

HOUTHOFF

| European Commission (EC) | General Court |
|---|---|
| EC's decision does not breach the principle of fiscal autonomy of the member states. |  |
| Primary line of reasoning | |
| The reference framework consists of the ordinary rules of taxation of corporate profit in Ireland, the objective of which was to tax the profits of all companies subject to tax in Ireland. |  |
| Article 107(1) TFEU requires the profit allocation method to be based on the arm's length principle (ALP) , regardless of whether or not the Member State had incorporated ALP into its national legal system. |  |
| The EC was entitled to rely on the Authorized OECD Approach (AOA). |  |
| Apple has failed to allocate the profits deriving from the Apple Group's IP to ASI and AOE's branches (based on the exclusion approach), thereby acting in breach of the ALP. |  |
| <i>The EC did not succeed in showing that the Irish tax authorities granted ASI and AOE an advantage for the purposes of Article 107(1) TFEU.</i> | |
| Subsidiary line of reasoning | |
| The EC can rely on the use the TNMM in order to assess the profit allocation method endorsed by the contested tax rulings. |  |
| The Irish branches of ASI and AOE had been incorrectly chosen as tested parties . |  |
| The choice of the Irish branches' operating costs as the profit level indicator was incorrect. |  |
| Methodological errors were made regarding the levels of return of the Irish branches. |  |
| <i>The EC did not succeed in demonstrating that the methodological errors to which it had referred with regard to the profit allocation methods endorsed by the contested tax rulings, had led to a reduction in ASI and AOE's chargeable profits in Ireland.</i> | |
| Alternative line of reasoning | |
| The tax rulings departed from a reliable approximation of a market-based outcome in line with the ALP. |  |
| The contested tax rulings had been issued by the Irish tax authorities on a discretionary basis, in the absence of objective criteria related to the Irish tax system. |  |
| <i>The EC did not succeed in showing that there was a selective advantage in the present instance for the purposes of Article 107(1) TFEU.</i> | |
| Conclusion | |
| By issuing the contested tax rulings, the Irish tax authorities granted ASI and AOE an advantage for the purposes of Article 107(1) TFEU. |  |