International Corporate Tax Update

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Agenda

- Introduction
- Corporate tax rates are coming down
- BEPS is driving change in the tax world
- Transfer Pricing update
- Patent Box “Nexus” changes (BEPS Action 5)
- Parent / Subsidiary Directive GAAR
- Country updates
- EU State Aid
- Key takeaways

Corporate tax rates are coming down?

Country / region	Corporate tax rate 2016	Going forward
UK	**20%**	19% 2017, 17% 2020, proposed 15%
US	**40%**	
China	**25%**	
Australia	**30%**	
Sweden	**22%**	
Norway	**25%**	Proposed 24% 2017, 23% 2018
Finland	**20%**	
Belgium	**33.99%**	
Netherlands	**25%**	
Luxembourg	**29.22%**	Proposed 27.08% 2017, 26.01% 2018
Spain	**25%**	
France	**33.3%**	Proposed 28%
Germany	**27.22% (+trade tax)**	
Italy	**31.4% (IRES 27.5%; IRAP 3.9%)**	Proposed IRES 24% FY2017
Ireland	**12.5%**	Confirmed to remain at 12.5%
Global average	**23.63% (2010 – 24.69%)**	
EU average	**22.09% (2010 – 22.93%)**	

BEPS is driving change in the tax world

Substance
Income should be taxed where the business activity is performed and the value created

Coordination
Cooperation and prevention of deductions in one country without the corresponding tax in another country

Transparency
Exchange of information e.g. to give tax agencies an understanding of a group's value chain

Action 4: Interest deductions
Action 5: Harmful tax practices
Action 6: Preventing treaty abuse
Action 7: Permanent Establishment
Action 8-10: Transfer Pricing and IP
Action 3: CFC rules

Action 2: Hybrid mismatch
Action 14: Dispute resolution
Action 15: Multilateral instruments
Action 1: Digital economy

Action 11: BEPS data
Action 12: Obligatory ”disclosure” rules
Action 13: TP-documentation and CbC reporting
Action 5: Exchange of tax rulings

Current Status: Implementation Phase (“Inclusive Framework”)

BEPS is driving change within Transfer Pricing

Relevant BEPS Action points

- **Action 13** – Master File + Local File + (CbC) = Increased information
- **Action 8 – 10** – Updating OECD Guidelines to prevent BEPS.
  - Risks – who manages and controls?
  - Intangibles – DEMPE functions
  - Value Creation
- *Current discussion drafts:*
  - Transactional Profit Split Method
  - Attribution of profits to a PE

Global trends

- Transfer Pricing **Documentation** requirements in the majority of countries
- Transfer Pricing **Disclosures** with a Tax Return becoming the norm
- **Automatic Filing Requirements** for Transfer Pricing Documentation in a few countries

BEPS 5 requires IP regimes to be “Nexus” compliant

States with IP regimes required to amend the rules (BEPS action 5)

- Modified nexus approach: Allows a taxpayer to benefit from an IP regime only to the extent the taxpayer itself incurred qualifying R&D expenditure that gave rise to the IP income
- The Nexus ratio:

