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By PwC Deutschland | 08. November 2022

ECJ: Advance tax rulings adopted by Luxembourg not illegal State aid

The European Court of Justice in its judgment on two joined cases held today that the General Court wrongly upheld the Commission's decision on State aid as regards the "tax rulings" issued by the Luxembourg tax authorities. The General Court erred when confirming the reference framework used by the Commission to apply the arm's length principle to integrated companies in Luxembourg but failing to consider the specific rules implementing that principle in that Member State.

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Background

In 2012, the Luxembourg tax authorities adopted a tax ruling in favor of Fiat Chrysler Finance Europe ('FFT'), by which it approved a methodology for determining FFT's remuneration for certain intragroup services, which enabled FFT to determine its Luxembourg corporate income tax liability on a yearly basis. In October 2015, the Commission found that that tax ruling constituted State aid incompatible with the internal market within the meaning of Article 107 TFEU.

Luxembourg and FFT each lodged an appeal before the General Court seeking annulment of the Commission decision. By its judgment of 24 September 2019, the General Court dismissed the actions brought by Luxembourg and by FFT. With their respective appeals, FFT (C-885/19 P) and Ireland (C-898/19 P) requested that this judgment be set aside.

ECJ decision

The ECJ granted the appeal and annuls the decision of the Commission, finding that its analysis of the reference system and the existence of a selective advantage granted to FFT to be erroneous

In its decision the ECJ further states that, contrary to the considerations of the General Court as Court of First Instance, the previous ECJ judgment in *Belgium and Forum 187 v Commission* (case ref. C 182/03 et C 217/03) does not support the view that the arm's length principle is applicable where national tax law tends to tax integrated companies and autonomous companies in the same way, irrespective of whether, and in what way, that principle is incorporated in that law. Indeed, in this case, it was about the taxation rules set out in the relevant national law, namely Belgian law, that the ECJ concluded that the arm's length principle should be applied.

In the light of this, the ECJ sets aside the judgment under appeal, annuls the contested decision in so far as the error made by the Commission in determining the rules applicable under the relevant national law and, consequently, in identifying the so-called 'normal' taxation in the light of which the anticipatory decision at issue was to be assessed, undermines the entire reasoning as to the existence of a selective advantage.

The ECJ also points out that the annulment of the judgment of the General Court, which erred in law, cannot be prevented by reason of the fact that the Commission also included in the contested decision a justification based on Article 164(3) of the Luxembourg Tax Code and the related Circular. The ECJ considers that this reasoning merely refers to the Commission's main analysis of the correct application of the reference system, so that it only apparently rectifies the Commission's error in identifying the reference system which should have formed the basis of its analysis of the existence of a selective advantage.

Source

ECJ **judgment of 13 October 2022 on joined cases** C?885/19 P *Fiat Chrysler Finance Europe v Commission* and C?898/19 *P Ireland v Commission and Others*

Further details on the judgment on the joined cases to be found in the ECJ's **press release No. 178/22** from

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Takeaway

This is likely to be an extremely important judgment as it represents the first time the European Court of Justice has addressed the substantive arguments in the recent State aid cases concerning transfer pricing rulings. It remains to be seen the impact this judgment will have in the other ongoing cases and investigations State aid and tax measures.
(The takeaway is an excerpt from the PwC EUDTG Newsalert from 10 November 2022 which will be available in due time on the **EUDTG website**).

Schlagwörter

illicit state aid, tax rulings