



Press and Information

General Court of the European Union
PRESS RELEASE No 90/20
Luxembourg, 15 July 2020

Judgment in Cases T-778/16, Ireland v Commission,
and T-892/16, Apple Sales International and Apple
Operations Europe v Commission

The General Court of the European Union annuls the decision taken by the Commission regarding the Irish tax rulings in favour of Apple

The General Court annuls the contested decision because the Commission did not succeed in showing to the requisite legal standard that there was an advantage for the purposes of Article 107(1) TFEU¹

In 2016 the Commission adopted a decision² concerning two tax rulings issued by the Irish tax authorities (Irish Revenue) on 29 January 1991 and 23 May 2007 in favour of Apple Sales International (ASI) and Apple Operations Europe (AOE), which were companies incorporated in Ireland but not tax resident in Ireland. The contested tax rulings endorsed the methods used by ASI and AOE to determine their chargeable profits in Ireland, relating to the trading activity of their respective Irish branches. The 1991 tax ruling remained in force until 2007, when it was replaced by the 2007 tax ruling. The 2007 tax ruling then remained in force until Apple's new business structure was implemented in Ireland in 2014.

By its decision, the Commission considered that the tax rulings in question constituted State aid unlawfully put into effect by Ireland. The aid was declared incompatible with the internal market. The Commission demanded the recovery of the aid in question. According to the Commission's calculations, Ireland had granted Apple 13 billion euro in unlawful tax advantages.³

Ireland (Case T-778/16) and ASI and AOE (Case T-892/16) claimed that the General Court should annul the Commission's decision.

By today's judgment, **the General Court annuls the contested decision because the Commission did not succeed in showing to the requisite legal standard that there was an advantage for the purposes of Article 107(1) TFEU.**

According to the General Court, the Commission was wrong to declare that ASI and AOE had been granted a selective economic advantage and, by extension, State aid.

The General Court endorses the Commission's assessments relating to normal taxation under the Irish tax law applicable in the present instance, in particular having regard to the tools developed within the OECD, such as the arm's length principle, in order to check whether the level of chargeable profits endorsed by the Irish tax authorities corresponds to that which would have been obtained under market conditions.

However, the General Court considers that the Commission **incorrectly concluded, in its primary line of reasoning, that the Irish tax authorities had granted ASI and AOE an advantage as a result of not having allocated the Apple Group intellectual property licences**

¹ Article 107(1) TFEU: '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 favouring 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.'

² Commission Decision (EU) 2017/1283 of 30 August 2016 on State aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple (*notified under document C(2017) 5605*)

³ Commission press release of 30 August 2016: State aid: Ireland gave illegal tax benefits to Apple worth up to 13 billion euro.

held by ASI and AOE, and, consequently, all of ASI and AOE's trading income, obtained from the Apple Group's sales outside North and South America, **to their Irish branches**. According to the General Court, **the Commission should have shown that that income represented the value of the activities actually carried out by the Irish branches themselves**, in view of, inter alia, the activities and functions actually performed by the Irish branches of ASI and AOE, on the one hand, and the strategic decisions taken and implemented outside of those branches, on the other.

In addition, the General Court considers that the Commission did not succeed in demonstrating, in its subsidiary line of reasoning, methodological errors in the contested tax rulings which would have led to a reduction in ASI and AOE's chargeable profits in Ireland. **Although the General Court regrets the incomplete and occasionally inconsistent nature of the contested tax rulings, the defects identified by the Commission are not, in themselves, sufficient to prove the existence of an advantage** for the purposes of Article 107(1) TFEU.

Furthermore, the General Court considers that the Commission **did not prove, in its alternative line of reasoning, that the contested tax rulings were the result of discretion exercised by the Irish tax authorities** and that, accordingly, ASI and AOE had been granted a selective advantage.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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