

ECJ Rejects European Commission's Appeal on Amazon State Aid Case (C-457/21 P)

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On 14 December 2023, the Court of Justice of the European Union (ECJ) gave its [judgement](#) in case C-457/21 P, *Commission v. Amazon.com and Others*. The ECJ rejected the European Commission's (EC) appeal by confirming that the EC failed to establish that the tax ruling given by the Luxembourg tax authorities (LTA) to Amazon Group was incompatible with the internal market. The ECJ's judgement is in line with Advocate General's (AG) (Juliane Kokott) opinion who concluded that the transfer pricing arrangements on corporate taxation granted to Amazon constitute compatible State aid (see [ECJ Advocate General Opines that Transfer Pricing Arrangements on Corporate Taxation Granted to Amazon Are Compatible State Aid \(8 June 2023\)](#)).

For context:

- in its [decision of 2017](#), the EC found that the tax ruling issued by the LTA with respect to the treatment of intra-group royalty payments constituted illegal state aid. Essentially, the EC held that the payment of royalties arising under a licensing agreement ultimately had the effect of artificially eroding the tax base of the Luxembourg payee and broadly that of Amazon Group in Luxembourg and in Europe (see [European Commission: Luxembourg provided illegal State aid to Amazon \(4 October 2017\)](#)); and
- in its [judgement of 2021](#), the General Court of the European Union (GC) annulled the 2017 EC decision. [In particular](#), the GC held that the EC had not demonstrated to the requisite legal standard that the Luxembourg payee had benefited from an undue reduction in its tax burden and consequently that Luxembourg had not granted a selective advantage in favour of that subsidiary (see [General Court Decides on State Aid Case Concerning Transfer Pricing Arrangements on Corporate Taxation of Amazon \(Joined Cases T-816/17 et T-318/18\) \(12 May 2021\)](#)).

In its current decision, the ECJ held that the EC committed errors of law and the GC gave incorrect conclusion. Specifically, it held that:

- the GC wrongly identified the arm's length principle; and
- in absence of an autonomous existence of said principle under EU law, the EC could rely on it only if it is incorporated into the national tax law concerned, i.e. that of Luxembourg.

The ECJ therefore concluded that the EC's decision has to be annulled because the latter wrongly determined the "reference system" (and not because of the conclusions given by the GC).

The full text of the judgement can be read [here](#) (in English).

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