



***Joined cases C-236/16 and C-237/16; case C-233/16 and joined cases C-234/16 and C-235/16 - ANGED***

***CJEU strengthens the relevance of comparability for purpose of assessing selectivity of tax measures***

On 26 April 2018 the Court of Justice of the European Union ruled in *ANGED* (joined cases C-236/16 and C-237/16; case C-233/16 and joined cases C-234/16 and C-235/16). The cases deal with a Spanish property tax levied on large retail establishments (see also our [EU Tax Alert no. 2/2017](#)). The amount of tax due is mainly based on the dimension of the sales area. Among others, the Spanish regime provides two exemptions (i) for small retail establishments (i.e. below certain dimensional thresholds) and (ii) for collective retail establishments and individual retail establishments pursuing certain businesses which require large areas (such as the business of a garden center or selling of vehicles, construction materials and machineries).

Of particular interest in the judgement is the assessment of selectivity for State aid purposes. In this regard the CJEU confirms prior case law, according to which a tax advantage may be considered selective in so far as it differentiates between operators who, in the light of the objective of the tax measure, are in a comparable factual and legal situation (judgement of 21 December 2016, *Commission v. World Duty Free Group and Others*, C-20/15 and C-21/15). Rather than strictly following the well-known three-step approach, the CJEU relies on the concept of comparability insofar as the assessment of selectivity is concerned. In this regard, the Court points at the comparability of the situations in light of the purpose of the tax, which is to counteract the environmental and territorial consequences of the retail activities (such as the rise in traffic flows).

Relying on the above, with regard to the first exemption, the CJEU points out that a condition based on the dimensional threshold does not contravene Art. 107 (1) TFEU, since it differentiates between undertakings (small retail establishments and other establishments) which are not comparable; and this is because retail establishments of bigger dimensions have a greater environmental impact compared to small retail establishments. With regard to the second exemption, the CJEU concludes that the finding of illegal State aid is subject to the condition that exempted establishments do not have an adverse effect on the environment as other ones which are instead included in the scope of application of the property tax.

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