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Amazon and Apple Issued Rulings from the European Commission

The EC concludes that Luxembourg provided illegal tax benefits to Amazon of €250 million and refers Ireland to the European Court for failure to recover illegal tax benefits from Apple of €13 billion

On 4 October 2017, the European Commission (EC) announced two tax state aid related decisions:

- a 2003 Luxembourg Tax Ruling granted to Amazon amounted to unlawful tax state aid since it allowed Amazon to underpay around €250 million of Luxembourg tax; and
- legal proceedings would be instituted against Ireland for its non-compliance with the order of 30 August 2016 to recover over €13 billion of tax from Apple.

Amazon

Following its investigation which started in 2014, the EC has determined that certain royalties paid by Amazon EU (AEU) to Amazon Europe Holding Technologies (AEHT), an IP holding company, were not at arm's length due to the a Tax Ruling provided to Amazon by the Luxembourg authorities. The EC contends that the Ruling enabled AEU to avoid Luxembourg taxation on three quarters of the profits it made from all Amazon sales in the EU. On this basis, the EC has concluded that the Ruling granted a selective economic tax advantage to Amazon (i.e. state aid) by allowing the group to pay less tax than other companies subject to the same Luxembourg tax rules.

The EC's decision sets out a methodology for calculating the Luxembourg tax that Luxembourg should recover from Amazon (which it estimates at around €250 million plus interest).

Press comment suggests that, during this period, Amazon paid €4 billion in royalties via its European IP structure and that the Amazon European businesses reported total profits of €11 million on a business turnover of approx. €60 billion.

The Commission's decision is likely to be challenged by Luxembourg and Amazon before the European Court of Justice. Luxembourg has already confirmed it disagrees with the conclusion and will decide whether to appeal it.

Apple

In August 2016, the EC ordered Ireland to recover approx. €13 billion in tax state aid it determined was granted to Apple.

The state aid rules provide that unlawful state aid must be recovered within four months of the official notification of the EC's decision. The period can be extended in agreement with the EC if there are significant difficulties. Both Apple and Ireland have raised this argument stating that unprecedented recovery amount of the €13 billion does give rise to such difficulties; the decision is also subject to appeals. The EC has noted that while Ireland has made progress in the calculation of the aid granted to Apple, this assessment is only to be concluded at earliest by March 2018. In these circumstances, the EC has decided to refer Ireland to the Court of Justice for failure to implement the Commission decision in accordance with the EU Treaty.

Comment

These decisions reaffirm the EC's continued commitment to use state aid rules to pursue tax reform amongst multinational groups operating in the EU.

The EC's decision in relation to Amazon is the fourth in a number of EC decisions made following investigation. The other well-documented decisions include those against Apple as regards Ireland ([see here](#)), Starbucks in the Netherlands and Fiat ([see here](#)), also in Luxembourg. The EC has also ordered Belgium to recover Belgian tax from a number of large multinational companies which it had claimed received Belgian tax benefits which constituted tax state aid ([see here](#)).

Two other formal state aid investigations into individual tax rulings involving McDonald's (Luxembourg) and ENGIE (Luxembourg) remain ongoing.

Further state aid investigations into tax rulings can be expected to follow as the EC continues to review tax rulings provided by all Member States.

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