

## 22 Ireland Apple escrow fund

**22.1** The Ireland Apple escrow fund is a multi-billion-euro fund held under the terms of a formal agreement between the Minister for Finance (the Minister) and Apple Sales International Limited and Apple Operations Europe Limited (jointly referred to as Apple), pending the final outcome of legal challenges to the findings of a State aid investigation undertaken by the European Commission (the Commission). The investment and management of the fund is jointly overseen by the Minister and Apple. The Minister delegated his functions in that regard to the National Treasury Management Agency (NTMA).

### Origin of the escrow fund

**22.2** In June 2014, the European Commission opened a formal investigation procedure into the tax opinions issued by the Revenue Commissioners in 1991 and 2007 to Apple. The investigation was focused on establishing whether these opinions conferred any advantage on the Apple Ireland subsidiaries relative to competitors, such that they constituted State aid.

**22.3** In August 2016, the Commission issued a decision ('the Commission's decision') concluding that Ireland had given illegal State aid to Apple.<sup>1</sup>

**22.4** The Commission ordered Ireland to recover, from Apple, the alleged State aid plus interest, related to a ten-year period from 2003 up to 2014.<sup>2</sup> The Commission estimated that the State aid allegedly granted was in the order of €13 billion. Both the Irish Government and Apple separately appealed the Commission's decision.

**22.5** Notwithstanding Ireland's appeal against the Commission's decision, the Irish Government complied with its obligation to recover the alleged State aid plus interest from Apple. The Minister agreed with Apple that the amounts collected would be held in an escrow fund until the legal process is completed.

**22.6** The Revenue Commissioners computed the alleged State aid to be collected by reference to the Commission's decision. The sum was €13.1 billion plus interest of €1.2 billion. Apple transferred €14.3 billion into the escrow account in 2018.<sup>3</sup>

**22.7** In July 2020, the General Court of the European Union issued its judgement in respect of the appeal case. The Court annulled the Commission's decision that Ireland had granted unlawful State aid to Apple.

**22.8** The Commission lodged an appeal of the Court judgement. As a result, the monies will remain in escrow pending a final decision by the European Court. This process of litigation could take a number of years. The Court has yet to set a date for the appeal hearing and is not obliged to provide a minimum notice period for a hearing date. Department of Finance officials have indicated that the timing of the appeal hearing is entirely at the Court's discretion.

<sup>1</sup> Commission Decision on State Aid SA.38373 of 30 August 2016.

<sup>2</sup> Article 9, Chapter V of the Commission Regulation (EC) No 794/2004 of 21 April 2004. The Ireland Apple case is the largest State aid recovery ever ordered.

<sup>3</sup> Figures in this report have been rounded.

## Oversight and management of the fund

- 22.9** Placement of the funds in an escrow account allows the escrow parties (the Minister and Apple) to determine jointly how these funds are invested until a final judgement by the European Court, and the ultimate owner of the fund is determined.
- 22.10** In April 2018, the Minister and Apple entered into an escrow framework deed. This sets out the detailed legal arrangements governing the collection of funds from Apple, how they are to be managed and any required releases from the escrow account. The arrangements for oversight, management and monitoring of the fund are summarised in Annex 22A.

## Investment strategy

- 22.11** The investment principles and parameters for the escrow fund are set out in the investment policy. The objective of the investment policy is to preserve the capital value of the escrow fund to the greatest extent possible in light of the prevailing market conditions. The agreed risk appetite in respect of the escrow fund is 'low', with investments permitted only in securities that have a low degree of inherent risk, such as highly rated fixed income securities of short to medium-term duration. The investment committee periodically reviews the ongoing appropriateness of the investment policy.<sup>1</sup>
- 22.12** The escrow fund is exposed to a variety of market, liquidity and credit risks. The risk management programme for the fund seeks to minimise the potential adverse effects of the risks on its financial performance.
- 22.13** The management and monitoring of risks is carried out by the investment managers. The escrow agent/custodian independently monitors compliance by the investment managers with their mandates and reports to the NTMA and Apple on a daily basis. The mandates issued to the investment managers are consistent with the investment policy for the fund. Compliance with the investment policy is considered by the investment committee on a quarterly basis. Regular meetings are held between the investment committee and the investment managers to review the investment managers' performance and that of the overall escrow fund.

<sup>1</sup> The investment committee comprises three representatives of the NTMA and three representatives of Apple. An NTMA representative chairs the committee.

