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Judgment of the Court in Joined Cases C-555/22 P | United Kingdom and Others v Commission, C-556/22 P | ITV v Commission and Others and C-564/22 P | LSEGH (Luxembourg) and London Stock Exchange Group Holdings (Italy) v Commission and Others (Taxation of profits of CFCs)

### **The Court annuls the Commission decision finding certain United Kingdom rules on the taxation of controlled foreign companies (CFCs) to be State Aid incompatible with the internal market and sets aside the judgment of the General Court confirming that decision**

*The Commission and the General Court erred in law in finding that the rules applicable to CFCs constituted the appropriate reference framework for examining whether a selected advantage had been conferred.*

In 2019, the European Commission decided <sup>1</sup> that between 2013 and 2018 the United Kingdom had granted State Aid which was illegal and incompatible with the internal market to certain multinational groups by granting selective tax advantages by way of exemptions from the 'CFC charge', namely the tax due by companies established in the United Kingdom on profits of their controlled foreign companies (CFCs). It found in particular that the relevant reference framework for examining whether there was a selective advantage consisted of the rules applicable to CFCs and that the exemptions from the CFC charge were a derogation from that framework.

The United Kingdom and ITV challenged that Commission Decision before the General Court of the European Union. In 2022, the General Court delivered a judgment rejecting their actions <sup>2</sup> and upholding the Commission's arguments.

**By its judgment delivered today the Court sets aside the judgment of the General Court confirming the Commission's decision finding certain United Kingdom rules on the taxation of CFC's profit to be incompatible State Aid and annuls that decision.**

The Court recalls that the Commission, when determining the reference framework, which is the first step in examining the condition of selectivity, is in principle required to accept the Member State's interpretation of the relevant provisions of its national law, unless it is able to establish that another interpretation prevails in the case-law or the administrative practice of that Member State. In that context, it states that, when, in the light of information provided by the Member State concerned, the Commission does not have, in relation to an aid scheme, case-law or an administrative practice of the Member State concerned which substantiates its own interpretation of the national law, that interpretation can prevail over that advocated by that Member State only if the Commission is able to demonstrate that the Member State's interpretation is incompatible with the wording of the relevant provisions.

In the present case, according to the United Kingdom, the reference framework is the general corporation tax system, which is largely based on the principle of territoriality, of which the rules applicable to CFCs, in their entirety, form part. Those rules make it possible to tax CFC profits in the same way as if they would have been if they had

been generated by United Kingdom companies, where there is a sufficiently high risk that those profits result from arrangements which give rise to an artificial diversion of profits or erosion of the tax base of United Kingdom corporation tax. By contrast, according to the Commission's analysis, which was upheld by the General Court, the rules applicable to CFCs are severable from the United Kingdom's general corporation tax system and therefore constitute the relevant reference framework. The Court examines whether the interpretation advocated by the United Kingdom was compatible with the wording of the relevant provisions and finds that that was the case.

Consequently, the Court holds that the General Court erred in law in confirming, as the Commission had found in the contested decision, that the reference framework for the purpose of examining the selectivity of the exemptions at issue consisted solely of the rules applicable to CFCs. That error relating to the determination of the reference framework necessarily vitiates the whole of the analysis of the condition relating to selectivity. Therefore, the finding of that error is sufficient for the judgment of the General Court to be set aside in its entirety and the Commission decision to be annulled.

**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.

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The [full text and, as the case may be, an abstract](#) is published on the CURIA website on the day of delivery.

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<sup>1</sup> Commission [Decision \(EU\) 2019/1352](#) of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption. See also [Commission Press Release CP/19/1948](#), published the same day.

<sup>2</sup> Judgment of 8 June 2022, United Kingdom and ITV v Commission [T-363/19 and T-456/19](#).