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By PwC Deutschland | 29. April 2025

ECJ: National tax exemptions as illicit state aid

In a Polish case, the ECJ has commented on the distinction between tax exemptions and state aid and specified under what circumstances tax exemptions may be prohibited by EU law.

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A Polish undertaking which owns an individual railway siding on its land decided to make that siding available to a rail carrier in order to avail itself of a property tax exemption. To that end, it applied to the competent authority for an advance tax ruling confirming its right to that exemption.

Although the company had satisfied all the conditions laid down by Polish law, it was refused exemption on the ground that, under EU law, that exemption would constitute unlawful State aid because it had not been notified to the Commission beforehand.

According to the ECJ, the property tax exemption in question does not appear to confer a selective advantage and thus does not appear to constitute State aid. However, it is for the national court to give a definitive ruling in that regard.

A general and abstract exemption to which a direct tax is subject, such as that established by Polish law, cannot, in principle, be regarded as State aid. In so far as it is presumed to be inherent in the ‘normal’ tax regime, it does not, as a general rule, confer a selective advantage.

However, there are two situations in which such an exemption could be selective. The first is where that exemption forms part of a tax regime configured according to manifestly discriminatory parameters. The second is where the conditions set by the relevant legislation for benefiting from that exemption are connected with one or more specific characteristics of the undertakings benefiting therefrom, those characteristics being inextricably linked to the nature of those undertakings or the nature of their activities, with the result that those undertakings form a consistent category.

More details to be found in the ECJ’s **press release No. 54/25** re. the judgment C-453/23 *Prezydent Miasta Mielca*.

Schlagwörter

illicit state aid, tax exemption