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# TP CASE SUMMARY

# FIAT FINANCE vs LUXEMBOURG

NOVEMBER 2022

# ACADEMY OF TAX LAW

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# HEAD OF ACADEMICS

Welcome to the Academy of Tax Law's case and judgment summaries. These documents have been carefully curated to support professionals, students, and researchers navigating the complex landscape of international tax and transfer pricing. At the Academy, we understand that tax law is ever-evolving, with key rulings continuously shaping its practice.

Each summary you'll find here is designed to provide not just the facts, but the context and implications of pivotal legal decisions. These case summaries are created to serve as a valuable resource for legal teams, multinationals, revenue authorities, and academics, offering insights that go beyond the surface. Our goal is to ensure you remain informed and prepared, whether you are dealing with tax planning, dispute resolution, or risk management.

We believe that knowledge is the foundation of sound decision-making, and with these resources, we hope to empower you in your professional journey. As you delve into the analysis, remember that staying ahead in tax law requires not just understanding the rules but how to apply them in a dynamic, global environment.

Thank you for choosing the Academy of Tax Law as your partner in this ongoing learning experience.

Sincerely,
Dr. Daniel N Erasmus

# PART 1

# SUMMARY

# JUDGEMENT SUMMARY

## CASE OVERVIEW

| | |
|---|---|
| **Court:** | European Court of Justice |
| **Case No:** | Joined Cases C-885/19 P and C-898/19 P |
| **Applicant:** | Fiat Chrysler Finance Europe; Ireland |
| **Defendant:** | European Commission |
| **Judgment Date:** | 8 November 2022 |
| **Full Judgment:** | https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62019CJ0885 |
| **View Online:** | https://academyoftaxlaw.com/fiat-chrysler-state-aid-transfer-pricing/ |

# JUDGMENT SUMMARY

The case involves two appeals by Fiat Chrysler Finance Europe (formerly Fiat Finance and Trade Ltd) and Ireland, challenging the General Court's decision to uphold a European Commission ruling that a tax ruling granted by Luxembourg to Fiat Chrysler Finance Europe constituted unlawful state aid. The Commission had determined that the tax ruling issued by Luxembourg gave Fiat Chrysler Finance Europe a selective tax advantage, breaching EU state aid rules under Article 107(1) of the Treaty on the Functioning of the European Union (TFEU).

The tax ruling, granted by Luxembourg in 2012, allowed Fiat to calculate its taxable income in Luxembourg based on intra-group transactions using transfer pricing methods. The European Commission found that the method approved by Luxembourg led to an unjustified reduction in Fiat's tax burden, thus giving it an economic advantage not available to other companies. This selective treatment was considered incompatible with the internal market.

The General Court upheld the Commission's findings, concluding that Luxembourg had not correctly applied the arm's length principle in its tax ruling. The core of the dispute was whether Luxembourg's tax ruling resulted in a deviation from market-based pricing for intra-group transactions.

Fiat Chrysler Finance Europe and Ireland appealed the General Court's judgment, arguing that the arm's length principle applied by the Commission was not part of Luxembourg national tax law. They also claimed that the Commission's decision amounted to a form of tax harmonization by the EU, violating the fiscal autonomy of Member States. However, the European Court of Justice rejected these arguments, affirming that the arm's length principle was a legitimate benchmark for assessing state aid under Article 107(1) TFEU, even if not explicitly codified in national law.



# KEY POINTS

## OF THE JUDGMENT

## BACKGROUND

The case stems from a tax ruling issued by Luxembourg to Fiat Chrysler Finance Europe (FFT), part of the Fiat/Chrysler group, in 2012. The ruling permitted FFT to use a specific transfer pricing arrangement to calculate its tax liability on intra-group transactions. FFT's main function was to provide treasury and financing services to other Fiat group companies, excluding those in Italy. The tax ruling allowed FFT to allocate profits in a way that minimized its tax burden in Luxembourg.

