



## PRESS RELEASE No 171/23

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Advocate General's Opinion in Case C-465/20 P | Commission v Ireland and Others

### **According to Advocate General Pitruzzella, the judgment of the General Court on 'tax rulings' adopted by Ireland in relation to Apple should be set aside**

'Tax rulings' make it possible for undertakings to apply to the tax authority for an advance decision concerning the tax treatment to which they will be subject. In 1991 and 2007, Ireland issued two tax rulings in relation to two companies of the Apple Group (Apple Sales International – ASI and Apple Operations Europe – AOE), incorporated under Irish law but not tax resident in Ireland. The rulings approved the method by which ASI and AOE proposed to determine their chargeable profits in Ireland deriving from the activity of their Irish branches. In 2016, the European Commission considered that the tax rulings, by excluding from the tax base the profits deriving from the use of intellectual property licences held by ASI and AOE, granted those companies, between 1991 and 2014, State aid that was unlawful and incompatible with the internal market and from which the Apple Group as a whole had benefitted, and ordered Ireland to recover that aid. In 2020, on the application of Ireland and ASI and AOE, the General Court of the European Union annulled the Commission's decision, finding that the Commission had not shown that there was an advantage deriving from the adoption of the tax rulings<sup>1</sup>. The Commission has lodged an appeal with the Court of Justice, asking it to set aside the judgment of the General Court.

In his Opinion, **Advocate General Giovanni Pitruzzella proposes that the Court set aside the judgment** and refer the case back to the General Court for a new decision on the merits.

According to the Advocate General, the General Court committed a series of errors in law when it ruled that the Commission had not shown to the requisite legal standard that the intellectual property licences held by ASI and AOE and related profits, generated by the sales of Apple products outside the USA, had to be attributed for tax purposes to the Irish branches. The Advocate General is also of the view that the General Court failed to assess correctly the substance and consequences of certain methodological errors that, according to the Commission decision, vitiated the tax rulings. In the Advocate General's opinion, it is therefore necessary for the General Court to carry out a new assessment.

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case; otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

Unofficial document for media use, not binding on the Court of Justice.

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

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Images of the delivery of the Opinion are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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<sup>1</sup> Judgment of 15 July 2020, [T-778/16](#), Ireland v Commission, and [T-892/16](#), Apple Sales International and Apple Operations Europe v Commission (see also [press release No 90/20](#)).