# Flash News

## Luxembourg appeals the EU Commission's State aid decision in the Fiat case

The Luxembourg Government decided on 4 December 2015 to appeal the decision of the EU Commission which concludes to the existence of State aid in the Fiat case.

*7 December 2015*

### In detail

As a reminder, the EU Commission opened in June 2014 state aid investigations into individual rulings granted by Luxembourg, the Netherlands and Ireland to local entities of Fiat, Starbucks and Apple respectively. In September 2014 the EU Commission opened a similar investigation for an individual ruling granted by Luxembourg to Amazon. On 21 October 2015, the EU Commission announced in a press release the adoption of its final decisions in the Starbucks and Fiat cases whereby the EU Commission concluded to existence of state aid in both cases and requested recovery of past taxes from Fiat and Starbucks. As of the date of this Flash news the text of the decisions is still not publicly released.

At the time when the final decision was announced in October 2015, Luxembourg's Finance Minister Mr. Pierre Gramegna said that **"Luxembourg disagrees with the conclusions reached by the European Commission in the Fiat Finance and Trade case and reserves all its rights"**, which corresponds to the position expressed by the Government since the opening of the investigations.

In the press release announcing the appeal of the decision, the Luxembourg Government specifically mentions that **"The vast majority of EU member states use tax rulings to provide legal certainty for the taxpayer. In its decision, the Commission has used unprecedented criteria in establishing the alleged State aid, thus putting into jeopardy the principle of legal certainty. In particular, the Commission has not established in any way that Fiat received selective advantages within the meaning of article 107 TFEU"**. The press release also mentions that **"Luxembourg is strongly committed to tax transparency and the fight against harmful tax avoidance. Luxembourg fully adheres to the OECD/G20 BEPS project, which will modernise international tax rules and create a global level playing field."**

This follows similarly clear statements of Mr. Gramegna reported in an interview granted to Financial Times this 2 December where he mentions that **"If the European Commission can make its own interpretation of the transfer pricing rules, others can too. This is worrying for companies and we live in a globalised world."** The FT further reported that in relation to the EU Commission's method of determining the profits of the Fiat subsidiary, Mr. Gramegna mentioned that **"The method of 'transfer pricing' that was used was an innovation undermining the usual interpretation of transfer pricing."**


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