

Fiat: Luxembourg did not grant illegal State aid

Posted 22.12.2022

In October 2015, the European Commission found that a tax ruling granted by Luxembourg to Fiat Chrysler Finance Europe ("**FFT**") in 2012 ("**Ruling**"), validating certain transfer pricing methodologies to assess the annual taxable profit of FFT, constituted State aid and ordered Luxembourg to recover from FFT the unlawful and incompatible aid. In 2019, the General Court of the European Union ("**General Court**") dismissed the actions brought by FFT and the Grand Duchy of Luxembourg and confirmed the validity of the Commission's decision.

On 8 November 2022, the Court of Justice of the EU ("**CJEU**") set aside the judgment of the General Court and annulled the Commission's decision in the Fiat Case (Joined Cases C-885/19 P and C-898/19 P, [available here](#)).

The CJEU recalled that taxation is a prerogative of Member States in the absence of EU harmonisation. The specific detailed rules for the application of the arm's length principle that are defined by national law must therefore be taken into account in order to identify the reference framework for the purposes of determining the existence of a selective advantage.

The CJEU concluded that the Commission committed an error of law in the application of Article 107(1) of the Treaty on the Functioning of the European Union by failing to take account of the specific transfer pricing rules provided for by Luxembourg law for the purposes of determining whether the Ruling has conferred a selective advantage on its beneficiary.

This decision of the CJEU was long-awaited and the outcome is key for Luxembourg taxpayers and transfer pricing experts. The Fiat Case may weaken the position of the Commission in other similar transfer pricing cases, in particular cases pending before the EU Courts concerning Amazon and Apple.

For any further information please contact us or visit our website at **www.elvingerhoss.lu**.

The information contained herein is not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific legal advice concerning particular situations.

We undertake no responsibility to notify any change in law or practice after the date of this newsletter

ELVINGER HOSS PRUSSEN

Société anonyme, Registered with the Luxembourg Bar, RCS Luxembourg B 209469, VAT LU28861577