In 2014, the European Commission initiated an investigation into tax rulings by Member States, focusing on whether such rulings granted selective tax advantages to multinational companies. The Commission concluded that the Luxembourg ruling granted to FFT violated EU state aid rules by reducing FFT's tax liability compared to what it would have been under the general Luxembourg corporate tax regime, based on the arm's length principle.

Luxembourg and FFT contested the Commission's decision at the General Court, which ruled in favor of the Commission in 2019. Both FFT and Ireland, which intervened in the case, appealed to the European Court of Justice.

In both disputes, the court had to consider the arm's length principle, the economic context in Venezuela, and the force majeure clauses in the licensing agreements between H1 and G2.

# KEY POINTS
## OF THE JUDGMENT

## CORE DISPUTE

The core dispute centers around whether the tax ruling issued by Luxembourg conferred a selective tax advantage on Fiat Chrysler Finance Europe in violation of Article 107(1) TFEU. The key issue was whether Luxembourg's tax ruling deviated from the arm's length principle, a standard used to determine whether intra-group transactions are priced similarly to transactions between independent companies.

The European Commission argued that the tax ruling granted to FFT allowed it to determine its tax liability in a manner that resulted in a significant reduction in its taxable profits. This was deemed a selective economic advantage, as other companies operating under market conditions would not have been able to benefit from such a reduction in tax liability.

Fiat Chrysler Finance Europe and Ireland contended that the Commission overstepped its powers by applying the arm's length principle as part of EU state aid law, arguing that the principle was not enshrined in Luxembourg's national tax legislation and that the Commission was attempting to impose tax harmonization.

# KEY POINTS
## OF THE JUDGMENT

## COURT FINDINGS

The European Court of Justice reaffirmed the General Court's findings, concluding that the Commission was correct in applying the arm's length principle to assess whether the Luxembourg tax ruling constituted unlawful state aid. The Court held that the arm's length principle, while not explicitly part of Luxembourg's tax law, was a legitimate tool for evaluating whether a tax measure granted a selective advantage under Article 107(1) TFEU.

The Court found that Luxembourg's tax ruling allowed FFT to pay less tax than it would have if it had followed a transfer pricing method that aligned with market conditions. By deviating from the arm's length principle, Luxembourg effectively granted state aid that was incompatible with the internal market. The ruling was selective because it was not available to all companies in Luxembourg but applied specifically to FFT due to its intra-group financing activities.

The Court also rejected the argument that the Commission's decision constituted tax harmonization in disguise, stating that Member States must comply with EU state aid rules, even in areas where taxation remains within national competence.

# KEY POINTS
## OF THE JUDGMENT

## OUTCOME

The European Court of Justice upheld the General Court's decision, confirming that the tax ruling granted by Luxembourg to Fiat Chrysler Finance Europe amounted to unlawful state aid. As a result, Luxembourg was required to recover the aid from FFT. The Court's judgment underscores the EU's commitment to ensuring fair competition within the internal market by preventing Member States from using tax rulings to provide selective advantages to multinational companies.

The Court's decision reinforced the role of the arm's length principle as a benchmark in state aid cases involving transfer pricing arrangements, even when the principle is not explicitly incorporated into national tax laws.



# TP METHOD
## HIGHLIGHTED (IF ANY)

In this case, the arm's length principle was central to the Commission's analysis of whether Luxembourg's tax ruling provided a selective advantage to Fiat Chrysler Finance Europe. The arm's length principle is used to ensure that transactions between related entities within a corporate group are priced as though they were between independent, unrelated parties operating in market conditions. The Transactional Net Margin Method (TNMM) was indirectly referenced, as the Commission's assessment criticized the methodology used by Luxembourg for not reliably approximating a market-based outcome. This deviation resulted in an unjustified reduction in the taxable profits of Fiat Chrysler Finance Europe, thereby violating the principle.

# PART 2

# SIGNIFICANCE

# MAJOR ISSUES

## AREAS OF CONTENTION

One of the significant points of contention was whether the European Commission had the authority to apply the arm's length principle in the context of EU state aid rules, given that it was not explicitly codified in Luxembourg's national tax law. Fiat Chrysler Finance Europe and Ireland argued that the application of the arm's length principle constituted a form of tax harmonization, which fell outside the EU's jurisdiction, infringing upon the fiscal sovereignty of Member States.