<sup>2</sup> As a consequence of the Minister's delegation of the investment functions, the NTMA is required to prepare annual financial statements to be audited by the Comptroller and Auditor General, and to be presented (following audit) to the Houses of the Oireachtas. This arises from the terms of Section 12 of the NTMA Act 1990.

<sup>3</sup> The financial statements of the escrow fund are prepared pursuant to Section 28(5) of the National Treasury Management Agency (Amendment) Act 2000.

## Performance of the escrow fund

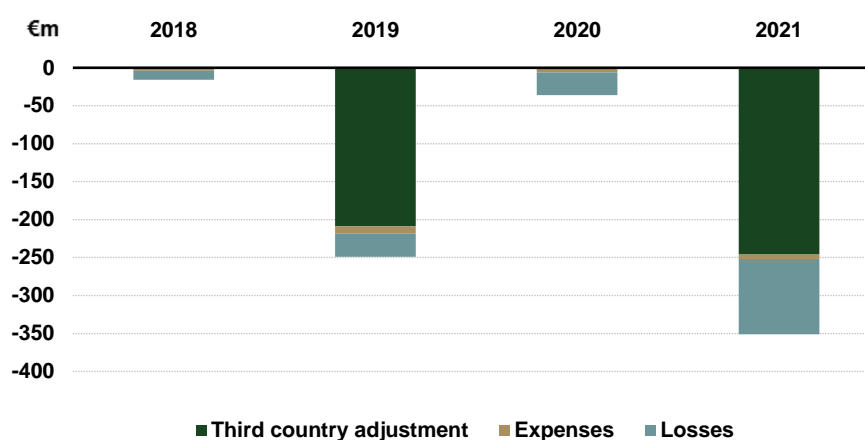
- 22.14** The financial statements of the escrow fund are prepared in accordance with International Financial Reporting Standards (IFRS), as directed by the Minister.<sup>2,3</sup> All financial assets of the escrow fund are priced at fair value, which is the quoted market value at the close of trading on the period-end date.
- 22.15** In line with the investment policy, the escrow fund is invested in highly rated euro-denominated fixed income securities, or held as cash and cash equivalents. Fixed income securities include sovereign, quasi-sovereign and corporate bonds. Cash and cash equivalents include cash and other short-term investments (with maturities of three months or less).
- 22.16** At 31 December 2021, the total assets held in the escrow fund amounted to €13,635 million (31 December 2020: €13,986 million).

**22.17** The total net assets of the fund reduced in 2021 by €351 million to €13,633 million (2020: €13,984 million).<sup>1</sup> The reduction was primarily due to a ‘third country adjustment’ amounting to almost €246 million (see below). The remaining €105 million decline in value for the year reflects the current negative interest rate environment and negative yields on highly rated euro sovereign and quasi-sovereign bonds, and fund operating expenses.

**22.18** The escrow fund incurred operating costs of €6 million during 2021 (2020: €7 million). Operating costs include investment managers’ fees, escrow agent/custodian’s fees and other fees.