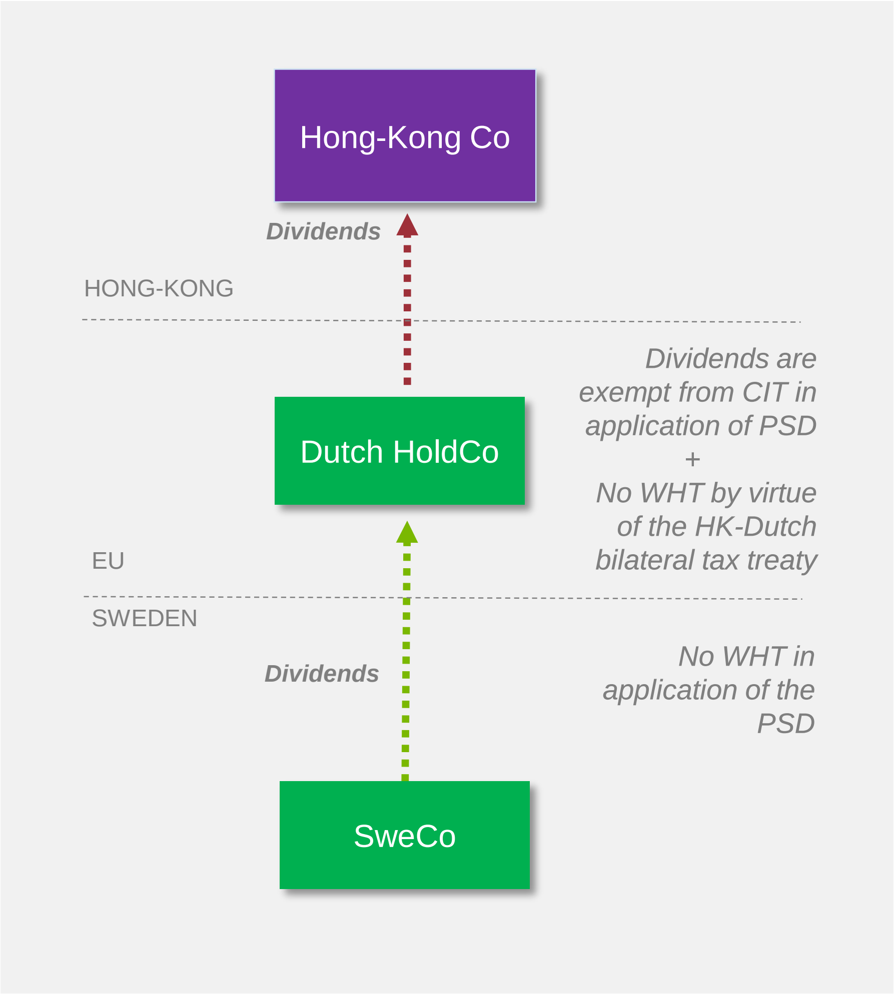
$$\frac{\text{Qualifying expenditure incurred to develop IP asset}}{\text{Overall expenditure incurred to develop IP asset}} \times \text{Overall income from IP asset} = \text{Income receiving tax benefits}$$

- Non compliant regimes: No new entrants after 30 June 2016 (but existing regimes are allowed until 30 June 2021)

IP regimes amended to be "Nexus" compliant

Country / region	IP regime	Amendments
Belgium	Patent income deduction (80%)	Current regime repealed as of 30 June 2016 (grandfathering 2021). New regime "innovation income" proposed
China	Reduced rate for high and new tech enterprises	
France	Reduced rate (15%) for long term capital gains and profits from the licensing of IP rights	
Hungary	IP regime for royalties and capital gains (50%)	New rules proposed (Nexus approach)
Italy	Patent box (qualifying income 40% exempt in 2016 and 50% in 2017)	Italian Revenue Agency circular on 7 April 2016 (Nexus principle applied)
Luxembourg	Partial exemption (80%) for income/gains derived from certain IP rights	Current regime repealed as of 1 July 2016 (grandfathering 2021). New Nexus compliant regime expected.
Netherlands	Innovation box (5% tax rate)	Changes proposed to align with BEPS 5
Portugal	Partial exemption from income on certain IP	New Nexus compliant regime June 2016
Spain	Partial (60%) exemption from income on certain IP	Amendments from 1 July 2016 to align with Nexus approach
Switzerland (Nidwalden)	License box	
United Kingdom	Patent box (10% tax rate)	Changed from June 2016 to be Nexus compliant (grandfathering 2021)

