



The Apple case decision on State Aid: the General Court annuls the decision issued by the European Commission against Apple and Ireland

On 15 July 2020, the General Court of the European Union ("GCEU") issued its judgment in cases T-778/16, *Ireland v. Commission*, and T-892/16, *Apple Sales International and Apple Operations Europe v Commission*, thereby annulling the decision taken by the European Commission with regard to the Irish tax rulings that allegedly favoured Apple (the "Tax Rulings").

The Tax Rulings were issued on 29 January 1991 and 23 May 2007 in favour of two Irish companies of the Apple group (Apple Sales International and Apple Operations Europe, respectively "ASI" and "AOE"). In particular, the Tax Rulings endorsed the methods used by ASI and AOE to determine their taxable profits in Ireland, with respect to the trading activity carried out by their respective Irish branches. According to the Commission, by means of those rulings Ireland granted to Apple a selective tax treatment, which constituted an illegal state aid under EU law. In this respect, the Commission maintained that the Tax Rulings artificially lowered the tax paid by Apple in Ireland since 1991 and gave Apple a significant advantage as compared to other businesses that were subject to Irish domestic tax law. Pursuant to the Commission's estimation, Ireland granted Apple with a 13 billion euro unlawful tax advantage.

As previously mentioned, the GCEU discharged those allegations. First, it found that the Commission incorrectly concluded that Ireland had granted to ASI and AOE an advantage as result of not having allocated to their Irish branches certain Apple IPs and, consequently, all of ASI and AOE's profits deriving from Apple's sales outside Americas. According to the General Court, the Commission should have shown that those profits represented the value of the activities actually carried out by the Irish branches, as established on the basis of a proper functional analysis.

Second, the General Court found that the Commission did not succeed in demonstrating that the choice to use the operating costs of the Irish branches as profit level indicator for transfer pricing purposes, was inappropriate and led to the granting of an advantage. In particular, according to the GCEU, the Commission should have proven not only that the transfer pricing methodology endorsed in the Tax Rulings presented certain technical deficiencies, but also that an advantage stemmed from those deficiencies in the form of an actual reduction of the tax burden otherwise normally due in Ireland.

Finally, the GCEU concluded that the Commission did not succeed in showing that the Irish tax authorities exercised, in the Tax Rulings, a broad discretion that resulted in a more favourable treatment given to ASI and AOE as compared with other companies in comparable situations.

For further information: **Maisto e Associati**

Milan

Piazza F. Meda 5
20121
T: +39.02.776931

Rome

Piazza d'Aracoeli 1
00186
T: +39.06.45441410

London

2, Throgmorton Avenue
EC2N 2DG
T: +44.207.3740299

This newsletter is intended to provide a first point of reference for current developments in Italian law. It should not be relied on as a substitute for professional advice. If further information or advice is required please refer to your Maisto e Associati contact or info@maisto.it.

Copyright © 2020 Maisto e Associati

