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Congressional reaction to EC's state aid investigation

Leaders of the U.S. congressional tax writing committees today responded to the announcement by the European Commission's Directorate-General for Competition (EC) of its state aid investigation findings that Ireland has granted undue tax benefits of up to €13 billion to a U.S.-based multinational corporation.

The EC found that Ireland's action was "illegal" under EU state aid rules because it allowed the company to pay substantially less tax than other businesses, and concluded that Ireland must now recover the illegal aid from the taxpayer. Read ***TaxNewsFlash-Transfer Pricing***

Manal Corwin, KPMG's National Leader, International Tax Services, commented:

> *"There's little question that this story is closer to its beginning than its end. International tax will always be complicated, and trying to build a level playing field in an uneven world is a monumental challenge. The real danger is creating an uncertain environment for multinational companies looking to follow the spirit and the letter of the law."*

U.S. congressional response

In response to today's EC's announcement, leaders of the House Ways and Means and Senate Finance committees issued statements.

- *"The European Commission's decision is a predatory and naked tax grab."* – Ways and Means Chairman Kevin Brady (R-TX). Read full text of Chairman Brady's **statement**.

- "*This ruling could set a dangerous precedent that undermines our tax treaties and paints a target on American firms in the eyes of foreign governments."* – Senate Finance ranking member, Ron Wyden (D-OR). Read full text of Senator Wyden's **statement**.

Senate minority leader Chuck Schumer (D-NY) and Senate Finance Chairman Orrin Hatch (R-UT) separately issued statements critical of the EC's findings.

Previously, a bipartisan group of congressional tax writers expressed concerns about the EC state aid investigations and called on Treasury to employ retaliatory measures under the authority of Code section 891 that could permit Treasury to impose higher taxes on certain foreign U.S. taxpayers. Treasury has acknowledged it is studying the issue. Read ***TaxNewsFlash-Transfer Pricing***

Administration's position

The U.S. Treasury Department last week released a "white paper" outlining Treasury's concerns with the approach of the European Commission and its state aid investigations. Read ***TaxNewsFlash-Transfer Pricing***

In explaining its concerns with the EC's approach, Treasury's white paper:

- Highlighted that the EC's approach is new and was unforeseeable by the relevant companies and EU Member States
- Emphasized that the EC should not seek to impose recoveries under this new approach in a retroactive manner because it sets a bad precedent for tax policymakers around the world
- Explained that the EC's approach undermines U.S. tax treaties and international transfer pricing guidelines already accepted broadly in the global tax community, and undermines the work done as part of the base erosion and profit shifting (BEPS) project

On prior occasions this year, Treasury Secretary Lew wrote to the EC president and challenged the authority and the approach employed by the EC in the state aid investigations and cases. Read ***TaxNewsFlash-Transfer Pricing***

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