cutting through complexity

**TAX ALERT**
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# An in-depth investigation has been launched into Hungarian advertisement tax procedures – hence progressive tax rates cannot be applied until the Commission has finished its assessment


The preliminary investigation into Hungarian advertisement tax has not provided satisfactory answers to the European Commission about the compatibility of the tax with EU norms; therefore, the investigation is now an official procedure allowing the involvement of interested third parties. At the same time, Brussels has taken a separate decision prohibiting the application of the progressive tax rates until the final decision of the in-depth investigation (a so called 'suspension injunction' procedure).

Based on the official press release, the primary concern of the European Commission in relation to the advertisement tax is that the extreme progressivity of the tax (from 0% up to 50%) may ensure selective advantage that takes the form of unlawful state aid for smaller-sized media companies. Brussels' worries are specifically linked to the fact that the progressive tax rates of the advertisement tax are levied based on turnover.

In addition, the Committee will pay special attention to some extra features of the advertisement tax (e.g. the aims and preconditions of carry-forward loss deduction) that appear to be unique in the field of turnover based taxes.

The actual opening of such an in-depth investigation and the doubts of the Committee ought not prejudice the final decision of the investigation. However, this time, as opposed to the usual implications of other infringement procedures, a negative decision may lead to retrospective consequences because of the special competition law provisions.

On top of these, and bearing in mind that 'suspension injunctions' have very rarely been deemed necessary by the Commission in the course of similar investigations, forbidding the application of progressive rates prior to the final decision may bring the retrospective disapplication of the currently effective table of rates.

Corresponding discussions between Hungary and the Commission are now bilateral and therefore not published, hence the outcome are hard to predict. However, triggering additional taxes with retroactive effect for entities having applied lower tax rates up until this date seems a rather unlikely scenario, even if a flat rate taxation rate abolishing the progressive regime were henceforth approved by Brussels.

It must be noted that if Hungary fails to comply with the suspension injunction criteria, the Commission would be entitled to refer the matter to the Court of Justice of EU and the latter may decide with retrospective effect on the advertisement tax as well.

In parallel to the investigation of matters relating to competition law, the Commission is also assessing the compatibility of the tax with existing Community law in light of the freedom of establishment.

The question as to whether turnover-based progressivity itself could prove non-compliance with state aid rules in Brussels, may also play an important role in terms of some other tax considerations (for examples food chain supervision fee and already abolished sector specific taxes).



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