

State Aid: ECJ Advocate General Opines on Apple State Aid Case (*European Commission v Ireland and Others* (Case C-465/20 P)) (Direct Tax); Refers Case Back to General Court

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Report from Angelika Xygka, Associate, IBFD.

On 9 November 2023, Advocate General Pitruzzella of the Court of Justice of the European Union (ECJ) gave his [opinion](#) in the case of *European Commission v. Ireland and Others* (Case C-465/20 P) as to whether the specific transfer pricing treatment granted to Apple and its Irish branches through Ireland's tax rulings, constituted illegal State aid.

In this case, the Advocate General proposed that the Court sets aside the judgment and refers the case back to the General Court. The Advocate General concluded that the General Court committed a series of errors in law when it ruled that the Commission had not shown to the requisite legal standard that the intellectual property licences held by Apple Sales International ASI and Apple Operations Europe and related profits, generated by the sales of Apple products outside the United States, had to be attributed for tax purposes to the Irish branches. The Advocate General is also of the view that the General Court failed to assess correctly the substance and consequences of certain methodological errors that, according to the Commission decision, vitiated the tax rulings. In the Advocate General's opinion, it is therefore necessary for the General Court to carry out a new assessment.

A more substantial report containing details of the Advocate General's reasoning will be published in due course.