



EUROPEAN COMMISSION

PRESS RELEASE

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State aid: Commission investigates transfer pricing arrangements on corporate taxation of Apple (Ireland) Starbucks (Netherlands) and Fiat Finance and Trade (Luxembourg)

The European Commission has opened three in-depth investigations to examine whether decisions by tax authorities in Ireland, The Netherlands and Luxembourg with regard to the corporate income tax to be paid by Apple, Starbucks and Fiat Finance and Trade, respectively, comply with the EU rules on state aid. The opening of an in-depth investigation gives interested third parties, as well as the three Member States concerned, an opportunity to submit comments. It does not prejudice the outcome of the investigation.

Commission Vice President in charge of competition policy Joaquín Almunia said: *"In the current context of tight public budgets, it is particularly important that large multinationals pay their fair share of taxes. Under the EU's state aid rules, national authorities cannot take measures allowing certain companies to pay less tax than they should if the tax rules of the Member State were applied in a fair and non-discriminatory way."*

Algirdas Šemeta, Commissioner for Taxation, said: *"Fair tax competition is essential for the integrity of the Single Market, for the fiscal sustainability of our Member States, and for a level-playing field between our businesses. Our social and economic model relies on it, so we must do all we can to defend it."*

The Commission has been investigating under EU state aid rules certain tax practices in several Member States following media reports alleging that some companies have received significant tax reductions by way of "tax rulings" issued by national tax authorities. Tax rulings as such are not problematic: they are comfort letters by tax authorities giving a specific company clarity on how its corporate tax will be calculated or on the use of special tax provisions. However, tax rulings may involve state aid within the meaning of EU rules if they are used to provide selective advantages to a specific company or group of companies.

According to Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), state aid which affects trade between Member States and threatens to distort competition by favouring certain undertakings is in principle incompatible with the EU Single Market. Selective tax advantages may amount to state aid. The Commission does not call into question the general tax regimes of the three Member States concerned.

Tax rulings are used in particular to confirm transfer pricing arrangements. Transfer pricing refers to the prices charged for commercial transactions between various parts of the same group of companies, in particular prices set for goods sold or services provided by one subsidiary of a corporate group to another subsidiary of the same group. Transfer

pricing influences the allocation of taxable profit between subsidiaries of a group located in different countries.

If tax authorities, when accepting the calculation of the taxable basis proposed by a company, insist on a remuneration of a subsidiary or a branch on market terms, reflecting normal conditions of competition, this would exclude the presence of state aid. However, if the calculation is not based on remuneration on market terms, it could imply a more favourable treatment of the company compared to the treatment other taxpayers would normally receive under the Member States' tax rules. This may constitute state aid.

The Commission will examine if the three transfer pricing arrangements validated in the following tax rulings involve state aid to the benefit of the beneficiary companies:

- the individual rulings issued by the Irish tax authorities on the calculation of the taxable profit allocated to the Irish branches of Apple Sales International and of Apple Operations Europe;
- the individual ruling issued by the Dutch tax authorities on the calculation of the taxable basis in the Netherlands for manufacturing activities of Starbucks Manufacturing EMEA BV;
- the individual ruling issued by the Luxembourgish tax authorities on the calculation of the taxable basis in Luxembourg for the financing activities of Fiat Finance and Trade.

The Commission has reviewed the calculations used to set the taxable basis in those rulings and, based on a preliminary analysis, has concerns that they could underestimate the taxable profit and thereby grant an advantage to the respective companies by allowing them to pay less tax. The Commission notes that the three rulings concern only arrangements about the taxable basis; they do not relate to the applicable tax rate itself.

In parallel to these three formal investigations, the Commission will continue its wider inquiry into tax rulings, which covers more Member States.

Luxembourg, contrary to The Netherlands and Ireland, only provided the Commission with a limited sample of the information requested (see [IP/14/309](#)), which included the ruling for Fiat Finance and Trade, but not the complete information demanded by the Commission. The Commission has therefore initiated infringement proceedings against Luxembourg by issuing letters of formal notice.

Background

The Commission is looking at the compliance with EU state aid rules of certain tax practices in some Member States in the context of aggressive tax planning by multinationals, with a view to ensure a level playing field. A number of multinational companies are using tax planning strategies to reduce their global tax burden, by taking advantage of the technicalities of tax systems, and substantially reducing their tax liabilities. This aggressive tax planning practice erodes the tax bases of Member States, which are already financially constrained.

Regarding tax rulings specifically, the preliminary enquiries have shown that the quality and the consistency of the scrutiny by the tax authorities differ substantively across Member States. In particular, the Commission notes that **The Netherlands** seem to generally proceed with a thorough assessment based on comprehensive information required from the tax payer. The Commission therefore does not expect to encounter systematic irregularities in tax rulings. However, at this stage the Commission has concerns that the tax ruling for Starbucks Manufacturing EMEA BV is providing that

company with a selective advantage, because there are doubts whether it is in line with a market-based assessment of transfer pricing.

In the case of **Ireland**, the authorities have been fully cooperative in providing comprehensive replies in response to Commission's requests. The Commission notes that although the transfer pricing rules have been tightened over the years, the tax administration had a significant degree of discretion in the past. The Commission has concerns that such discretion has been used in the case of Apple to grant a selective advantage to that company, reducing its tax burden below the level it should pay based on a correct application of the tax rules. The Commission notes however that the number of tax rulings issued in Ireland relating to transfer pricing arrangements is limited.

The opening of formal investigations allows Member States' authorities to further explain their practices and the Commission to gather further information from interested parties.

The non-confidential versions of the decisions will be made available under the case numbers SA.38373, SA.38374 and SA.38375 in the [State Aid Register](#) on the [competition website](#) once any confidentiality issues have been resolved. New publications of state aid decisions on the internet and in the Official Journal are listed in the [State Aid Weekly e-News](#).

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