Special Committee on Tax Crimes, Tax Evasion, and Tax Avoidance

(TAX3)

COMMITTEE MEETING
OF
21 JUNE 2018

Hearing on "Lessons learnt from the Paradise Papers"

Panel II: Alleged aggressive tax planning schemes within the EU

Background information for an exchange of views with Multinational Corporations[1]

NIKE

[1] Document prepared by the TAX3 Secretariat

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I. General Information

Company description from Reuters

(Source: Reuters Company Profile as of 15 June 2018)

NIKE, Inc., incorporated on September 8, 1969, is engaged in the design, development, marketing and selling of athletic footwear, apparel, equipment, accessories and services. The Company's operating segments include North America, Western Europe, Central & Eastern Europe, Greater China, Japan and Emerging Markets. The Company's portfolio brands include the NIKE Brand, Jordan Brand, Hurley and Converse. The Company sells its products to retail accounts, through its retail stores and Internet Websites, and through a mix of independent distributors and licensees across the world. The Company's products are manufactured by independent contractors.

As of May 31, 2016, the Company focused its NIKE brand product offerings in nine categories: Running, NIKE Basketball, the Jordan Brand, Football (Soccer), Men's Training, Women's Training, Action Sports, Sportswear (its sports-inspired lifestyle products) and Golf. Men's Training includes its baseball and American football product offerings. The Company also markets products designed for kids, as well as for other athletic and recreational uses, such as cricket, lacrosse, tennis, volleyball, wrestling, walking and outdoor activities. The Company's athletic footwear products are designed primarily for specific athletic use. Its products are also worn for casual or leisure purposes. The Company also sells sports apparel. The Company also markets apparel with licensed college and professional team and league logos.

The Company competes with Adidas, ASICS, Li Ning, Lululemon Athletica, Puma, V.F. Corporation and Under Armour.

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Annual Report
(Source: Nike 2017 Annual Report)

Domestic and International Markets

For fiscal 2017, NIKE Brand and Converse sales in the United States accounted for approximately 46% of total revenues, compared to 47% and 46% for fiscal 2016 and fiscal 2015, respectively. In the United States, NIKE has six significant distribution centers located in Memphis, Tennessee, two of which are owned and four of which are leased.

For international markets in fiscal 2017, non-U.S. NIKE Brand and Converse sales accounted for 54% of total revenues, compared to 53% and 54% for fiscal 2016 and fiscal 2015, respectively. We sell our products to retail accounts, through our own Direct to Consumer operations and through a mix of independent distributors, licensees and sales representatives around the world. We sell to thousands of retail accounts and ship products from 60 distribution centers outside of the United States. During fiscal 2017, NIKE's three largest customers[2] outside of the United States accounted for approximately 12% of total non-U.S. sales.

Taxation

Nike is subject to the tax laws in the United States and numerous foreign jurisdictions. Current economic and political conditions make tax rules in any jurisdiction, including the United States, subject to significant change. There have been proposals to reform U.S. and foreign tax laws that could significantly impact how U.S. multinational corporations are taxed on foreign earnings. Although they cannot predict whether or in what form these proposals will pass, several of the proposals considered, if enacted into law, could have an adverse impact on Nike's income tax expense and cash flows. They earn a substantial portion of their income in foreign countries and are subject to the tax laws of those jurisdictions.

Portions of their operations are subject to a reduced tax rate or are free of tax under various tax holidays and rulings that expire in whole or in part from time to time. These tax holidays and rulings may be extended when certain conditions are met, or terminated if certain conditions are not met. If the tax holidays and rulings are not extended, or if Nike fails to satisfy the conditions of the reduced tax rate, their effective income tax rate would increase in the future.

Financial Information for Fiscal Year ending December 31st, 2017

(Source: Fortune 500)

	$ millions	**% change**
Revenues ($M)	$34,350	6.1%
Profits ($M)	$4,240.0	12.8%
Assets ($M)	$23,259	
Total Stockholder Equity ($M)	$12,407	
Market Value — as of March 29, 2018 ($M)	$108,094	

[2] No indication is given in Nike 2017 Annual Report of the names of these three customers.