Countries have adopted P/S Directive GAAR



- *"…Member States shall not grant the benefits of this Directive to an* ***arrangement*** *or a series of arrangements which, having been put into place for the* ***main purpose*** *or one of the main purposes of obtaining a* ***tax advantage*** *that defeats the object or purpose of this Directive, are* ***not genuine*** *having regard to all relevant facts and circumstances.*
- *…regarded as not genuine to the extent that they are not put into place for* ***valid commercial reasons which reflect economic reality****…"*
- Both inbound and outbound dividends
- Required to be adopted by 1 January 2016

Countries have adopted P/S Directive GAAR

Country	Transposition: Yes or No?	Inbound / outbound dividends?	Guidelines available?
Sweden	No (already existing rule)	Inbound/outbound	Existing conduit rule Existing Tax Avoidance Act
Belgium	No	N/A	N/A
Denmark	Yes	Inbound/outbound	No guidelines
Finland	Yes		No guidelines
France	Yes	Inbound/outbound	No guidelines
Germany	No (already existing rule)	Inbound/outbound	Genuine business activities substance (personnel, office space, equipment) participating in the local market
Hungary	No	N/A	N/A
Ireland	Yes	Inbound/outbound	No guidelines
Italy	No (already existing rule)	Inbound/outbound	Economic substance
Luxembourg	Yes	Inbound/outbound	No guidelines
Malta	Yes	Inbound/outbound	No guidelines
Netherlands	Yes	Outbound	Yes. Substance, active business, investment attributable to that business, managerial and strategic functions
Poland	Yes	Inbound/outbound	No guidelines
Portugal	Yes	Inbound/outbound	No guidelines
Slovakia	Yes	Inbound	No guidelines
Slovenia	Yes	Inbound/outbound	No guidelines

Some other CIT developments in Europe

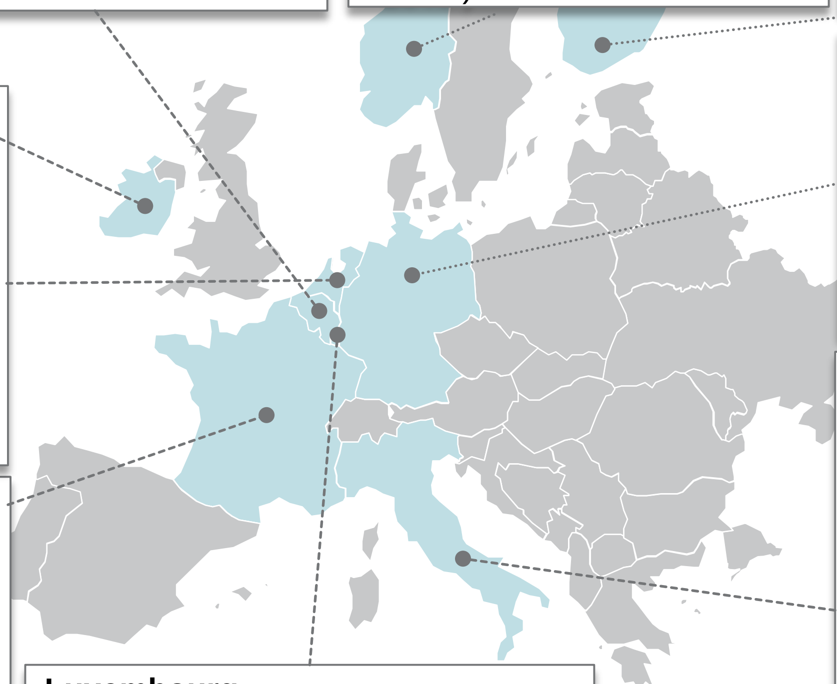
Ireland
- Budget 2017 (13 Oct 2016)
- R&D Knowledge development box 6.25% CT rate (1 Jan 2016)

Belgium
- Preparing corporate tax reform
- NID 2017: 0.237% (2016: 1.131%)

Norway
- Norwegian earnings stripping rules contrary to EEA treaty – EFTA Surveillance Authority reasoned opinion (25 Oct 2016)

Finland
- Limitation on interest deductions in debt push-down arrangements (branch/SPV) (guidance May 2016)

