

Euro Tax Flash

Issue 244 - January 16, 2016

Euro Tax Flash from KPMG's EU Tax Centre



EU Commission publishes a decision on its state aid investigation into Luxembourg tax rulings issued to Amazon

State aid – tax rulings – Luxembourg

On January 16, 2015, the European Commission published a decision dated October 7, 2014 relating to a state aid investigation into tax rulings issued by Luxembourg to companies of the Amazon group. The decision sets out the factual and legal basis for the Commission's preliminary view that one of these rulings constitutes state aid. The decision states that the Commission will continue its investigation, taking into account comments submitted in the course of the procedure, pending a final decision on whether the ruling is compatible with EU law on state aid. Similar decisions were published in September 2014 in respect of rulings issued by Ireland, Luxembourg and the Netherlands, concerning respectively the Apple, Fiat, and Starbucks groups (see [Euro Tax Flash 233](#)).

Background

In June 2014 the Commission began its investigation into alleged state aid granted by Luxembourg to companies within the Amazon

group by way of a transfer pricing ruling.

Under EU law, the Commission is obliged to review state aid granted by EU Member States and, if it finds that the aid is not compatible with EU law, require the Member States concerned to abolish or alter such aid within a prescribed time period. Broadly speaking, aid is incompatible with EU law if it distorts competition by, for example, favoring certain undertakings and thus affecting trade between Member States. However, certain aid is specifically considered compatible with EU law, such as certain regional aid granted to promote economic development.

The Decision

According to the decision, the ruling in question reduces charges that would normally be borne by the Luxembourg entity concerned. The Commission expressed concerns that the ruling may underestimate the taxable profits of the latter and held that to the extent the Luxembourg authorities have deviated from the arm's length principle as regards the contested tax ruling, the measure should be considered selective. Its preliminary view is that this ruling therefore constitutes state aid and may not be compatible with EU law. Accordingly, the Commission decided to initiate the formal state aid investigation procedure. The non-confidential version of the decision is available under case number [SA.38944](#).

EU Tax Centre Comment

This decision forms the start of the formal procedure to investigate the alleged state aid granted by Luxembourg. The procedure is now open for interested parties, including Member States, to provide comments to the Commission.

Should you require further assistance in this matter, please contact the EU Tax Centre or, as appropriate, your local KPMG tax advisor.

Robert van der Jagt

Chairman, KPMG's EU Tax Centre and
Partner, Meijburg & Co
vanderjagt.robert@kpmg.nl

Barry Larking

Director EU Tax Services, KPMG's EU Tax Centre
larking.barry@kpmg.nl

[Back to top](#)

kpmg.com/socialmedia



kpmg.com/app



[Privacy](#) | [Legal](#)

KPMG's EU Tax Centre, Laan van Langerhuize 9, 1186 DS Amstelveen, Netherlands

Euro Tax Flash is published by KPMG International Cooperative in collaboration with the EU Tax Centre. Its content should be viewed only as a general guide and should not be relied on without consulting your local KPMG tax adviser for the specific application of a country's tax rules to your own situation. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2015 KPMG International Cooperative (KPMG International), a Swiss entity. Member firms of the KPMG network of independent firms are affiliated with KPMG International. KPMG International provides no client services. No member firm has any authority to obligate or bind KPMG International or any other member firm vis-à-vis third parties, nor does KPMG International have any such authority to obligate or bind any member firm. All rights reserved.

The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International.