Income Tax for Previous Years ending on May 31st

(Source: Nike 2017 Annual Report)

	2017	2016	2015
Federal income tax rate	**35.0%**	35.0%	35.0%
State taxes, net of federal benefit	**1.1%**	1.1%	0.9%
Foreign earnings	**-20.7%**	-18.2%	-14.8%
Resolution of a U.S. tax matter	**-3.2%**	—%	—%
Other, net	**1.0%**	0.8%	1.1%
Effective Income Tax Rate	**13.2%**	18.7%	22.2%

The effective tax rate for the year ended May 31, 2017 was 550 basis points lower than the effective tax rate for the year ended May 31, 2016 primarily due to a one-time benefit in the first quarter of the fiscal year related to the resolution with the U.S. Internal Revenue Service (IRS) of a foreign tax credit matter and a decrease in foreign earnings taxed in the United States.

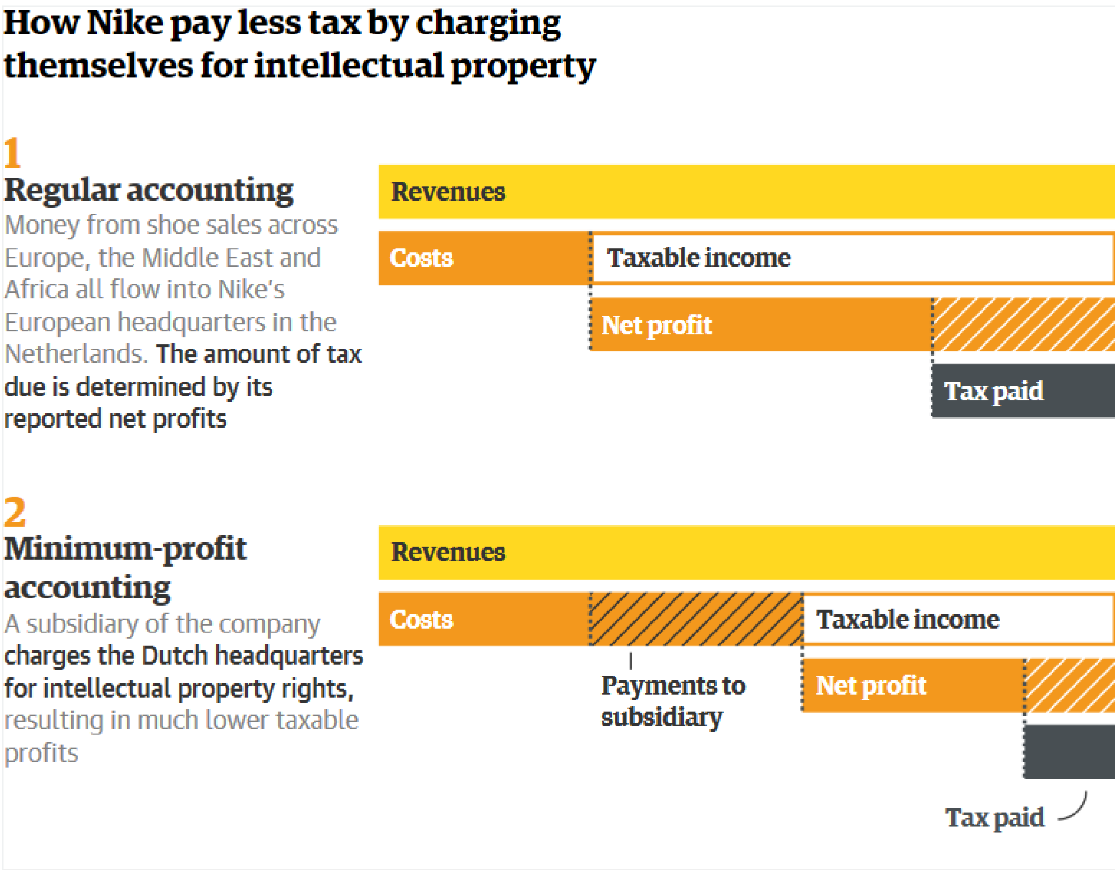
The effective tax rate for the year ended May 31, 2016 was 350 basis points lower than the effective tax rate for the year ended May 31, 2015 primarily due to an increase in the proportion of earnings from operations outside of the United States, which are generally subject to a lower tax rate.

