

Luxembourg Tax Alert

EU Commission issues decisions relating to Fiat and Starbucks state aid cases

As a reminder, on 11 June 2014 the European Commission opened three investigations in connection with transfer pricing arrangements issued respectively by Ireland, the Netherlands and Luxembourg. The European Commission examined *“whether decisions by the tax authorities in Ireland, the Netherlands and Luxembourg with regard to the corporate income tax to be paid by Apple, Starbucks and Fiat Finance and Trade, respectively, comply with the EU rules on state aid”*.

Today, the European Commission has reaffirmed that it has no problem with advance tax decisions practices in general: *“they are comfort letters by tax authorities giving a specific company clarity on how its corporate tax will be calculated or on the use of special tax provisions”*. However, the two tax rulings (Fiat and Starbucks) under investigation **“endorsed artificial and complex methods to establish taxable profits for the companies. They do not reflect economic reality”**.

Therefore, the EU Commission concluded that *“Luxembourg and the Netherlands have granted selective tax advantages to Fiat Finance and Trade and Starbucks, respectively. These are illegal under EU state aid rules”*. Luxembourg and the Netherlands are ordered by the EU Commission to recover the unpaid tax from Fiat and Starbucks. As mentioned by the EU Commission: *“The amounts to recover is €20 - €30 million for each company but the precise amounts of tax to be recovered must now be determined by the Luxembourg and Dutch tax authorities on the basis of the methodology established in the Commission decisions.”*

In so far as Luxembourg is concerned in the “Fiat case”, the Luxembourg government has also reacted saying that: *“Luxembourg disagrees with the conclusions reached by the European Commission in the Fiat Finance and Trade case and reserves all its rights. Luxembourg will use appropriate due diligence to analyse the decision of the Commission as well as its legal rationale. Luxembourg already notes that the European Commission has used unprecedented criteria in establishing the alleged State aid. **In particular, the Commission has not established in any way that Fiat Finance and Trade received selective advantages with reference to Luxembourg’s national legal framework.**”*



Luxembourg does not consider that Fiat Finance and Trade has been granted incompatible State aid, as foreseen by article 107(1) of the Treaty on the Functioning of the European Union.

Luxembourg adheres to international standards, in particular those relating to the arm's length principle applicable with respect to transfer pricing, and with State aid rules".

This announcement from the European Commission does not provide any details regarding the final decision of the EU Commission. Technical developments and reasoning should be published soon.

At this stage there is no relevant information pertaining to the potential appeal of this EU Commission decision before the Court of Justice of the European Union. If an appeal is undertaken, the Court of Justice of the European Union will ultimately decide whether or not there is state aid in this instance.

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