



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
The Director-General

Brussels,
TAXUD D1/JT/ab Ares(2016) 6748249

Subject: Petition sent to President Juncker to stop dangerous tax harmonisation policy

Dear Petitioners,

The Commission's Decision in the Apple Ireland case was taken in the context of State aid control and is not about tax policy. The purpose of State aid control is to safeguard fair competition between enterprises in the internal market as laid down in Article 107 of the Treaty on the Functioning of the European Union. In this context, any economic advantage selectively granted to an undertaking by a Member State that is capable of distorting competition is considered incompatible with the internal market. This economic advantage can also take the form of a tax relief and that was at stake in the Apple Ireland case. If the Commission concludes that a Member State has granted a tax relief to an enterprise in conflict with the State aid rules, the automatic consequence is that the tax relief must be reversed. This is referred to as the "recovery" and is simply meant to restore equal treatment with other companies and ensure that the Member State involved receives the funds that it would have received without the granting of the State aid.

Taxation policy in the EU primarily falls within the competence of the Member States. As a matter of principle, Member States can therefore decide on their fiscal priorities and the levels of tax that they wish to collect in order to support their budgets.

In the field of direct taxation, the European Union (EU) holds competence under Article 115 of the Treaty on the Functioning of the European Union (TFEU) to enact all appropriate measures that directly affect the establishment or functioning of the internal market. Considering that mismatches in the interaction of disparate national tax systems, preferential regimes or other harmful national tax features distort the functioning of the internal market, the EU possesses sufficient legal ground in taking action to rectify this situation.

The Commission is in favour of smart and simple tax systems as well as of fair tax competition. It however holds the view that the level of taxation is not necessarily linked to how smart, effective, certain and fair for taxpayers a tax system can be. The tax harmonisation agenda of the Commission and more precisely, the recently re-launched Common Consolidated Corporate Tax Base (CCCTB) would create a fairer corporate tax system, without harmful preferential elements, alongside facilitating business to trade and invest cross-border in the internal market. Companies would thus pay taxes based on where their activity creates real value. It would no longer be possible for taxpayers to take advantage of loopholes in the national tax systems of some Member States and/or of mismatches. In the same vein, taxpayers would not be in a position to benefit from a special tax treatment based on selective rulings. At the same time, the CCCTB would allow cross-border groups to deal

with one tax administration in the EU and would also do away with burdensome transfer pricing formalities within the group. All these elements protect the functioning of the internal market from dysfunctions and distortions. Accordingly, national jurisdictions would retain the power to compete with each other on a more transparent basis, notable on the levels of tax rates.



Stephen Quest