

The ECJ Final Decision in *Apple* – A Key Milestone in the EU Fight against Tax Avoidance

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According to the [final decision](#) of the Court of Justice of the European Union (ECJ) in Case C-465/20 P (delivered on 10 September 2024), the European Commission was correct to decide in 2016 that Ireland granted unlawful aid to Apple.

Apple Case History and Past Milestones

Under Commission Decision 2017/1283 of 30 August 2016 on State aid SA. 387637 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple (summary [here](#)), the 1991 and 2007 tax rulings granted by Ireland to Apple, which endorsed a transfer pricing methodology for the allocation of profits from activities carried out by its two Irish subsidiaries and their respective branches, resulting in the allocation of Apple intellectual property (IP) licences outside of Ireland and therefore significantly reducing the annual taxable income in Ireland, conferred a selective advantage and constituted illegal State aid. The Commission ordered Ireland to recover the unlawful aid, worth EUR 13 billion.

The financial stakes of the *Apple* case are massive – for instance, in 2011, one of the Irish subsidiaries recorded a profit of approximately EUR 16 billion. On account of the contested tax rulings, around EUR 50 million were taxable in Ireland, resulting in the subsidiary paying less than EUR 10 million annual tax, which translates to an effective tax rate of about 0.05% of the annual profit (according to [Remarks by Executive Vice-President Vestager \(europa.eu\)](#)).

Ireland and Apple brought an action in front of the General Court against the Commission Decision in *Apple*. In July 2020, the General Court [ruled](#) that the European Commission did not sufficiently prove the existence of an advantage in favour of Apple and annulled the 2016 decision of the European Commission. The General Court held that the Commission failed to demonstrate methodological errors in the contested tax rulings that would have led to a reduction in the branches' chargeable profits in Ireland. The General Court confirmed that the Commission can scrutinize tax rulings under State aid rules but set a high evidentiary standard for the Commission to prove illegal State aid.

On 25 September 2020, the Commission [appealed](#) the General Court's judgment. In November 2023, Advocate General (AG) Pitruzzella of the ECJ [opined](#) that the Court should set aside the General Court's judgment of 15 July 2020 and refer the case back.

ECJ Final Decision in *Apple* and Reactions

According to the final ECJ decision in *Apple*, the General Court was mistaken to rule that the Commission had not proved sufficiently that the IP licences and related profits should have been allocated for tax purposes to the Irish branches. In particular, the General Court was held to have erred when it ruled that the Commission's primary line of reasoning was based on erroneous assessments of normal taxation under the Irish tax law

applicable in the case and when it upheld the complaints regarding the Commission's factual assessments of the activities of the Irish branches and of activities outside those branches.

More concretely, the ECJ confirmed the Commission's approach that the IP licences held by Apple's Irish subsidiaries and the related profits should have been allocated to the Irish branches.

In a [press release](#) issued on the same day as the decision, Executive Vice-President Margrethe Vestager, in charge of competition policy, remarked that the ECJ judgment "is a win for the Commission. It is also a win for the level playing field in the Single Market, and for tax justice". According to the Irish government's [reaction](#), also issued on the same day, "[t]he Irish position has always been that Ireland does not give preferential tax treatment to any companies or taxpayers. [...] Ireland will of course respect the findings of the Court regarding the tax due in this case".

The *Apple* decision is the latest in a series of ECJ judgments in well known cases departing from investigations launched by the Commission with respect to the compatibility of Member States' tax ruling practices with EU State aid law. Developments in these cases have recently unfolded at the two courts of the Court of Justice of the European Union, changing the manner in which future investigations might be tackled.

Preliminary Remarks

The structure in *Apple* is certainly not possible nowadays, with Ireland [changing](#) its rules regarding residence and the attribution of profits to branches of non-resident companies operating therein, but also in light of changes following from the BEPS project and, especially, in the wake of the implementation of the [Minimum Taxation Directive](#) (2022/2523). Even so, the ECJ decision marks an important victory for the European Commission and is a significant development in the European Union's efforts to tackle aggressive tax planning. The decision reinforces the need to comply with State aid rules and will influence future tax disputes – there are still [open formal investigations](#) by the Commission in the *Ikea*, *Nike* and *Huhtamäki* cases. The victory is particularly significant for the Commission after several setbacks in the *Fiat* (C-885/19 P), *Amazon* (C-457/21 P) and *Engie* (C-451/21_P) cases.

It is noteworthy to look at the use of the reference system in the ECJ's *Apple* decision in the context of the earlier *Fiat* and *Amazon* decisions. In *Fiat*, the ECJ noted that "the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Guidelines) can only be used in a selectivity analysis if they are specifically referenced in national provisions". In *Amazon*, the Court noted that "the OECD Guidelines can be of practical importance only if Luxembourg tax law makes explicit reference to them" (see, for details, [Brief Overview of the ECJ Advocate General's Opinion in the UK CFC Group Financing Exemption and a Trip Down Memory Lane, Revisiting Analogous State Aid Cases](#)). The ECJ takes a different approach in *Apple*, noting that "the findings of the General Court caused it in particular to rule ... that the Commission had not erred when it relied on the arm's length principle ... and when it relied, in essence, on the *Authorised OECD Approach for the purposes of applying that provision*, while taking into account the allocation of assets, functions and risks between those branches and the other parts of those companies. Those findings must be taken as read, in so far as they have not been validly called into question by the other parties in the context of the present appeal" (paragraph 124 of the judgment; emphasis added).

The judgment also notes that "the Court explicitly acknowledged that, contrary to Ireland's contention, the application of section 25 of the TCA 97, as described by Ireland, *corresponded in essence* to the functional and factual analysis conducted as part of the first step of the *Authorised OECD Approach*" (paragraph 123 of the judgment; emphasis added). Relying on domestic legislation *corresponding in essence with international*

standards seems to be changing the narrative in the ECJ judgments analysing the compatibility of Member States' tax ruling practices with EU State aid law.

According to Executive Vice-President Vestager, the main takeaways from the *Apple* decision are as follows:

- First, even though the tax rulings do not escape EU State aid control, Member States have the exclusive competence to define their corporate taxation system.
- Second, the Commission can exercise control to avoid that undertakings receive unfair tax advantages through rulings that derogate from national law, domestic case law or administrative practice.
- Once Member States have exercised their fiscal sovereignty, the tax administration needs to abide by its own rules. The Commission carries the burden of proving that Member States deviated from their own parameters.

The *Apple* decision is impacting the fine balance between Member States' sovereignty and EU intervention through State aid control, and it is worth watching the dynamics unfolding as a direct outcome of the case.

IBFD references

- For links to IBFD summaries of the final Commission decisions, IBFD summaries of ECJ judgments and the latest news reports, IBFD articles and papers on cases investigating the compatibility of Member States' tax ruling practices with EU State aid law, see the [State Aid and Tax Rulings Tax Dossier](#).
- For more details on harmful tax competition and forbidden State aid, see [C. Valério & S. Kale, Direct Taxation](#), Global Topics IBFD.
- [A. Xygka, 2023: The Year of State Aid Developments](#), 64 Eur. Taxn. 5 (2024), Journal Articles & Opinion Pieces IBFD.
- EU tax law developments are reported in the daily IBFD [Tax News Service](#).