



Dear Sir or Madam,

CFE Tax Advisers Europe has [published](#) an Opinion Statement prepared by the CFE ECJ Task Force on the cases *Ireland v Commission* (T-778/16) and *Apple Sales International and Apple Operations Europe v Commission* (T-892/16), decided by the General Court (GC) on the 15 July 2020. This follows the earlier judgments rendered by the GC in the *Starbucks* and *Fiat* cases concerning the legality of EU Commission's (hereinafter Commission) decisions considering as prohibited State Aid some transfer pricing rulings granted by Member States to Multinational Enterprises.

The GC reached a balanced verdict: While agreeing on the fundamental point regarding the applicability of the arm's length principle to Member States' tax rulings, it concluded that the Commission had failed to apply that principle so as to prove a selective advantage had been granted by the Irish revenue authorities. The Commission lodged an appeal against the GC's judgment before the CJEU (C-465/20 P).

The CFE welcomes the clarifications brought by the GC's judgment as regards the admissibility of the Commission's action in checking the compatibility of Member States' tax rulings with the TFEU's prohibition of State aid, in particular with respect to the Commission's evidentiary burden to show that a ruling provides a selective advantage and the need to take account of the inaccuracies inherent in the transfer pricing methodology when assessing the existence of State aid.

The CFE appreciates the GC's methodological clarifications concerning of the notions of advantage and selectivity, and the need to derive the methodology to be applied in the context of the allocation of profits to a branches of non-resident companies from the domestic law of a Member State, so that the Commission is permitted to use the arm's length principle and the Authorized OECD Approach as tools to assess the correct amount of taxation only

where a sufficient basis for this application can be found in that Member State's domestic law.

In light of the pending appeal in *Apple* before the CJEU, the CFE alerts to the deficits of legal certainty that might be created from a more expansive interpretation of the Commission's powers to interfere with the ordinary application of domestic tax rules for businesses across Europe, particularly taking into account that the recovery of aid may be requested 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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EU Transparency Register No. 3543183647-05