Netherlands
- Refocus the "debt push down" rules (2017)
- Fiscal unity for Dutch sister companies under third country parent (CoA May 2016)



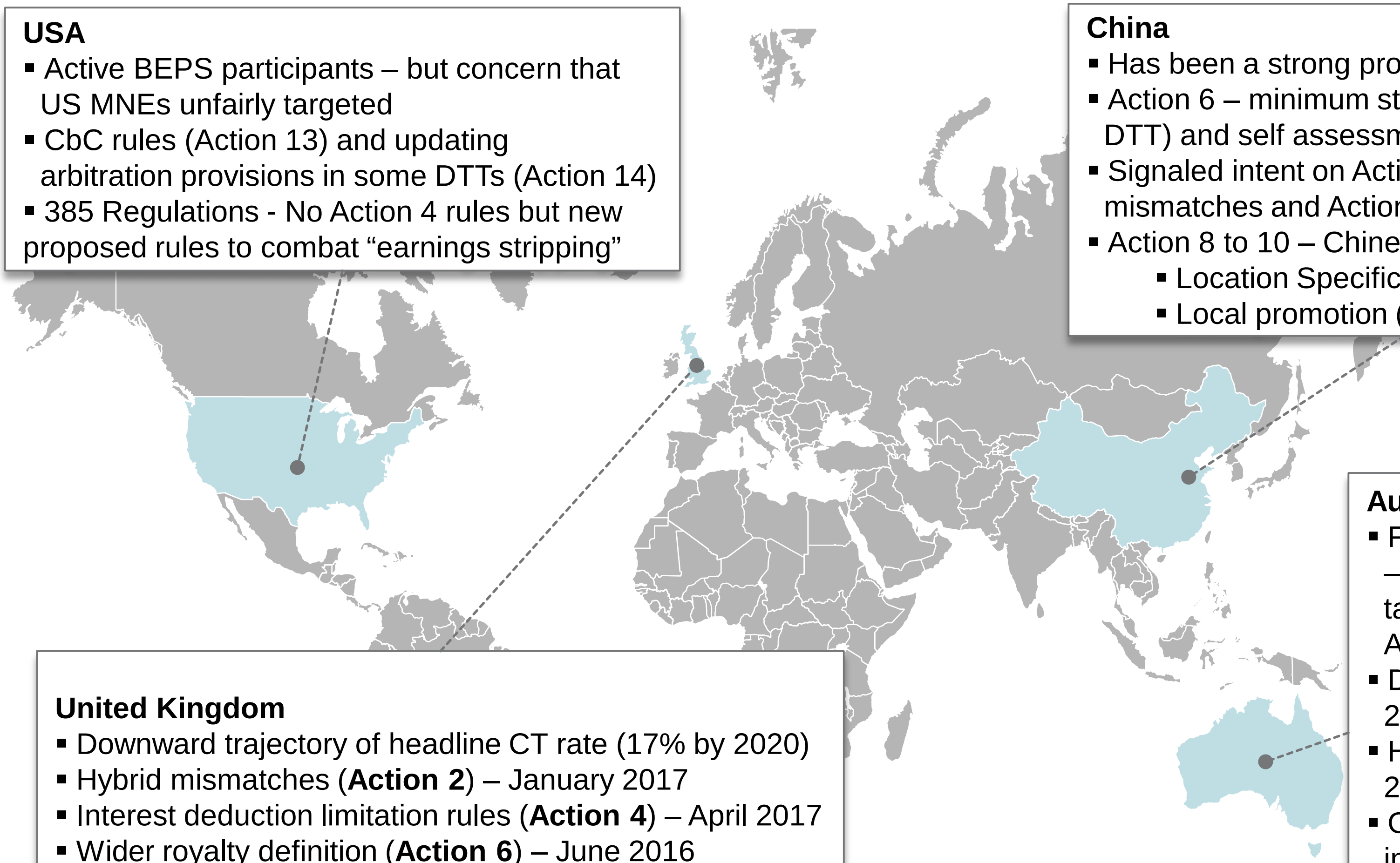
Germany
- No forfeiture of tax losses in change of ownership if no change in business within 3 years
- Trade tax and CFC changes
- Move towards self assessment system?

