EU Direct Tax Newsalert

European Commission opens State aid investigation into Luxembourg's tax treatment of Finnish company

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On 7 March 2019, the European Commission (EC) issued a press release announcing the opening of a State aid investigation into tax rulings granted by the Luxembourg tax authorities to a Luxembourg subsidiary of a Finnish group in relation to the treatment of interest-free loans granted by another Irish subsidiary of the group to the Luxembourg company.

Background

According to the EC's press release, the formal investigation concerns three rulings obtained by the Luxembourg subsidiary from the Luxembourg tax administration in 2009, 2012 and 2013.

According to the facts as presented in the preliminary decision of the EC:

- The Luxembourg subsidiary, which carried out intra-group financing activities, has been granted interest-free loans from an Irish group subsidiary and used the funds to grant in its turn loans to other group companies.
- The rulings confirmed that the Luxembourg subsidiary can deduct from its taxable basis an amount of deemed interest on the interest-free loans corresponding to interest payments that an independent third party would have otherwise demanded for the loans in question.

EC's preliminary assessment

According to the press release, the EC expresses doubts as to whether the treatment endorsed by the rulings in question can be justified. Notably, the EC appears concerned that the unilateral downward adjustment applied on the interest-free loans by the Luxembourg company represents a selective advantage to the group because it would allow the group to pay less tax than other stand-alone or group companies whose transactions are priced in accordance with market terms.

Takeaway

The decision is the latest in a number of high profile cases concerning State aid and taxation and it is the first one that concerns the treatment of interest-free loans.

The text of the opening decision, which is not yet available, will be important in order to understand the EC's detailed argumentation in this case and potentially also in relation to other prior cases dealing with arm's length transactions and transfer pricing.