

4. Fourth plea in law, alleging that the Commission has violated the fundamental principle of equal treatment/non-discrimination by treating non-trading finance profits derived from qualifying loans in the same way as non-trading finance profits derived from non-qualifying loans; and by treating the Group Financing Exemption differently depending on whether the non-trading finance profits fall within sections 371EB or 371EC of the Taxation (International and Other Provisions) Act 2010.
5. Fifth plea in law, alleging that in the alternative, even if the alleged aid measure falls within the ambit of Article 107(1) TFEU, the Commission has violated Article 16(1) of the Procedural Regulation ⁽²⁾ by ordering the recovery of amounts of alleged incompatible aid from the beneficiaries of the alleged aid measure, because such recovery infringes general principles of EU law, namely the principle of legitimate expectations and legal certainty.

⁽¹⁾ Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ 2016 L 193, p.1).

⁽²⁾ 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).

Action brought on 13 November 2019 – The Sage Group and Others v Commission

(Case T-787/19)

(2020/C 45/60)

Language of the case: English

Parties

Applicants: The Sage Group plc (Newcastle Upon Tyne, United Kingdom), Sage Treasury Company Ltd (Newcastle Upon Tyne), Sage Irish Investments One Ltd (Newcastle Upon Tyne) and Sage Irish Investments Two Ltd (Newcastle Upon Tyne) (represented by: J. Lesar, Solicitor, and K. Beal QC)

Defendant: European Commission

Form of order sought

The applicants claim 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 Controlled Foreign Companies (CFC) Group Financing Exemption;
- in any event, order the Commission to bear the costs incurred by the applicants for these proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on eight pleas in law:

1. First plea in law, alleging that the Commission wrongly applied Article 107(1) TFEU and/or made a manifest error of appraisal or assessment in its selection of the reference framework for the analysis of the tax regime. The Commission should have treated the reference framework as the UK's corporation tax regime, not simply the Controlled Foreign Companies (CFC) regime itself.

2. Second plea in law, alleging that the Commission erred in law in its application of Article 107(1) TFEU and/or made a manifest error of appraisal or assessment by adopting a flawed approach to the analysis of the CFC regime. The Commission at recitals (124) to (126) of the contested decision wrongly treated the provisions of Chapter 9 of Part 9A of the Taxation (International and Other Provisions) Act 2010 as a form of derogation from a general charge to tax found in Chapter 5 thereof.
3. Third plea in law, alleging that the Commission erred in law in its application of Article 107(1) TFEU when finding at recitals (127) to (151) of the contested decision that the selectivity criterion was fulfilled in that undertakings in factually and legally comparable positions were treated differently.
4. Fourth plea in law, alleging that the 75 % exemption under section 371ID of the Taxation (International and Other Provisions) Act 2010 is justified by the nature and overall structure of the tax system.
5. Fifth plea in law, alleging that imposition of a tax burden on CFCs meeting the exemptions laid down in the said Chapter 9 as a class would breach the applicants' freedom of establishment contrary to Article 49 TFEU.
6. Sixth plea in law, alleging that there was a manifest error of appraisal or assessment in relation to the 75 % exemption and fixed ratio issue.
7. Seventh plea in law, alleging that the Commission's decision fails to comply with the general EU law principle of non-discrimination or equality.
8. Eighth plea in law, alleging that the Commission erred in law in applying by analogy or placing undue reliance upon the terms of Council Directive (EU) 2016/1164, ⁽¹⁾ which was not applicable *ratione temporis*.

⁽¹⁾ Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ 2016 L 193, p. 1).

Action brought on 14 November 2019 — Moerenhout and Others v Commission

(Case T-789/19)

(2020/C 45/61)

Language of the case: French

Parties

Applicants: Tom Moerenhout (Humbeek, Belgium) and six other applicants (represented by: G. Devers, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the contested decision;

— order the Commission to pay all the costs.