France
- Amended group dividend exemption from 1 Jan 2016 (*Groupe Steria* case C386/14) (99% EU/EEA exemption)
- 3% dividend tax is unconstitutional (French Constitutional court decision on 30 September 2016)

Luxembourg
- Restrictions on future losses from 2017 – 17 years carry forward
- Increase in investment tax credit rates

Italy
- “Fast track” advance rulings (45 day response)
- Repeal of “black list” cost rules (deductible if arm’s length) and CFC rule changes
- Additional 40% depreciation on certain assets
- Domestic tax consolidation for sister companies (SCA Group Holding case C-39/13)
- A step-up in basis of business assets

Some other CIT developments around the world



USA
- Active BEPS participants – but concern that US MNEs unfairly targeted
- CbC rules (Action 13) and updating arbitration provisions in some DTTs (Action 14)
- 385 Regulations - No Action 4 rules but new proposed rules to combat “earnings stripping”

China
- Has been a strong proponent of BEPS outputs
- Action 6 – minimum standards (recent Chile DTT) and self assessment
- Signaled intent on Action 2 (Hybrid mismatches and Action 3 (CFC rules)
- Action 8 to 10 – Chinese interpretation
    - Location Specific Advantages
    - Local promotion (DEMPE)

Australia
- Focus on anti-avoidance – e.g. MNEs avoiding a taxable presence in Australia
- Diverted Profits Tax (July 2017)
- Hybrid mismatch (Action 2) – January 2018
- Other Actions are being incorporated into DTTs (e.g. recently with Germany)
- Transparency measures

United Kingdom
- Downward trajectory of headline CT rate (17% by 2020)
- Hybrid mismatches (**Action 2**) – January 2017
- Interest deduction limitation rules (**Action 4**) – April 2017
- Wider royalty definition (**Action 6**) – June 2016
- Diverted Profits Tax (since 2015)
- UK tax strategy (September 2016)

Commission decides tax rulings are state aid

Article 107 (1) TFEU
Aid granted by a Member State…
which distorts or threatens to distort competition by…
favoring certain undertakings*…*
incompatible with the internal market.

2014

2015

2016

? CJEU

2013-2014: Systematic Investigation of all MS ruling procedures

June 2014: Initiated formal investigation into Apple in Ireland, Starbucks in the NL, Fiat in Lux

October 2014: Started investigation into **Amazon** in Lux and formal investigation on 16 January 2015

2015: Information request for 1,000 rulings (60% from LuxLeaks – Nov 2014)

February 2015: Started investigation into Belgian Excess Profit rulings

October 2015: Political agreement on **automatic exchange** of cross border tax rulings

