



**BRUSSELS | 5 JUNE 2023**

## **EC: Future of State Aid Rules Depend on Apple Case**

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The European Commission legal representative at the Apple case hearing said the future of fiscal state aid depends on the European Court of Justice position in the Apple case. Paul-John Loewenthal said it depends on the ECJ whether certain EU Member states will still be allowed to grant MNEs preferential tax deals in return for jobs and investment.

Under the tax arrangement with Apple, Ireland's Revenue allowed Apple's Irish branches and subsidiaries to pay an effective tax rate on its European profits of 1% in 2003 and 0,005% of tax in 2014, according to the European Commission assessment.

Lawyers for Apple argued that the Irish Apple structure did not aim to avoid tax entirely, merely deferring U.S. taxes on foreign earnings. Ireland and Apple,

supported by Luxembourg, are challenging the European Commission's assessment in Case [C-465/20 P Commission vs. Ireland and Others](#).

Recently, Advocate General Kokott issued an Opinion in Case C-454/21 P | *Engie Global LNG Holding and Others v Commission* and C-451/21 P | *Luxembourg v Commission*, in which she largely disagrees with the General Court judgment which confirmed the European Commission's approach in this fiscal State aid case, suggesting that the EU institutions should not use State aid law to shape an EU Member state (ideal) tax system.

The Opinion argues that the Commission can only look at the 'outliers' to assess tax rulings under State aid law: the discretion enjoyed by the Member States in tax assessment would exceed its limits if they abused their tax law in order to grant advantages to individual undertakings in circumvention of the rules on State aid, only when there is manifest error or inconsistency as happened in the case of Gibraltar. Compliance with State aid law should be a concern only with manifestly discriminatory issues, to avoid the EU courts becoming supreme tax courts.

## CFE Opinion Statement on Official Ruling 57:2023 of the Italian Central Tax Office on Intervening Fixed Establishments in a VAT Context

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The CFE has issued an [Opinion Statement](#) on Official Ruling 57/2023 given by the Italian Central Tax Office.

This Opinion Statement explains the views of CFE Tax Advisers Europe concerning the Official Ruling 57/2023 given by the Italian Central Tax Office (Agenzia delle Entrate – Divisione Contribuenti – Direzione Centrale Grandi Contribuenti e Internazionale) on 17 January 2023 on intervening fixed

establishments in a VAT context. CFE is issuing this Statement because we consider that it is material to the correct treatment of intra-Community supplies.

We invite you to read the [statement](#) for further analysis and remain available for any queries you may have.

## EU Customs Reform Proposals Published

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The European Commission has published proposals setting out plans for the most comprehensive overhaul of the EU Customs Union system since its being established in 1968. The reform aims to respond to modern pressures on the Union, including hugely increased trade volumes, e-commerce and the number of EU standards that must be checked at the EU Customs border.

*According to the Commission, "The measures proposed present a world-leading, data-driven vision for EU Customs, which will massively simplify customs processes for business, especially for the most trustworthy traders. A new EU Customs Authority will oversee an EU Customs Data Hub which will act as the engine of the new system. Over time, the Data Hub will replace the existing customs IT infrastructure in EU Member States, saving them up to €2 billion a year in operating costs. The new Authority will also help deliver on an improved EU approach to risk management and customs checks."*

The **three pillars of EU Customs Reform** are comprised of:

**A new partnership with business** - businesses that want to bring goods into the EU will be able to log all the information on their products and supply chains into a single online environment: the new **EU Customs Data Hub**. This cutting-edge technology will compile the data provided by business and – via machine learning, artificial intelligence and human intervention – provide authorities with a 360-degree overview of supply chains and the movement of goods. At the

same time, businesses will only need to interact with one single portal when submitting their customs information and will only have to submit data once for multiple consignments. In some cases where business processes and supply chains are completely transparent, the most trusted traders ('Trust and Check' traders) will be able to release their goods into circulation into the EU without any active customs intervention at all. The Trust & Check category strengthens the already existing Authorised Economic Operators (AEO) programme for trusted traders.