**22.19** Figure 22.1 shows the movement in the fund’s net assets each year, from 2018 to 2021.

**Figure 22.1 Movement in the fund’s net assets — 2018 to 2021**



Source: Financial Statements of the Ireland Apple Escrow Fund, 2018 to 2021

### *Third country adjustment*

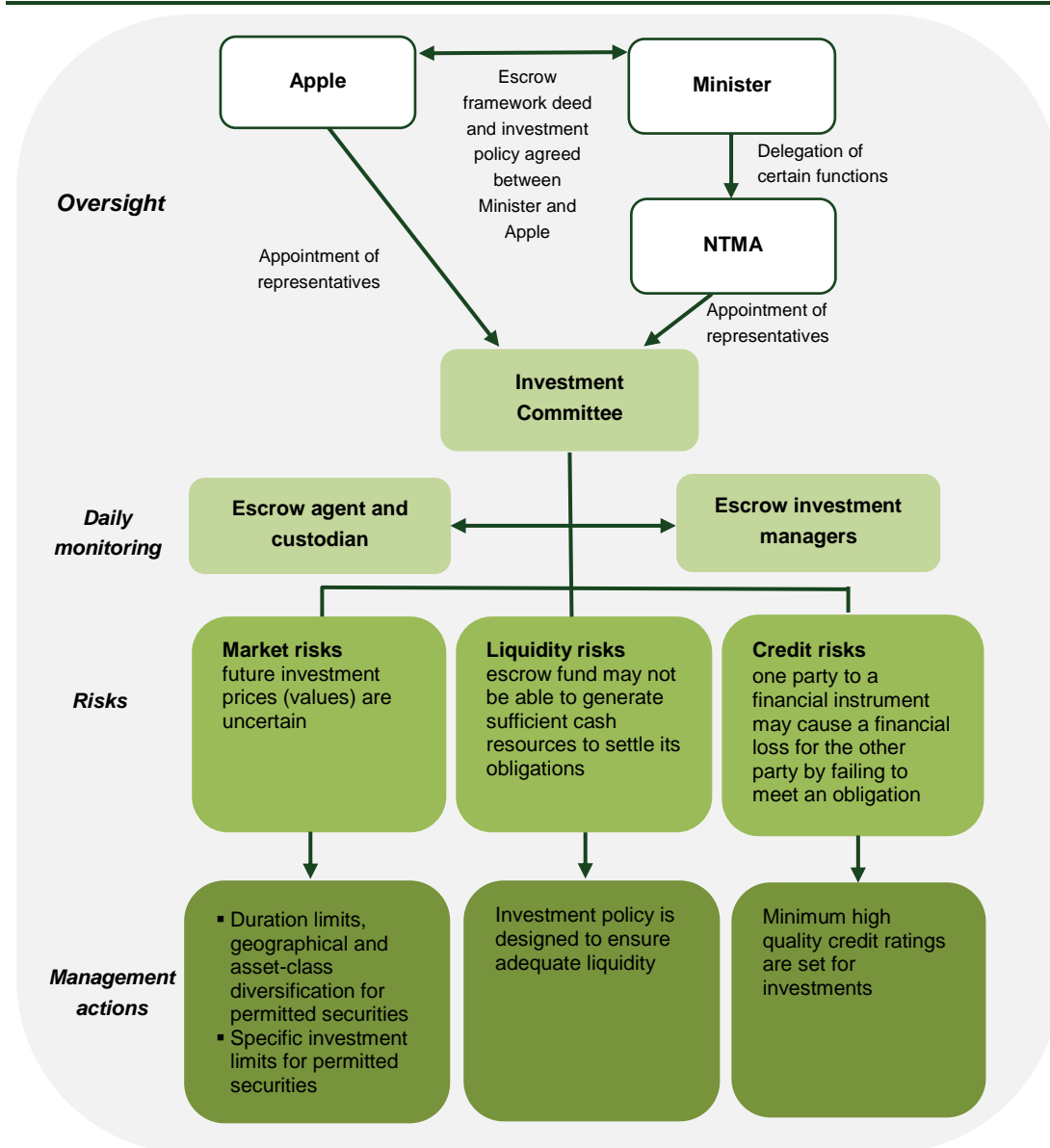
**22.20** The Commission’s decision noted that the profits to be subjected to tax in Ireland for the period covered by the decision could be reduced if Apple was required to pay taxes in another jurisdiction in respect of (some of) the same profits. Such reductions are referred to as ‘third country’ adjustments and are provided for in the escrow framework deed. The Minister for Finance determines the validity of any third country adjustment applications made by Apple in accordance with the escrow framework deed.

**22.21** In April 2021, Apple made a claim for a third country adjustment. On 25 May 2021, following the appropriate determinations by the Minister for Finance, with advice from the Revenue Commissioners, €246 million was transferred from the fund to Apple in respect of the claim.

<sup>1</sup> The difference between the total assets and the total net assets is liabilities of the fund outstanding at the year-end.

**Annex 22A**

**Figure 22A.1 Oversight, management and monitoring of the escrow fund<sup>a,b,c</sup>**



Source: Financial Statements of the Ireland Apple Escrow Fund, 2021. Analysis by the Office of the Comptroller and Auditor General.

- Notes:
- a The role of The Bank of New York Mellon, London Branch (BNYM) as the escrow agent and custodian is to open and maintain escrow bank/securities accounts as well as to hold, apply and realise the escrow funds in accordance with the terms and conditions of the escrow agent/custodian agreement.
  - b The investment managers — Amundi Asset Management, BlackRock (Netherlands) BV and Goldman Sachs Asset Management International — are responsible for the management of investments in accordance with an investment manager mandate to preserve the fund's capital to the greatest extent possible in light of prevailing market conditions.
  - c The escrow fund is held by BNYM, as escrow agent and custodian. The investment and management of the escrow fund is jointly overseen by the Minister and Apple Sales International Limited and Apple Operations Europe Limited through an investment committee. The Minister for Finance is the beneficial owner for the duration of the escrow fund in accordance with the agreed escrow framework deed.