Additionally, Fiat Chrysler Finance Europe contested that its tax ruling followed Luxembourg's national tax regulations and, thus, could not be regarded as unlawful state aid. They emphasized that the transfer pricing methodology was approved by the Luxembourg tax authorities and was consistent with the OECD Transfer Pricing Guidelines.

Another issue of contention was whether the transfer pricing analysis and subsequent tax ruling conferred a selective advantage on Fiat Chrysler Finance Europe. The Commission argued that the tax ruling was selective because it deviated from market-based pricing, while Fiat and Luxembourg argued that the ruling was consistent with Luxembourg's corporate income tax laws.

# EXPECTED
## OR CONTROVERSIAL?

The decision was controversial due to its broader implications for tax rulings across the EU and the relationship between Member States' fiscal sovereignty and the application of EU state aid law. While the European Court of Justice's ruling reaffirmed the European Commission's authority to scrutinize tax rulings under state aid rules, it raised concerns among Member States about potential overreach by the EU into national tax policies.

For many tax professionals and multinational corporations, the decision confirmed the Commission's aggressive stance on state aid investigations concerning tax rulings. The ruling continued the pattern established in high-profile cases like the Apple/Ireland case and reinforced the application of the arm's length principle, even when it is not expressly codified in national law.

However, the ruling was not entirely unexpected, as the Commission had already set a precedent by targeting similar tax arrangements in the context of state aid. The controversy surrounding the case arose from the perception that the Commission was effectively using state aid rules to impose a level of tax harmonization, indirectly pushing for uniformity in transfer pricing arrangements across the EU.

# SIGNIFICANCE
## FOR MULTINATIONALS

The judgment is significant for multinational enterprises (MNEs) because it highlights the increased scrutiny that tax rulings and transfer pricing arrangements can face under EU state aid rules. MNEs operating in multiple jurisdictions must ensure that their intra-group transactions align with the arm's length principle, not only to comply with national tax laws but also to avoid triggering state aid investigations by the European Commission.

For MNEs that rely on favorable tax rulings from individual Member States, this judgment serves as a reminder that such rulings could be challenged if they are deemed to provide a selective advantage that distorts competition.

The decision also reinforces the importance of implementing robust transfer pricing policies that can withstand scrutiny under both national laws and EU regulations.

Multinationals need to be aware of the risk of retroactive recovery of state aid, as seen in this case, where Luxembourg was ordered to recover the unlawful aid from Fiat Chrysler Finance Europe. The case highlights the need for MNEs to engage with tax experts and implement tax risk management strategies that take into account not only the tax laws of the jurisdictions in which they operate but also EU state aid rules.

# SIGNIFICANCE

## FOR REVENUE SERVICES

For national tax authorities, this judgment reinforces the need to carefully consider the potential state aid implications of tax rulings and transfer pricing agreements. Revenue services in Member States must ensure that tax rulings comply with both national tax laws and EU state aid regulations. The judgment emphasizes the importance of applying the arm's length principle in determining the taxable profits of integrated companies to avoid the perception that they are receiving a selective advantage.

The ruling also signals to tax authorities that their decisions on transfer pricing arrangements can be subject to EU-wide scrutiny, even if they believe their rulings comply with national legislation. National tax authorities must work closely with legal and tax experts to ensure that their rulings do not inadvertently confer unlawful state aid that could result in recovery orders and litigation at the EU level.

This case underscores the role of the European Commission as an overseer of state aid compliance and highlights the need for national tax authorities to be transparent and consistent in their application of tax laws, particularly regarding transfer pricing and intra-group transactions.