21 October 2015 Commission decisions:

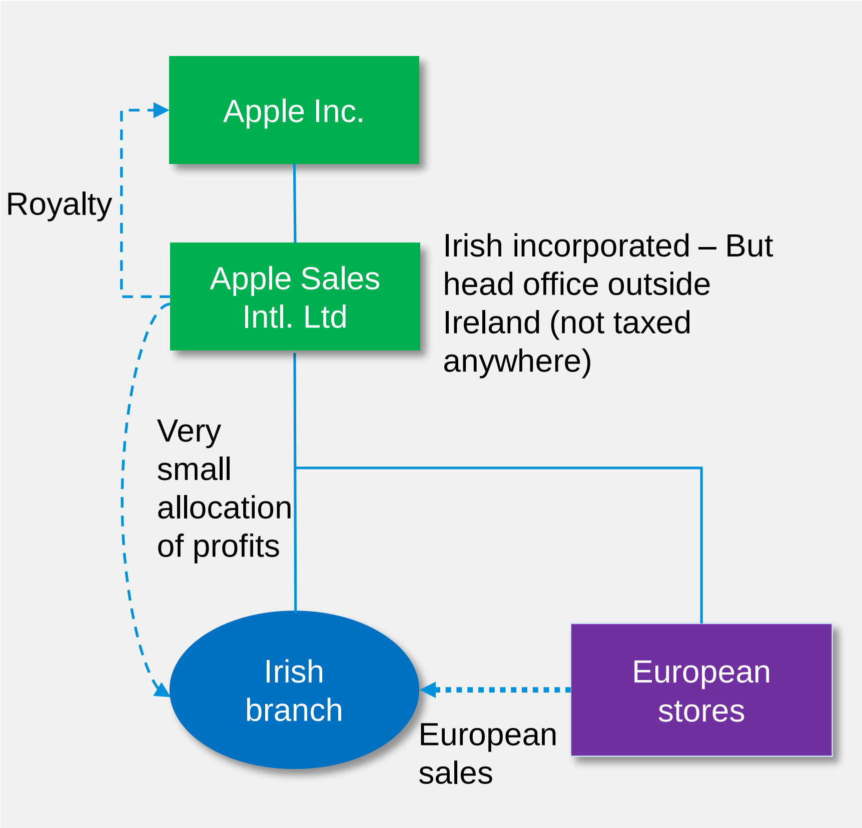
Fiat – Lux / **Starbucks** – NL

3 December 2015 /6 June 2016: Initiated formal investigation into **McDonald's** in Lux

11 January 2016 – Commission decision: **Belgian Excess Profit** rulings

30 August 2016 Commission decision **Apple**; Ireland

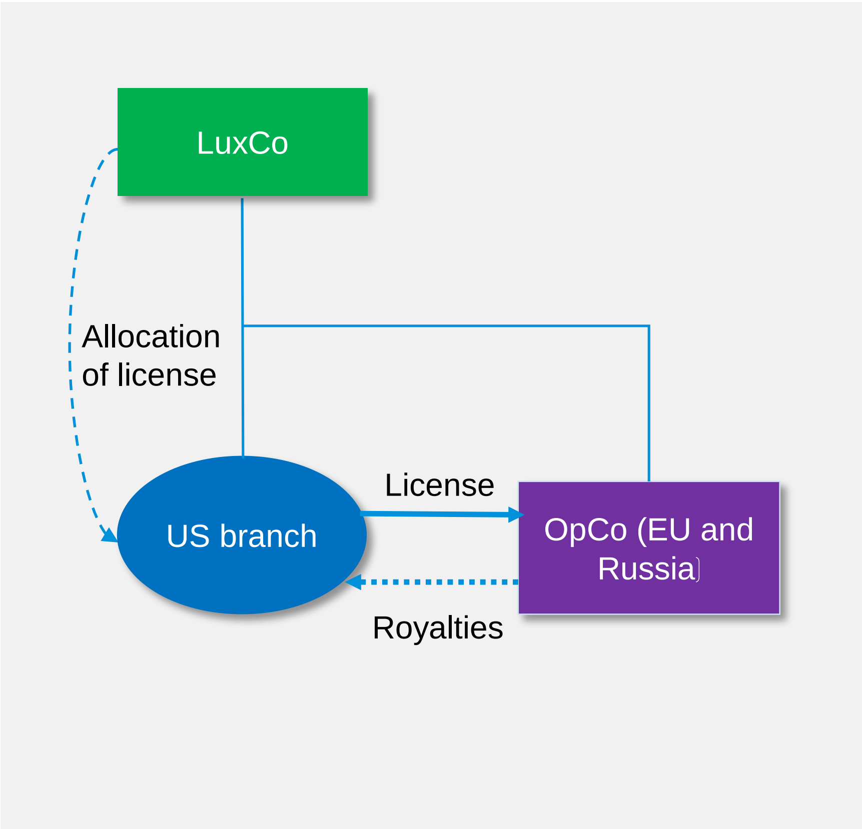
Ireland's rulings were illegal state aid to Apple



