By PwC Deutschland | 12. Oktober 2023

Update: General Court: Belgian tax rulings for multinational companies illegal aid

The tax exemptions by way of tax rulings from Belgium to companies forming part of multinational groups constitute an unlawful aid scheme. The General Court of the EU thus confirms the decision of the European Commission which found, in 2016, that the Belgian tax scheme was an infringement of the EU rules on State aid.

Background

Since 2005, Belgium has applied a tax scheme that exempts certain ‘excess’ profits of Belgian entities which form part of multinational corporate groups. Those entities can obtain an advance ruling (tax ruling) from the Belgian tax administration, in particular if they centralize activities, create employment or make investments in Belgium. In that context, ‘excess’ profits - i. e., profits exceeding the profit that would have been made by comparable standalone entities operating in similar circumstances - are exempt from corporate income tax.

In 2016, the European Commission found that this beneficial system constituted a State aid that was incompatible with the internal market.

Decision

The General Court decided that the Commission was correct to assume that the Belgian tax scheme relating to excess profit infringes EU State aid rules.

Thus, the General Court rejects all the arguments put forward by Belgium to challenge the Commission’s decision, including with regard to the financing of the scheme at issue through State resources or the alleged failure to take into account the tax rules applicable in Belgium. According to the General Court, the Commission did demonstrate that the scheme at issue granted tax advantages to its beneficiaries. Furthermore, the General Court held that the Commission correctly concluded that that scheme was selective insofar as it drew a distinction between operators who were in a comparable factual and legal situation.

The General Court also confirms the Commission’s finding that the scheme at issue was selective because it was not open to companies that had decided not to make investments, centralize activities, or create employment in Belgium. The scheme at issue was, moreover, also selective because it was not open to undertakings that were part of a small group.

Update (12 October 2023):

More details and "the takeaway" on possible consequences to be found in the ***PwC EUDTG Newsalert of 26 September 2023***.

Source:

Judgment of the General Court in the case T-131/16 RENV, *Belgium v Commission -*

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