# SIMILAR CASES

## APPLE/ IRELAND VS EU (T-892/16)

This case involved the European Commission's decision that Ireland had granted Apple unlawful state aid through favorable tax rulings. The Commission ordered Ireland to recover €13 billion in back taxes. Apple and Ireland appealed, arguing that the tax rulings were in line with Irish law. The General Court annulled the Commission's decision, but the case highlighted the Commission's use of state aid rules to target tax rulings and transfer pricing arrangements.

https://academyoftaxlaw.com/apple-tax-ruling-cjeu-2024/

## AMAZON/ LUXEMBOURG VS EU (T-816/17)

In this case, the Commission ruled that Luxembourg had granted Amazon illegal state aid by allowing the company to shift profits to a Luxembourg-based holding company, thereby reducing its tax liability. The General Court ruled in favor of Amazon, annulling the Commission's decision. However, the case reinforced the scrutiny applied to tax rulings involving multinational corporations and the arm's length principle.

https://academyoftaxlaw.com/amazon-luxembourg-tax-ruling/

## ENGIE/ LUXEMBOURG VS EU (T-516/18)

The Commission found that Luxembourg had granted Engie unlawful state aid by allowing the company to avoid paying taxes on certain intra-group transactions. The General Court upheld the Commission's decision, affirming the application of the arm's length principle and state aid rules to tax rulings. The case demonstrated the importance of aligning transfer pricing arrangements with market conditions to avoid state aid investigations.

https://tpcases.com/wp-content/uploads/Commission-vs-Engie-Luz-ARRET-DU-TRIBUNAL-ENG.htm

# PART 3

# PREVENTION

## ENGAGING EXPERTS

Given the complexity and increased scrutiny surrounding cross-border transactions, it is crucial for MNEs to engage transfer pricing experts. These experts can help ensure that intra-group transactions are not only priced at arm's length but also supported by genuine economic substance, reducing the risk of tax disputes. Transfer pricing experts play a critical role in:

- Structuring transactions in a way that complies with both transfer pricing regulations and anti-abuse rules.
- Preparing robust documentation that demonstrates the commercial rationale behind cross-border transactions.
- Helping businesses navigate the complex web of national and international tax laws to avoid potential tax risks.

# PREVENTATIVE

## MEASURES TO AVOID SIMILAR CASES

## TAX RISK MANAGEMENT PROCESS

Implementing a comprehensive tax risk management process is essential to identify, assess, and mitigate tax risks associated with cross-border transactions. This process should involve:

- Regular reviews of intra-group transactions to ensure they have genuine economic substance.
- Proactive engagement with tax authorities to seek clarity on the application of anti-abuse rules.
- Thorough documentation of the business rationale for each transaction to support

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**TAX INTELLIGENCE: THE 7 HABITUAL TAX MISTAKES MADE BY COMPANIES**

Tax Intelligence: The 7 Habitual Tax Mistakes Made by Companies" by Dr. Daniel N. Erasmus is a must-read for businesses seeking to navigate the intricate world of tax compliance and risk management. By highlighting common pitfalls and offering strategic solutions, Erasmus equips companies with the knowledge to improve their tax practices and secure financial stability.

https://support.academyoftaxlaw.com/product/tax-intelligence-by-prof-dr-daniel-n-erasmus/



# PREVENTATIVE

## MEASURES TO AVOID SIMILAR CASES

## TAX STEERING COMMITTEE

Establishing a tax steering committee can help ensure that tax policies are aligned with the broader business strategy and that transactions are vetted for both commercial and tax implications. A tax steering committee can:

- Review all significant cross-border transactions before they are executed.
- Ensure that tax decisions are made in the context of overall business objectives, not solely for tax savings.
- Monitor changes in international tax laws to ensure ongoing compliance and avoid disputes like the X BV case.

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**DRIVING TAX COMPLIANCE: THE ESSENTIAL ROLE OF THE TAX STEERING COMMITTEE**

The eBook "Driving Tax Compliance: The Essential Role of a Tax Steering Committee" by Prof. Dr. Daniel N. Erasmus, Renier van Rensburg, and Gilbert Ferreira, emphasizes the critical importance of establishing a Tax Steering Committee (TSC) within multinational corporations to ensure tax compliance and manage tax-related risks effectively.

https://support.academyoftaxlaw.com/product/essential-role-of-the-tax-steering-committee/

TP CASE
# SUMMARY

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