



Statement by Commissioner Vestager on illegal tax benefits to Amazon in Luxembourg and referring Ireland to Court for failure to recover illegal tax benefits from Apple

Brussels, 4 October 2017

****Please check against delivery****

The Commission has today adopted a decision that Amazon's tax benefits in Luxembourg are illegal under EU State aid rules.

A tax ruling granted by Luxembourg has reduced Amazon's tax bill for more than eight years, between May 2006 and June 2014. This was not justified. Amazon now has to repay tax benefits worth around 250 million euros, plus interest.

EU State aid rules help to ensure that companies can compete on the merits within the Single Market. The rules prevent Member States from giving unfair advantages only to selected companies. For example, a Member State cannot give tax benefits to multinational groups, which are not available to local businesses. That distorts competition. It is illegal under EU State aid rules.

These rules have been in force since 1958 and apply to all companies that choose to operate in the Single Market.

What is our case about?

Our decision concerns the tax treatment of two Amazon group companies in Luxembourg, under a Luxembourg tax ruling. The ruling enabled Amazon to shift the vast majority of its profits from one company to the other, with no valid economic justification. As a result, these profits were not taxed. In fact, the ruling enabled Amazon to avoid taxation on almost three quarters of the profits it made from all Amazon sales in the EU.

What does that mean? Let's say Amazon generates the same amount of profits as a local company. Both are based in Luxembourg and are subject to the same national taxation laws. The local company would have to pay four times as much in tax as Amazon on the same profits – as a result of the tax ruling. That does not allow companies to compete on an equal footing and it is illegal under EU State aid rules.

Amazon's structure in Europe

How did this work in practice? As mentioned, our decision concerns two companies in the Amazon group, based in Luxembourg.

The first is an operating company called "**Amazon EU**". It had over 500 employees and ran Amazon's European retail business. Its staff selected the goods for sale, bought them from manufacturers, and managed the online sale and the delivery of products to the customer.

The second is its direct parent "**Amazon Europe Holding Technologies**". This company is a holding company with no employees, no offices and no business activities.

There is an important difference between the two companies – the operating company pays taxes in Luxembourg, the holding company doesn't. This is allowed under Luxembourg's general tax laws.

Under the structure set up by Amazon, the operating company recorded profits from all Amazon sales in the EU. If you buy something online on any of the websites Amazon operates in Europe, you buy it from this company in Luxembourg.

The operating company used certain intellectual property – or IP – to run Amazon's European retail business. This included software, trademark and brand names.

This IP was developed by Amazon in the US. It was licensed to the operating company, for its exclusive use in Europe, via the holding company. The holding company essentially served as an intermediary between Amazon in the US, which developed the IP, and the operating company, which used the IP. The holding company did not make any active use of the IP itself.

As intermediary, the holding company received a royalty from the operating company. It passed on

part of this money to Amazon in the US, as annual contribution to the development costs of the IP. The appropriate level of these payments has recently been determined by a US tax court. I learnt this morning the US tax authority will challenge this ruling. This does not impact the assessment in our decision.

Amazon's illegal advantage

This is how Amazon decided to structure its European operations between May 2006 and June 2014.

As such, this structure is not a matter for State aid rules. Nor is our case about Luxembourg's general tax system or the payments the holding company makes to Amazon in the US.

What we did investigate was the method to determine the royalty paid by the operating company to the holding company. This was endorsed by a tax ruling that Luxembourg issued in 2003 and prolonged in 2011.

We investigated whether this royalty corresponded to market conditions. Tax rulings cannot endorse a royalty between one company to another company in the same group that does not reflect economic reality. Doing so would disadvantage all the stand-alone companies that are not part of a group. They are taxed on their actual profits because they pay market prices for the goods and services they use.

In this case, our investigation established that the method endorsed by the ruling inflated the royalty paid by the operating company.

The royalty exceeded, on average, 90% of the operating company's profits. This was significantly more than what the holding company needed to pay to Amazon in the US. It reduced the operating company's taxable profits to a quarter of what they were in reality.

