



EU Direct Tax Newsalert ***EU Commission takes next steps against Ireland and Luxembourg in Apple and Amazon State aid cases***

On October 4, 2017, the European Commission (EC) continued its ongoing challenges to Member States' transfer pricing tax regimes by advancing two high profile cases to the next stages. In the Apple case, the EC referred Ireland to the Court of Justice of the European Union (CJEU) for failing to enforce an August 2016 State aid recovery decision. In the Amazon case, the EC announced its conclusion that Luxembourg's tax treatment of Amazon gave rise to unlawful State aid.

Background

The EC has had an increased focus on tax cases since 2013 where it considers that possible State aid may have been granted by a number of EU Member States, most prominently Luxembourg, Belgium, the Netherlands, and Ireland.

The case against Ireland with regard to Apple was launched in June of 2014. The EC's final decision was rendered on August 30, 2016 concluding that Ireland had granted unlawful State aid to Apple estimated in the amount of up to EUR 13 billion and that this amount together with compound interest should be recovered immediately. Ireland lodged its appeal to the European courts against the decision on November 9, 2016, and Apple appealed on December 19, 2016. An appeal does not automatically suspend recovery proceedings and the EC's action signals its unwillingness to allow Ireland more time to complete the collection process despite acknowledged difficulties. Ireland's Department of Finance responded with a brief statement, calling the Commission's action "extremely disappointing". They stated that Ireland has been engaged in intensive work to ensure that Ireland complies with its recovery obligations as soon as possible and that the EC has been updated on the process. The Statement also affirms that "Ireland fully respects the rule of law in the European Union". The EC press release can be found [here](#). The Ireland Department of Finance statement can be found [here](#).

The case against Luxembourg with regard to Amazon was launched in October, 2014. The decision announced last week concludes that Luxembourg granted unlawful State aid to Amazon in the amount of up to EUR 250 million. The EC decision challenges the transfer pricing method that was used to calculate royalty payments from Amazon EU, a Luxembourg tax resident company, to Amazon Europe Holding Technologies (AEHT), a Luxembourg partnership. The royalties were paid with respect to intellectual property rights paid for and owned by AEHT under a cost sharing agreement. In response to the EC announcement, the Luxembourg Finance Ministry issued its own press release. The press release highlights that the investigation refers to a period back to 2006, and notes that international and legal frameworks have evolved substantially since that time. The Luxembourg Finance Ministry said that "Amazon has been taxed in accordance with the tax rules applicable at the relevant time" and accordingly "has not been granted incompatible State aid." The EC press release can be found [here](#). The Luxembourg Finance Ministry press release can be found [here](#).

Takeaway

If the CJEU finds that Ireland has failed to fulfil its obligations under the EU Treaties, Ireland will be required to take the necessary measures to comply with the court's judgment. Failure to do so could expose Ireland to possible penalty payments. The next step for the Luxembourg-Amazon case will depend on whether the decision is appealed, which seems likely. The appeals process can take several years, so a quick resolution of the case may not be likely. In the meantime, however, Luxembourg will be required to effectuate recovery of the amount identified as unlawful aid by the EC.

PwC's EU Direct Tax Group

EUDTG is PwC's pan-European network of EU law experts. We specialise in all areas of direct tax, including the fundamental freedoms, EU directives and State aid rules. You will be only too well aware that EU direct tax law is moving quickly, and it's difficult to keep up. But, it is crucial that taxpayers with an EU or EEA presence understand the impact as they explore their activities, opportunities and investment decisions. Find out more on: www.pwc.com/eudtg

Interested in receiving our free EU tax news? Send an e-mail to eudtg@nl.pwc.com with "subscription EU Tax News".

For more detailed information, please do not hesitate to contact:

Alina Macovei - PwC Luxembourg
 + 352 49 48 48 3122
alina.macovei@lu.pwc.com

Denis Harrington - PwC Ireland
 +353 (0) 872318277
denis.harrington@ie.pwc.com

Maarten Maaskant - PwC US
 +1 646 471 0570
maarten.p.maaskant@pwc.com

Jonathan Hare - PwC UK
 +44 (0)20 7804 6772
jonathan.hare@pwc.com

Hein Vermeulen - PwC Netherlands
 +31 6 20 94 10 31
hein.vermeulen@pwc.com

Emmanuel Raingeard - PwC France
 +33 155 574 014
emmanuel.raingeard@pwcavocats.com

Or contact any of the other members of [PwC's State Aid Working Group](#), or your usual PwC contact