- European Commission decision on 30 August 2016
- Ireland granted **illegal state aid**: **tax opinions** in 1991 and 2007: artificial **allocation of profits** of the Irish branches of two Apple subsidiaries
- Profits from European sales subject to very limited tax (ETR 0.005 - 0.05%)
- Commission orders Ireland to calculate and **recover** additional taxes from Apple for the period June 2003 through September 2014
- The EU Commission estimates the State aid to be **Euro 13 billion** plus interest
- Both Apple and the Irish government disagree and have announced to **appeal** the decision

Profit allocation no factual or economic justification – selective – must be in line with arm's length principle

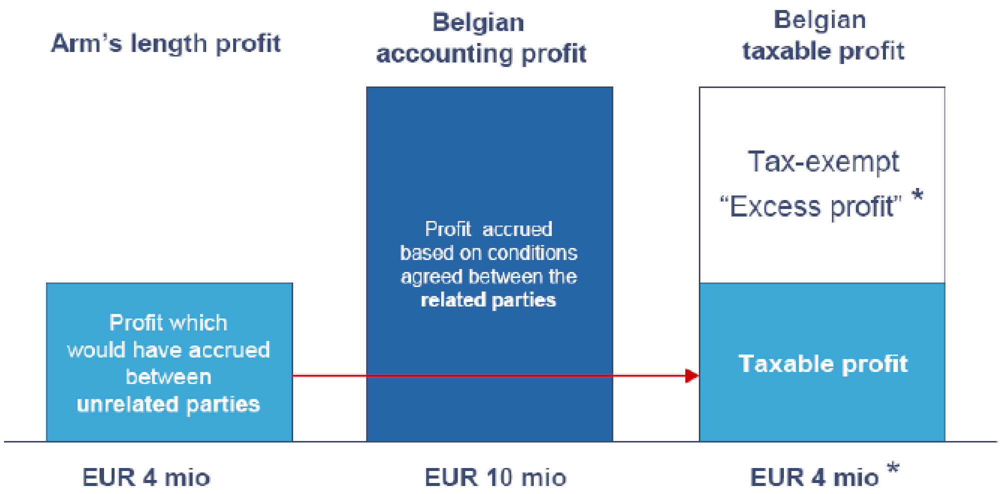
Are Lux rulings to McDonald's illegal state aid?



- European Commission initiated formal investigation on 3 December 2015 (published on 6 June 2016)
- Luxembourg **tax rulings** granted to McDonald's in 2009 regarding tax treatment of royalty income
- US branch from Lux tax perspective
  - Royalties exempt in Luxembourg based on US-Luxembourg **Double Tax Treaty**
- No trade and no business from US tax perspective
  - No taxable income in the US
- Commission: Since **Lux was aware that US could not tax** it should not have agreed to exempt the income in Lux – selective advantage

Inconsistent application of national law/treaty – double non taxation

Belgian Excess Profit Ruling system is state aid



- **Excess Profit Ruling (EPR) system** allows unilateral downwards adjustment of tax base
- Comparison actual profits of group company with hypothetical profits of a stand-alone company
- Excess profits resulting from being part of multinational group, e.g. synergies etc
- **Commission**: Belgian does not apply the arm's length principle properly – selective advantage – double non-taxation
- Illegal state aid
- 35 multinationals affected
- Amounts recovered approx. €700m
- Appealed

EPR system derogated from normal Belgian practice and arm's length principle – selective

Five key take aways

1	2	3	4	5
Countries take steps to remain tax competitive	**OECD's BEPS initiative is driving CIT developments (substance / transparency)**	**Countries have started to implement BEPS (mainly 2, 5 and 13)**	**EU case law and directives key to developments in Europe (Commission active)**	**Commission: Selective tax rulings considered illegal state aid**

Tack!

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