TaxAlert

Belgium: "Excess profit" tax advantages to be recovered from multinationals

12 January 2016

The European Commission yesterday announced it has concluded that selective tax advantages granted by Belgium under its "excess profit" tax regime are illegal under EU state aid rules. The EC's investigation showed that the regime derogated from normal practice under Belgian company tax rules and the "arm's length principle."

The content of the present newsletter is based on the EC's press release and summarizes the main points of the decision as well as its background.

Main points

The Belgian "excess profit" tax regime has applied since 2005, and allowed certain multinational group companies to pay substantially less tax in Belgium on the basis of tax rulings. The European Commission announced the opening of an in-depth investigation into the "excess profit" tax rulings last February.

This selective tax advantage regime benefitted at least 35 multinational entities (mainly from the EU) that now must return unpaid taxes to Belgium. The EC estimated the total amount to be recovered from the companies to be approximately €700 million.

The "excess profit" tax regime only benefitted certain multinational groups that were granted a tax ruling while "stand-alone companies" (i.e., companies that are not part of groups) only active in Belgium could not claim similar benefits.

The EC found the regime was "a very serious distortion of competition" within the EU's single market, affecting a broad range of economic sectors. Belgium now must recover the full unpaid tax from the multinational companies that have benefitted from the regime. The Belgian tax authorities must determine which companies have benefitted from the regime and the amounts of tax to be recovered from each company.

Background

Belgian company tax rules require companies to be taxed on the basis of profit actually recorded from activities in Belgium. However, the "excess profit" regime (based on Article 185§2, b) of the *Code des Impôts sur les Revenus / Wetboek Inkomstenbelastingen*) allowed multinational companies to reduce their tax base for alleged "excess profit" on the basis of a binding tax ruling. These rulings were typically valid for four years and could be renewed.

Under the tax rulings, the actual recorded profit of a multinational would be compared with the hypothetical average profit of a stand-alone company in a comparable situation. The difference in profit would be deemed to be "excess profit" by the Belgian tax authorities, and the multinational entity's tax base would be reduced proportionately. This treatment was based on a premise that multinational companies made "excess profit" as a result of being part of a multinational group, e.g., due to synergies, economies of scale, reputation, client and supplier networks, access to new markets.

In practice, the actual recorded profit of companies concerned was usually reduced by more than 50% and in some cases up to 90%.

The European Commission has been investigating the tax ruling practices of Member States since June 2013. In October 2015, it has decided that Luxembourg and the Netherlands have granted selective tax advantages to Fiat and Starbucks, respectively. The Commission also has three ongoing in-depth investigations into concerns that tax rulings may give rise to state aid issues, concerning Apple in Ireland, Amazon in Luxembourg and McDonald's in Luxembourg.

The Commission now plans to launch a further package of initiatives to combat corporate tax avoidance within the EU and throughout the world. The proposals will rest on the simple principle that all companies, big and small, must pay tax where they make their profits. The package will be presented on 27 January and will also set out a coordinated EU-wide approach for implementing good tax governance standards internationally.

This latest State Aid decision, again, proves that fight against tax evasion and tax fraud is one of the top priorities of this Commission, which requires much attention from the side of multinational companies as taxpayers as well.

Should your company be subject to a Belgian „excess profit" ruling, please contact the experts of KPMG for further assistance in this matter.

Contacts:

Partners

Gábor Beer
Partner, Head of Tax Advisory
T: +36 1 887 7329
E: gabor.beer@kpmg.hu

dr. Csaba László
Senior Partner
T: +36 1 887 7420
E: csaba.laszlo@kpmg.hu

Indirect Tax Advisory and Compliance Services

Zoltán Farkas
Director
T: +36 1 887 7439
E: zoltan.farkas@kpmg.hu

Zsolt Srankó
Manager
T: +36 1 887 7460
E: zsolt.sranko@kpmg.hu

Corporate Tax, Deal Advisory and M&A Tax

Gábor Zachár
Director
T: +36 1 887 6690
E: gabor.zachar@kpmg.hu

dr. András Németh
Director
T: +36 1 887 7261
E: andras.nemeth@kpmg.hu

Mihály Gerhát
Senior Manager
T: +36 1 887 7180
E: mihaly.gerhat@kpmg.hu

dr. Helga Kiss
Senior Manager
T.: +36 1 887 5569
E.: helga.kiss@kpmg.hu

Eszter Somogyi
Manager
T.: +36 1 887 6636
E.: eszter.somogyi@kpmg.hu

International Tax

Bálint Gombkötő
Director
T: +36 1 887 7159
E: balint.gombkoto@kpmg.hu

Zsófia Pongrácz
Senior Manager
T: +36 1 887 7374
E: zsofia.pongracz@kpmg.hu

Global Mobility Services

Attila Zoltán Arányi
Director
T: +36 1 887 7304
E: attila.aranyi@kpmg.hu

Gabriella Joó
Senior Manager
T: +36 1 887 6630
E: gabriella.joo@kpmg.hu

Andrea Szűcs
Manager
T: +36 1 887 6589
E: andrea.szucs@kpmg.hu

Transfer Pricing Advisory Group

Mihály Gódor
Director
T: +36 1 887 7340
E: mihaly.godor@kpmg.hu

Szabolcs Végh
Senior Manager
T: +36 1 887 7213
E: szabolcs.vegh@kpmg.hu

Tax Advice for the Financial Services Sector

Gábor Farkas
Senior Manager
T: +36 1 887 7415
E: gabor.farkas@kpmg.hu

Balázs Pethő
Senior Manager
T: +36 1 887 7368
E: balazs.petho@kpmg.hu

Accounting Advisory, Bookkeeping and Payroll Services

Ágnes Rakó
Director
T: +36 1 887 7438
E: agnes.rako@kpmg.hu

Legal Services

dr. Dávid Bosznay
Attorney-at-law
T: +36 1 887 7311
E: david.bosznay@kpmg.hu

BLOG