

What has happened?

The European Commission has today issued a negative decision in the Apple State aid case.

Ireland has been instructed by the European Commission to recover up to €13bn of alleged state aid from the company covering a ten year period.

Notwithstanding the negative decision, no fine or penalty has been imposed on the State.

The European Commission has stated that "This decision does not call into question Ireland's general tax system or its corporate tax rate". No other companies are subject to this decision by the European Commission.

Ireland's position

Ireland's position remains that the full amount of tax was paid in this case and no State aid was provided. Ireland did not give favourable tax treatment to Apple. Ireland does not do deals with taxpayers.

Appeal

Following discussion with the Taoiseach, the Minister for Finance will now seek Cabinet approval to appeal the Commission decision to the European Courts. Ireland has a period of two months and 10 days to bring an appeal. The Government will now study the decision of the European Commission in consultation with its legal advisors to prepare the grounds for an appeal.

Recovery and escrow

The Commission has stated that:

- The amount of unpaid taxes to be recovered by the Irish authorities would be reduced if other countries were to require Apple to pay more taxes on the profits recorded by Apple Sales International and Apple Operations Europe for this period.
- The amount of unpaid taxes to be recovered by the Irish authorities would also be reduced if the US authorities were to require Apple to pay larger amounts of money to their US parent company for this period to finance research and development efforts.

This illustrates the contradiction at the heart of the European Commission's decision. While requiring Ireland to recover the tax sums, the Commission is also acknowledging that the sums may in fact be taxable in other jurisdictions.

The European Commission is also incorrect to state that profits allocated to the Apple companies' head offices were not subject to tax in any country under a specific provision of the Irish tax law. This refers to a mismatch between different countries' tax rules, which by definition cannot be the responsibility of Ireland alone.

Notwithstanding the right of appeal, Ireland is legally obliged to recover the alleged state aid from Apple in the interim. Given that this money may ultimately have to be returned to the company in the event of a successful appeal, the money can be held in escrow until the case has concluded.

Ireland's track record

Ireland, as a founder member of the OECD, has been at the forefront of international tax reform. Ireland has been an early mover in implementing the OECD's Base Erosion and Profit Shifting (BEPS) project and has participated fully in important reforms at EU level through the recent Anti-Tax Avoidance Directive. Ireland is a strong supporter

of tax transparency and administrative cooperation, which are key to tackling the global problems of tax avoidance and aggressive tax planning.

International tax reform is complex and requires all countries to work together. The evidence shows that real reform is happening and delivering results, with an unprecedented level of consensus on a way forward and a demonstrable commitment to making it happen.

European Commission

Ireland acknowledges and accepts that the European Commission has a legitimate role, under the Treaties, in enforcing competition rules. It is not appropriate that EU State aid competition rules are being used in this new and unprecedented way in the area of taxation, which is a Member State competence and a fundamental matter of sovereignty.

Ireland has very real concerns about the way in which the European Commission is undermining the international consensus, impeding reform and creating uncertainty for business and investment in Europe.

Ireland is not alone in this view. The US Treasury has raised very important concerns in its recent White Paper the European Commission's State aid investigations. The US Treasury has stated that: "The Commission's new approach is inconsistent with international norms and undermines the International tax system".

Minister's comment

Speaking today, the Minister for Finance, Michael Noonan, TD, said:

"I disagree profoundly with the Commission's decision. Our tax system is founded on the strict application of the law, as enacted by the Oireachtas, without exception.

The decision leaves me with no choice but to seek Cabinet approval to appeal the decision before the European Courts. This is necessary to defend the integrity of our tax system; to provide tax certainty to business; and to challenge the encroachment of EU state aid rules into the sovereign Member State competence of taxation.

It is important that we send a strong message that Ireland remains an attractive and stable location of choice for long-term substantive investment. Apple has been in Ireland since the 1980s and employs thousands of people in Cork. The company has continued to expand its operations in Ireland in recent times."