



## **CJEU annuls the EC's Fiat-Chrysler state aid ruling**

### **Introduction**

On 8 November 2022, the Court of Justice of the European Union (**CJEU**) issued a long-awaited (landmark) decision in the Fiat-Chrysler state aid case. The CJEU set aside the judgement of the General Court of the European Union (**General Court**). It annulled the decision (the **Decision**) of the European Commission (**EC**) that Luxembourg had granted unlawful state aid to Fiat-Chrysler Finance Europe (**FFE**), through the provision of a tax ruling (the **Tax Ruling**).

### **Facts**

FFE (a Luxembourg subsidiary of the Fiat-Chrysler group) provided intra-group financing and treasury services to group entities. To determine an arm's-length remuneration for FFE, a transfer pricing analysis based on the OECD TP Guidelines was prepared. In order to obtain certainty in advance, FFE concluded the Tax Ruling with the Luxembourg tax authorities. The Tax Ruling confirmed the arm's-length nature of the remuneration as determined by the transfer pricing analysis.

At the time when FFE and Luxembourg tax authorities concluded the Tax Ruling, there was no explicit reference to the arm's length principle in Luxembourg's national tax system. Therefore, both FFE and the Luxembourg tax authorities relied on the guidance provided in the OECD TP Guidelines.

### **Previous proceedings**

In the Decision issued in 2015, the EC argued that with the conclusion of the Tax Ruling, Luxembourg had granted unlawful state aid to FFE. In specific, the EC stated that the Tax Ruling endorsed an inappropriate method to determine the remuneration to be realized by FFE in relation to its intra-group financing and treasury services and, consequently, its yearly corporate tax liability in Luxembourg. As a result, the EC concluded that the Tax Ruling resulted in a lowering of FFE's tax liability as compared to the tax liability the company would have had as a stand-alone company.

In the view of the EC, the Tax Ruling met all the conditions to be classified as state aid as set out in Article 107(1) TFEU. In specific, the EC concluded that the Tax Ruling provided a selective advantage to FFE as compared to the situation where it would have operated as a stand-alone company. Furthermore, the EC stressed the existence of an autonomous EU arm's length principle, which forms an integral part of the assessment of tax rulings in the context of state aid irrespective whether a Member State has adopted the arm's length principle into its national legal system. FFE and Luxembourg unsuccessfully appealed to the Decision of the General Court. As a last resort, FFE and Ireland (which was one of the appellants in first instance) brought an appeal to the CJEU.



### **CJEU decision**

Contrary to the General Court, the CJEU ruled that there is no autonomous EU arm's length principle, that applies independently of the relevant national law, for the purposes of examining a tax ruling in the context of state aid. Instead, the CJEU stressed that, in order to determine whether a tax ruling constitutes state aid, a comparison has to be made with the national tax system applicable in the relevant Member State. Therefore, the CJEU concluded that, in the current case, the EC failed to adequately define and apply the relevant reference system, which constitutes an error of law. As a result, the CJEU annulled the Decision of the EC.

### **Key takeaway**

In line with previous judgements, the CJEU has ruled that there is no autonomous EU arm's length principle, that applies independently of the relevant domestic law. Having said the afore, it is important to note that the CJEU has, as a general remark, explicitly stated that its judgement does not rule out the possibility that (in general) a tax ruling may still be classified as state aid, provided that the correct reference system (i.e., the national law as applicable in a relevant Member State) is taken into account.

Although the CJEU has set aside the initial judgement of the General Court and annulled the Decision of the EC, the judgement of the CJEU provides significant guidance for the application of the EU state aid rules in the area of international taxation.

The CJEU has explicitly stated that the actions of Member States in areas which are not harmonization based on EU law, are not excluded from the scope of treaty provisions focused on countering state aid.

Lastly, it is noted that in other pending state aid cases the EC also came to the conclusion of state aid based on the existence of an EU arm's length principle. Since the EC has used a similar reference system in other state aid cases, the current decision of the CJEU can potentially also lead to the annulment of the decision of the EC in other state aid cases.

### **Contact information**

**Taco Wiertsema**

[tw@atlas.tax](mailto:tw@atlas.tax)

M: +31 621 286 636

**Brian Schalker**

[bs@atlas.tax](mailto:bs@atlas.tax)

M: +31 621 994 922

**Pauline Thio**

[pt@atlas.tax](mailto:pt@atlas.tax)

M: +31 6 1954 3280