



Dear Sir/Madam,

The CFE ECJ Task Force has prepared an [Opinion Statement](#) on the General Court decisions of 24 September 2019, in Cases C-760/15 & T-636/16, *The Netherlands v. Commission (Starbucks)*, and Cases T-755/15 and T-759/15, *Luxembourg v. Commission (Fiat Finance and Trade)*, on State Aid granted by transfer pricing rulings. These decisions are the first of a series of expected judgments concerning the legality of the EU Commission's decisions considering as prohibited State Aid some transfer pricing rulings granted by Member States to multinational enterprises.

The General Court reaches different verdicts in the decisions. Whereas in *Starbucks* it annulled the Commission's decision, in *Fiat* it upholds it, ordering Luxembourg to recover the aid. Despite the different outcomes, the judgments have several commonalities as to how the General Court has interpreted the applicable European law on State Aids to tax matters. Therefore, they may provide an indication of how the Court will decide similar pending cases. In addition, the judgments are of paramount importance to understand: i) the role and limits of the Commission in reviewing rulings granted by Member States; ii) the role of the OECD's arm's length principle and of the OECD Transfer Pricing Guidelines in assessing the Treaty on the Functioning of the European Union's prohibition of State Aid, and; iii) the level of evidence that has to be provided by the parties in these procedures.

The importance of these two judgments should not yet be over-emphasised. Although the Commission has apparently decided not to appeal on *Starbucks*, the appellants in *Fiat Finance* will do so, thus asking for a final resolution by the Court of Justice of the European Union. The latter is not bound to follow the General Court and may decide the matter on points on law in a way that deprives the current judgments of their jurisprudential value. That being the case, the General Court conversely would have to follow the ECJ's reasoning in future decisions as to the interpretation of EU law on State Aid.

In the meantime, however, these judgments are the best guidelines that MNEs and Member States have (and will have in the near future) as concerns the admissibility of their transfer pricing rulings in light of the EU State Aid rules. The CFE acknowledges the clarifications brought by the General Court's decision as concerns the admissibility of the Commission's action in checking the compatibility of Member States' transfer pricing rulings with the TFEU's prohibition of State Aid, particularly as concerns the burden of proof.

However, the CFE hopes that the ECJ will bring further clarity to the technical specifics of the arm's length principle such as the admissibility of one-sided methods (such as the transactional net margin method) and the permissible leeway used to assess Member States' measures in light of Art. 107(1) of the TFEU, as that "tool" is based only on the broad principle of Member States' market-based corporate income tax systems. The CFE notes that the new concepts and criteria are not sufficiently clear and leave ample room for divergent interpretations. The CFE is concerned by the impact on legal certainty that this situation creates for businesses across Europe, particularly taking into account that the recovery of aid may be requested for up to the ten previous years.

We invite you to read the [Opinion Statement](#), and remain at your disposal for any queries you may have.

Kind regards,

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