COURT OF JUSTICE
OF THE EUROPEAN UNION

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Judgment of the Court in Case C-465/20 P | Commission v Ireland and Others

Tax rulings: the Court of Justice sets aside the judgment of the General Court concerning tax rulings issued by Ireland in favour of Apple

The Court of Justice gives final judgment in the matter and confirms the European Commission's 2016 decision: Ireland granted Apple unlawful aid which Ireland is required to recover

In 2016, the European Commission decided that companies belonging to the Apple Group had, from 1991 to 2014, received tax advantages that constituted State aid granted by Ireland. That aid related to the tax treatment of profits generated by Apple's activities outside the United States. In 2020, the General Court annulled the Commission's decision, holding that the Commission had not sufficiently established that those companies enjoyed a selective advantage. On appeal, the Court of Justice sets aside the judgment of the General Court and gives final judgment in the matter, conversely confirming the Commission's decision.

In 1991 and 2007, Ireland issued two tax rulings in favour of two companies in the Apple Group (Apple Sales International (ASI) and Apple Operations Europe (AOE)). Both companies were incorporated in Ireland but not tax resident in Ireland. Those tax rulings approved the methods used by ASI and AOE to determine their chargeable profits in Ireland in relation to the trading activity of their respective Irish branches.

In 2016, the European Commission found that, by excluding from the tax base the profits generated by the use of intellectual property licences held by ASI and AOE, on the ground, essentially, that the head offices of those companies were located outside Ireland and management of those licences depended on decisions taken at the level of the Apple Group in the United States, the tax rulings had, from 1991 to 2014, conferred on those companies State aid that was unlawful and incompatible with the internal market, and from which the Apple Group as a whole had benefited. The Commission therefore ordered Ireland to recover the aid [1]. According to Commission estimates, Ireland had given illegal tax benefits worth €13 billion to Apple [2].

In 2020, in actions brought before it by Ireland and by ASI and AOE, the General Court annulled the Commission's decision, ruling that the Commission had been unable to show that there was a selective advantage that arose from the adoption of the tax rulings at issue and resulted in a preferential reduction of the tax base in Ireland [3].

By its judgment, on appeal by the Commission, the Court of Justice **sets aside the judgment of the General Court and gives final judgment in the matter**.

According to the Court of Justice, the General Court erred when it ruled that the Commission had not proved sufficiently that the intellectual property licences held by ASI and AOE and related profits, generated by sales of Apple products outside the United States, should have been allocated, for tax purposes, to the Irish branches. In particular, the General Court 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 raised by Ireland and by ASI and AOE regarding the Commission's factual assessments of the activities of the Irish branches of ASI and AOE and of activities outside those branches.

After setting aside the judgment under appeal, the Court of Justice considers that the state of the proceedings is such that it may give final judgment in the actions, and that it should do so within the limits of the matter before it. In that context, the Court confirms in particular the Commission's approach according to which, under the relevant provision of Irish law relating to the calculation of tax payable by non-resident companies, the activities of the branches of ASI and AOE in Ireland had to be compared not to activities of other Apple Group companies, for example a parent company in the United States, but to those of other entities of those companies, particularly their head offices outside Ireland.

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 and, as the case may be, an abstract of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ✆ (+352) 4303 3355.

Pictures of the delivery of the judgment are available from "Europe by Satellite" ✆ (+32) 2 2964106.

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[1] 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.

[2] Commission press release IP/16/2923 of 30 August 2016.

[3] Judgment of the General Court of 15 July 2020, *Ireland* v *Commission*, T-778/16 and T-892/16; see also Press Release No 90/20.