



## PwC's EU Direct Tax Group

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# EU Direct Tax Newsalert

## EU's General Court confirms EC's decision related to the State aid scheme granted to Belgian ports

On 20 September 2019, by three judgments (cases T-673/17, T-674/17 and T-696/17), the General Court of the European Union (GC) confirmed the European Commission's (EC) decision ruling the corporate tax exemption for the Belgian ports amounts to an incompatible State aid scheme.

### Background and facts

On 3 July 2013, the EC asked information to all Member States on the functioning and taxation of their ports. From the information gathered, the EC held the tax regime for ports granted by the Netherlands (decision of 21 January 2016), France (decision of 27 July 2017) and Belgium (decision of 27 July 2017) constituted existing State aid and ordered them to remove the tax exemption for ports.

Where France and the Netherlands exempted their ports from corporate income tax, Belgium exempted ports from "corporate tax" but subjected them to "tax on legal persons" which was however not charged on the total amount of income and generally at lower rates. Belgian ports brought an action before the GC requesting annulment of the EC's decision related to Belgium.

### Judgment

The GC rejected their application and confirmed the State aid decision of the EC.

Firstly, the Court concluded that Belgian ports are 'undertakings' in the meaning of Article 107(1) TFEU to the extent they actually carry on economic activities. The fact that ports also perform services of general interest (in so far their economic activities cannot be separated from the exercise of their public powers) or enjoy a statutory monopoly does not disqualify them from being designated (at least partly) as 'undertakings'.

Secondly, regarding the selectivity criteria, the EC and Belgium disagreed on the legal basis of the corporate tax exemption for

ports. Hence, in order to determine the reference framework, the GC was called to interpret the Belgian national tax provisions. Based on their wording and official comments from the Belgian tax authorities, the GC confirmed that in absence of a general exemption for ports in the Belgian tax code, ports would be subject to corporate tax and not to tax on legal persons. Therefore the reference system was considered to be the general tax rules on direct taxation in Belgium and the exemption was considered a selective deviation from this reference framework.

The GC on that basis agreed with the EC that ports and companies subject to corporate tax were in comparable situation in the light of the objective pursued by the reference system, which was to tax income, with respect to their economic activities.

Thirdly, the request for a transitional period until such time that the EC has completed its investigation into the tax regime of the various ports in the EU was denied as the GC considered that it was not empowered to do so.

### Takeaway

The three judgements are consistent with previous rulings of the GC confirming the existing State aid classification by the EC of the former corporate tax exemption applicable to the French (T-747/17 and T-754/17) and the Netherlands ports (T-160/16). The EC is now focussing also on the tax regime applied by Spain and Italy to their ports. On 8 January 2019, they invited Spain and Italy to adapt the legislation in order to ensure that Spanish and Italian ports, as from 1 January 2020, will pay corporate tax in the same way as other companies.

