

Client Alert

Tax Practice Group

31 August 2016

EU tax ruling levies €13 billion state aid penalty on Apple

On 30 August 2016, Ireland was ordered by the EC to recover up to €13 billion from Apple on the basis that tax arrangements implemented between Apple and Ireland, originally in 1991, amounted to the provision of unlawful tax state aid in contravention of EU law. The decision clearly has very major ramifications for all multinationals in Europe – and particularly for US multinationals – which are operating under tax arrangements entered into historically with Member States and brings into much sharper focus the need for all multinationals to assess their existing tax arrangements to determine whether these give rise to adverse state aid consequences and how profits may have been allocated between different group entities.

This case builds on similar decisions by the EC last year when it concluded that the Netherlands and Luxembourg had provided unlawful tax state aid to Starbucks and Fiat respectively pursuant to tax agreements previously entered into with them – see our earlier [client alert](#) about this decision.

The Apple decision

In 1991, Apple, via its Irish branches of affiliates, concluded tax agreements with the Irish Tax Authorities under which it agreed certain tax arrangements on its European profits. In very broad terms, the impact of this agreement, according to the EC, is that Apple paid Irish corporate tax at an effective tax rate of between 1% and 0.005% (compared with the Irish "headline" corporate tax rate of 12.5%). The EC concluded that these arrangements did not correspond to economic reality and were not available to other Irish tax payers; the arrangements, therefore, gave Apple an undue advantage and distorted competition. The EC alleges that this advantage amounted to unlawful tax state aid and has, therefore, required Ireland to recover up to €13 billion, the amount of unlawful state aid given to Apple.

Apple's position, on the other hand, is, in broad terms, that the tax arrangements it entered into with Ireland were similar to those available to all companies operating there and not specific to Apple. Consequently, Apple derived no special advantage from those tax arrangements with the Irish Tax Authorities and, accordingly, no state aid was received.

For more information, contact:

Daniel Friel
+44 (0)20 7551 2110
dfriel@kslaw.com

King & Spalding
London
125 Old Broad Street
London EC2N 1AR
Tel: +44 20 7551 7500
Fax: +44 20 7551 7575

www.kslaw.com

Ireland's own position is that it did not give any tax advantage to Apple since to do so would have been unlawful under Irish and EU law.

Consequences of the decision

1. The "penalty" is vast. It is calculated on the basis of the tax that "should" have been paid, plus penalties and interest.
2. For affected companies, the rulings will very likely be litigated for a number of years ahead between the Member State and EC.
3. For other multinationals operating in the EU with tax agreements in place, it will be essential that those agreements are assessed immediately to determine if those arrangements give rise to state aid consequences.
4. Furthermore, intra-group arrangements which are in any way connected with those companies with tax agreements can be expected to be subjected to a higher level of scrutiny.
5. The immediate broader consequences will be increased political and corporate rhetoric between Member States, affected corporations, the US and the EC regarding the correctness of the EC's approach.
6. The largest US tech companies have recently warned the Netherlands that failure to preserve its special tax status will risk job losses and lower investment. It is assumed these companies will take a similar view towards other Member States, including Ireland, challenged by the EC.

Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 900 lawyers in 18 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at www.kslaw.com.

This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."