



EUROPEAN COMMISSION
DIRECTORATE-GENERAL TAXATION AND CUSTOMS UNION
Direct taxation, Tax Coordination, Economic Analysis and Evaluation
Control of the application of EU legislation and state aid/direct taxation

Brussels, 10 March 2015
Taxud D3(2015) 1129586
4(1)(b) - CAB req\cssr\2015\Apple-report

REPORT OF MEETING

1. Meeting: Meeting with representatives of Apple regarding the ongoing investigations in tax rulings

2. Date and place: 3 March 2015, Mrs. Scoppio's office BERL, 15.30 – 16.00

3. Participants: Elena Scoppio, CAB-Moscovici

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Apple

Freshfields

4. Report

The representative of Apple started explaining why tax rulings play a very important role for companies by giving companies legal certainty. He then stated that Apple has been in Ireland since the early 80ies and currently employing around 4.000 persons in the Cork area. With regard to the ongoing state aid investigation of DG COMP he explained that both Ireland and Apple believe that the Commission's allegations are unfounded. The Commission argued that the ruling did not reflect the arm's length principle. In Apple's view, the "opinion" in question (Apple explained that there is no such thing like a ruling, but "opinions" from the tax administration) would not grant an advantage, as Apple would have been subject to exactly the same tax charge without this opinion. Ireland has not implemented the OECD Guidelines and thus there is no such arm's length principle in the Irish tax law. Furthermore, the Commission would have failed in its opening decision to state why the criterion of selectivity is fulfilled.

Furthermore, the opinion of 2007 would not anymore apply after end 2014. Ireland has changed its provisions regarding residency rules which will impact the double Irish provisions. 4(2)(2)

Mrs. Scoppio mentioned that CAB Moscovici and TAXUD follow the state aid investigations, but chef de file is CAB Vestager and DG COMP. She agreed that the issue whether there is an advantage and selectivity therefore would be for DG COMP to assess. DG TAXUD thereby would assist. This investigation also has to be seen as a pure competition issue and not a disguised attempt to introduce tax harmonisation by the back door by the state aid instrument.

Then Apple explained that the state aid investigation would have to be seen in a wider frame, in particular to the investment climate not only in Ireland, but also in the European Union.

Mrs. Scoppio did not fully share this argument as Ireland still would be able to apply its low corporate income tax rates. She also did not follow the argumentation that the state aid investigations actually would reduce investments in the European Union.

At the end, the discussion was coming to interpret what would be the “fair share” of taxation. Apple pointed out that they would be the 5th biggest tax payer worldwide and that they are fully subject to US taxation on their worldwide income – however, under US rules this US taxation can be deferred until repatriation to the US.

Mrs. Scoppio pointed out to the need that there must be a level playing field also in the direct taxation field at EU level which also applies to US corporations.

5. Report by: 4(1)(b) DG TAXUD D3

6. Copy: M.-E. SCOPPIO (CAB-MOSCOVICI), , M.
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