee also has examined the tax strategies of Microsoft Corp., Hewlett-Packard Co. and other multinational companies, finding that they too have avoided billions in U.S. taxes by shifting profits offshore and exploiting weak, ambiguous sections of the tax code. Microsoft has used "aggressive" transactions to shift assets to subsidiaries in Puerto Rico, Ireland and Singapore, in part to avoid taxes. HP has used complex offshore loan transactions worth billions while using the money to run its U.S. operations, according to the panel.

Apple uses five companies located in Ireland to carry out its tax strategy, according to the report. The companies are located at the same address in Cork, Ireland, and they share members of their boards of directors. While all five companies were incorporated in Ireland, only two also have tax residency in that country. That means the other three aren't legally required to pay taxes in Ireland because they aren't managed or controlled in that country, in Apple's view.

The report says Apple capitalizes on a difference between U.S. and Irish rules regarding tax residency. In Ireland, a company must be managed and controlled in the country to be a tax resident. Under U.S. law, a company is a tax resident of the country in which it was established. Therefore, the Apple companies aren't tax residents of Ireland nor of the U.S., since they weren't incorporated in the U.S., in Apple's view.

The subcommittee said Apple's strategy of not declaring tax residency in any country could be unique among corporations.

"Apple wasn't satisfied with shifting its profits to a low-tax offshore tax haven," Sen. Carl Levin, the subcommittee's chairman, said in a statement. "Apple sought the Holy Grail of tax avoidance. It has created offshore entities holding tens of billions of dollars, while claiming to be tax resident nowhere."

The subcommittee report also noted that Apple has been setting aside billions for tax bills it may never pay. As previously reported by The Associated Press, the overlooked asset that Apple has been building up could boost its profits by as much as $10.5 billion. However, Apple has been lobbying to change U.S. law so it can erase its tax liabilities in a less conspicuous fashion.

In its second quarter ended March 31, Apple posted its first profit decline in 10 years. Net income was $9.5 billion, or $10.09 a share, down 18 percent from $11.6 billion, or $12.30 a share, in the same period a year ago. Revenue increased 11 percent, to $43.6 billion.

Apple said in April that it will distribute $100 billion in cash to its shareholders by the end of 2015. The company is expanding its share buyback program to $60 billion, the largest buyback authorization in history, and is raising its quarterly dividend by 15 percent, to $3.05 a share.

In Monday's regular trading session, Apple's stock rose $9.67, or 2.23 percent, to close at $442.93.

President Barack Obama has proposed using the tax code to encourage companies to move jobs back to the U.S. and discourage them from shifting jobs abroad. Many in both top political parties say they want to overhaul the entire tax code, but there are vast differences in how they would do so.