**A smarter approach to customs checks** - Member States will have access to real-time data and will be able to pool information to respond more quickly, consistently and effectively to risks. Artificial intelligence will be used to analyse and monitor the data and to predict problems before the goods have even started their journey to the EU. This will allow EU customs authorities to focus their efforts and resources where they are needed most: to stop unsafe or illegal goods from entering the Union and to uphold the growing number of EU laws that ban certain goods that go against common EU values – for example in the field of climate change, deforestation, forced labour, to give just a few examples. It will also help to ensure proper collection of duties and taxes, to the benefit of national and EU budgets. To help Member States prioritise the right risks and coordinate their checks and inspections – especially during times of crisis – information and expertise will be pooled and assessed at EU level via the new **EU Customs Authority** acting on the data provided through the EU Customs Data Hub.

**A more modern approach to e-commerce** - Platforms will be responsible for ensuring that customs duties and VAT are paid at purchase, so consumers will no longer be hit with hidden charges or unexpected paperwork when the parcel arrives. With online platforms as the official importers, EU consumers can be reassured that all duties have been paid and that their purchases are safe and

in line with EU environmental, safety and ethical standards. At the same time, the reform abolishes the current threshold whereby goods valued at less than €150 are exempt from customs duty, which is heavily exploited by fraudsters. Up to 65% of such parcels entering the EU are currently undervalued, to avoid customs duties on import. The reform also simplifies customs duty calculation for the most common low-value goods bought from outside the EU, reducing the thousands of possible customs duty categories down to only four.

More information and the legislative proposals can be accessed [here](#).

## Save the Date: CFE, ICAEW & PwC Event "*A Gender Equal Tax System in Europe: Reflections for a New Agenda*" - 4 July 2023

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On 4 July 2023 p.m., CFE Tax Advisers Europe, the ICAEW Women in EU Finance Network and PwC will co-host a panel discussion at the European Parliament on the topic of "*A Gender Equal Tax System in Europe: Reflections for a New Agenda*".

Gender equality in fiscal affairs is a matter of fairness, well-being and growth. While the EU has taken steps to include a gender perspective in all stages of policy design significant challenges remain – including when it comes to tax. The structure and administration of tax systems often still have different impacts on gender.

As the EU starts to look ahead towards a new legislative term, what would it take to establish a truly inclusive tax system by 2030? What needs to be done to ensure that future changes to tax systems help drive gender equality as well as responding to Europe's green, digital and growth ambitions? Speakers will offer views and reflections on a pathway towards a more gender equal tax

system by 2030, and address questions such as: what are the key features of tax system designed to help reduce gender inequality and what is lacking today; what do policymakers and tax administrations need to do to in the next EU legislative period to build a tax system that is gender equal, green, digital and competitive; and, what lessons can be learnt from international best practice.

Further details concerning speakers and registration will be made available in due course.

## Global Forum Develops Model Administrative Compliance Strategy for Automatic Exchange of Information

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As part of its [Strategy to unleash the potential of AEOI for developing countries](#), the Global Forum Secretariat is developing toolkits and e-learning courses to facilitate the implementation of the AEOI standard. As such, it has [developed](#) a Model Administrative Compliance Strategy in order to *"assist jurisdictions in developing, improving and implementing their own administrative compliance strategy to ensure the effectiveness of the [Standard for Automatic Exchange of Financial Account Information in Tax Matters](#) (AEOI)."*

The Model Strategy, the CRS Notification Tracking tool, and the Methodology for implementation of the risk-based approach have all been launched this year, and complement the [Toolkit for the Implementation of the Standard for Automatic Exchange of Financial Account Information](#), which was released in 2021.

The assessment tool and its user guide are available on demand to all interested jurisdictions in English. French and Spanish versions will be made available in due course.

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