

Action brought on 5 July 2019 — International Personal Finance Investments v Commission**(Case T-493/19)**

(2019/C 312/29)

*Language of the case: English***Parties**

Applicant: International Personal Finance Investments Ltd (Leeds, United Kingdom) (represented by: M. Anderson, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul Commission Decision C(2019) 2526 final of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption its entirety in insofar as it concerns the applicant;
- if the contested decision is not annulled in its entirety, (a) annul it insofar as it applies to the matched interest exemption within Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 and (b) order that in determining the amount of aid to be recovered, losses, reliefs or exemptions which were available to the applicant at the time when it claimed the group financing exemption (GFE), or which would have been available to the applicant at that time had it not claimed the GFE, should in either case be taken into account even if access to those losses, reliefs or exemptions is now time barred under UK law;
- order the defendant to pay the applicant's costs.

Pleas in law and main arguments

In support of the action, the applicant relies on nine pleas in law.

1. First plea in law, alleging that the defendant has failed to establish that the GFE constitutes an advantage in each case where the GFE has been claimed. Further, the applicant argues that it chose to claim the GFE, initially contemplating a 75 % exemption, without considering whether its liability could have been lower if it had done an analysis under the significant people functions (SPF) test in section 371EB of Chapter 5 of Part 9A of the Taxation (International and Other Provisions) Act 2010.
2. Second plea in law, alleging that there was no intervention by the State or through State resources. The applicant argues that the defendant has failed to prove that claiming the GFE has certainly led to a reduction in the UK corporate tax liability.

3. Third plea in law, alleging that the GFE does not favour certain undertakings or the production of certain goods. The applicant argues that the defendant has erred by (i) defining the reference system too narrowly as the rules in the said Part 9A instead of the wider UK corporate tax system; (ii) failing to understand that Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 is not a derogation from Chapter 5 thereof; and (iii) failing to recognise that, even if the said Chapter 9 is a derogation from that Chapter 5, it is justified by the nature or general scheme of Part 9A of the legislation.
4. Fourth plea in law, alleging that the GFE does not affect trade between Member States. The applicant argues that the defendant has erred by concluding that the GFE is liable to influence choices made by multinational groups as to the location of their group finance functions and their head office within the EU, particularly in view of the lack of a level playing field and absence of CFC rules in 15 other Member States before 2016.
5. Fifth plea in law, alleging that the GFE does not distort or threaten to distort competition. The applicant argues that the defendant has failed to prove that claiming the GFE has certainly led to a reduction in the UK corporate tax liability and that the GFE does not distort competition having regard to arguments made at the fourth plea above.
6. Sixth plea in law, alleging that recovery of the alleged aid would be contrary to general principles of EU law. The applicant argues that the SPF test lacks legal certainty, the UK had a margin of appreciation to address that uncertainty and that the defendant has breached its duty to carry out a complete analysis of all relevant factors. By ordering the recovery of aid, the defendant has acted contrary to Article 16(1) of Council Regulation (EU) 2015/1589,⁽¹⁾ which prohibits the recovery of aid where recovery would be contrary to a general principle of EU law.
7. Seventh plea in law, alleging that the selective advantage would be eliminated, and no recovery would be required, if the UK were retrospectively to extend the GFE to upstream lending and third-party lending. The applicant argues that the defendant has failed to acknowledge that taking such action would eliminate any selective advantage (assuming for the moment that there is one) and in such case there would be no unlawful state aid to be recovered under EU law.
8. Eighth plea in law, alleging that, in determining the amount of the aid to be recovered, losses, reliefs or exemptions which were available to the applicant at the time when it claimed the GFE, or which would have been available at that time had the applicant not claimed the GFE, should be taken into account even if access to those losses, reliefs or exemptions is now time barred under UK law. The applicant argues that that is the correct interpretation of recital 203 of the contested decision but, insofar as that is not the case, the contested decision is incorrect because failing to take such losses, reliefs or exemptions into account would lead to over-calculation of the amount of the aid which would introduce a distortion into the internal market.
9. Ninth plea in law, alleging that the defendant has failed to substantiate its reasons in relation to the matched interest exemption (MIE) and to carry out a complete analysis of all relevant factors. The applicant argues that the defendant has failed to distinguish between three separate exemptions under the said Chapter 9 which function independently and to understand that the MIE is not a proxy for the SPF test and that the existence of the MIE (which is inextricably linked to rules restricting the deductibility of interest expenses) in the said Chapter 9 demonstrates that the defendant has erred by defining the reference system narrowly as the rules in Part 9A of the legislation instead of the wider UK corporate tax system.

⁽¹⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).