The Commission concluded that this level of royalty could not be justified for two reasons:

- First, the holding company was an empty shell that simply passed on the IP rights to the operating company. It had no employees, no offices and no business activities. It was not in any way actively involved in the management, development or use of this IP. It did not, and could not, perform any activities to justify the level of payments received.
- Second, the operating company was the only entity actively taking decisions and carrying out activities related to Amazon's European retail business. In fact, the operating company also adapted the technology and software behind the Amazon e-commerce platform in Europe. It invested in marketing and gathered customer data. This means that it managed and added value to the IP.

That is why our decision concludes that the tax ruling endorsed an unjustified method to calculate Amazon's taxable profits in Luxembourg. It enabled Amazon to shift almost three quarters of its profits from the operating company to the holding company. In other words, from a company that is subject to tax in Luxembourg to a company which is not. As a result, almost three quarters of Amazon's profits from all its sales in the EU remained untaxed.

Luxembourg's selective tax treatment of Amazon is illegal under EU State aid rules. It gave Amazon a significant competitive advantage compared to other businesses.

As always, as soon as we agree with Luxembourg and Amazon on the business secrets to be removed from the decision, we will publish it for all to see.

Conclusions from our State aid investigation

So, what are the consequences of this decision for Luxembourg and for Amazon?

Luxembourg must now recover about €250 million euros in unpaid tax from Amazon, plus interest. This amount covers the eight year period during which Amazon had this structure in place. It is for the Luxembourg tax authorities to now determine the exact amount, based on the method set out in our decision.

Furthermore, Amazon's European profits depend on the level of payments due to Amazon in the US for the IP. This will be reflected when calculating the unpaid tax due in Luxembourg.

I sometimes hear that EU State aid rules impose fines on companies – this is not true. What the recovery of illegal aid does is to restore equal treatment with other companies. It removes an advantage that the company should never have received in the first place.

Ireland infringement procedure

This brings me to the second decision we adopted today. Illegal aid must be recovered as soon as possible. Otherwise, the company continues to benefit from an illegal advantage. EU rules give Member States four months to do so, from the date of the Commission decision.

In August 2016, so more than a year ago, the Commission adopted its decision requiring Ireland to

recover up to 13 billion euros in illegal aid from Apple. However, Ireland has still not recovered any money, not even in part.

We of course understand that recovery in certain cases may be more complex than in others, and we are always ready to assist. But Member States need to make sufficient progress to restore competition. That is why we have today decided to refer Ireland to the EU Court for failing to implement our decision.

Enforcing State aid rules in tax rulings

So, today's decisions order Luxembourg to recover unpaid tax from Amazon and refer Ireland to the EU Court for failing to recover unpaid tax from Apple. Both send a clear message that companies must pay their fair share of tax. And our work is by no means done.

But we have also already come a long way. A number of EU countries have made an effort to comply with EU State aid rules by changing their ruling practices.

For example, in January this year, Luxembourg adopted new rules for companies which provide financial services to other companies of the same corporate group. Old tax rulings issued to financing companies are no longer in force – that affects 200 of the 500 rulings mentioned in Luxleaks. The new rules aim to make sure that financing companies are taxed sufficiently. More specifically, under the new rule the type of advantage Fiat received in Luxembourg would no longer be possible.

In July, Cyprus also changed their rules on financing companies, in a similar way. This cooperation with Member States is very welcome.

Legislative initiatives

The ultimate goal should of course be that all companies, big or small, pay their fair share of tax where their profits are earned. But enforcement of EU State aid rules alone cannot achieve this. That's why it is so important that there is also real momentum to reform our corporation taxation framework to make it both fairer and more efficient. At the international level, important steps have been taken in both the G20 and the OECD.

And within the EU, there is now a broad consensus amongst Member States that we need to move forward quickly on issues of fair taxation, especially of digital companies. And two weeks ago, the Commission issued a Communication setting out options on this issue, under the leadership of my colleagues Valdis Dombrovskis and Pierre Moscovici.

This ongoing debate builds on important progress already made as part of the Commission's strategy towards fair taxation and greater transparency in the EU. For example, our proposals on tax transparency have entered into force and now allow Member States to automatically exchange information on tax rulings.

Conclusion

And we need to continue to work together. So that companies can compete on equal terms – and not at the expense of European taxpayers, namely citizens and companies that do pay their fair share of taxes.

STATEMENT/17/3714