



Corporate tax alert

Belgium

Belgian excess profit rulings are “illegal state aid” and must be recovered, Commission says

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On 11 January 2016, the European Commission concluded its in-depth investigation of the Belgian excess profit rulings (EPR's), announced on 3 February 2015. The investigation resulted with the decision that these rulings constitute unlawful and incompatible aid under EU state aid rules. The issued press release can be consulted on [this page](#). The full text of the decision is not yet available and will only be published at a later time.

According to the European Commission's press release, the EPR's deviate from both the normal Belgian corporate tax rules as well as the arm's length principle under EU state aid rules:

- the EPR's give a selective advantage to at least 35 multinational companies as they were not taxable on their full profits due to the exclusion of “excess profits”;
- even assuming that a multinational can generate “excess profits”, they should be shared between group members in a way reflecting economic reality and taxed where they arise (instead of being allocated to a single group company).

Furthermore, the rulings could not be justified by the double taxation avoidance argument, since Belgium made the adjustments unilaterally, i.e. without requiring evidence or a double taxation risk.

Therefore, the Commission ordered Belgium to stop applying EPR's in the future and to recover the full unpaid tax from the (at least 35) beneficiaries of the excess profit rulings. The Belgian authorities must determine the beneficiaries and the precise amounts of tax to be recovered (estimated at around EUR 700 million).

The Commission decision can be challenged by the Belgian State as well as the beneficiaries before the EU General Court within 2 months and ultimately the EU Court of Justice.

Aside from very exceptional circumstances, such appeal does not suspend Belgium's recovery obligation. Should Belgium fail to comply with its recovery obligation, it may be referred to the General Court by the Commission.

If you have any questions concerning the items in this alert, please contact your usual tax consultant at our Deloitte office in Belgium

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