Documents/Articles on Taxation

(Source: CBC)

- In 2005, Dutch authorities effectively signed off on a 10-year tax avoidance agreement with Nike which started in June 2005; this agreement allowed the company to shift billions of dollars in profits from Europe to the tax haven of Bermuda.

(Source: Guardian)



Guardian graphic | Nikolaus Kommenda, Josh Holder and Cath Levett

- The sales revenue of shoes sold in London do not flow into Nike's main British subsidiary, Nike UK Ltd; the sales revenue flows out of the UK into the Netherlands

- There are two companies at the heart of Nike's Dutch operations; the two companies pay "some tax on the near \$8 bn -£6bn- of revenue they receive from Nike sales Europe, the Middle East and Africa"

- In 2014, Nike changed its strategy; given that its deal with the Netherlands was due to expire, Nike agreed with Dutch authorities to move the company's intellectual property from Nike International Ltd in Bermuda to another subsidiary; this subsidiary was known as Nike Innovate CV.

(Source ICIJ)

- The initials "CV" stand for "commanditaire vennootschap" which is governed by Dutch law.

- Under the Dutch law, profits made through a CV are regarded as if they were made by the partners. As such, these earnings have been made outside the Netherlands and cannot be taxed there. Other countries, meanwhile, see the picture differently. They see Dutch CVs as much like regular companies and regard the taxing rights as belonging to the Dutch.

- In effect, a CV that is owned by partners outside the Netherlands can be entirely stateless, and as a result taxless.

- In tax-avoidance circles, this confusion is much sought after and is known as a "hybrid mismatch."

(Source: World Commerce Review)

- A CV has at least one general partner and one limited partner. Limited partners are liable only for the debts of the CV up to the amount of their partnership contribution. General partners are fully liable for the debts of the CV and are therefore usually limited liability companies, also in other jurisdictions.

(Source: Aspen Group Limited)

- As long as the Dutch C.V. is not resident in the Netherlands, it does not need to maintain books or file accounts or tax returns in the Netherlands; however, the Dutch C.V. must be registered in the Chamber of Commerce.

- When the limited partner is an individual, inheritance taxes are not levied. The partnership agreement must determine that if one of the limited partners dies, the C.V. can be dissolved and the assets are distributed to the partners in accordance with the terms of the partnership agreement. Alternatively, the assets can be held by the C.V. for persons stated in the partnership agreement. This shall effectively create a new limited partner.

- If the general partner is an individual who is not considered, a Dutch person for tax purposes, that is, a Dutch resident, then s/he shall not be subject to Netherlands inheritance taxes.

(Source: Guardian)

- Nike is not the only multinational to use the CV model. Many of the US's largest multinationals use similar subsidiaries.

- The CV model, and the one that preceded it in Bermuda, appear to have helped Nike substantially reduce its global tax rate. In May, Nike's offshore mountain of accumulated profits was worth more than $12bn. And its global tax rate has fallen from 34.9% in 2007 to 13.2% last year.

(Source: Transparency EU)

- These kind of 'hybrid mismatches', as they are called in technical jargon, have been recently addressed by the EU in its Anti-Tax Avoidance Directive (ATAD) and should cease to exist in 2020.

Sources:

http://www.cbc.ca/news/business/nike-tax-avoidance-tax-loophole-netherlands-bermuda-1.4380596

https://www.theguardian.com/news/2017/nov/06/nike-tax-paradise-papers

https://transparency.eu/just-tax-it/

http://fortune.com/fortune500/nike/

https://www.reuters.com/finance/stocks/company-profile/NKE

https://s1.q4cdn.com/806093406/files/doc_financials/2017/ar/docs/nike-2017-form-10K.pdf

http://www.worldcommercereview.com/publications/article_pdf/273

http://www.aspenoffshore.com/files/docs/2013/01/a_guide_to_dutch_limited_partnerships_2.pdf

https://www.icij.org/investigations/paradise-papers/swoosh-owner-nike-stays-ahead-of-the-regulator-icij/