

# Newsalert EU Direct Tax Group

## European Commission takes the next step in its EU-wide State aid review of tax ruling practices

On 8 June, the European Commission ('Commission') announced its next steps in its EU-wide State aid review of Member States' tax ruling practices.

### Background

On 17 December 2014, the European Commission announced that it had extended its enquiry into tax ruling practices in the EU under EU State aid rules to cover all EU Member States.

Under the review, the Commission has asked all EU Member States to provide information about their tax ruling practice, in particular to confirm whether they provide tax rulings, and, if they do, send a list to the Commission of all companies that have received a tax ruling from 2010 to 2013.

On 8 June, the Commission announced that it has issued an information injunction to two Member States and an information request to 15 Member States.

### Injunction issued to Poland/Estonia

The Commission states in its press release that, following the December 2014 enquiry, Estonia and Poland refused to respond in full detail to the information request.

The Commission has now issued an information injunction to both countries, which have one month to provide the missing information to the Commission. Both countries have a legal obligation to respond.

### Profound review of the ruling practice

As part of its State aid review which started in June 2013, the Commission already asked 7 Member States<sup>1</sup> at an earlier stage to share further information on their respective ruling practices.

In addition to the above announcement

regarding Estonia and Poland, on the basis of the information it has received, the Commission will ask 15 Member States<sup>2</sup> to provide a substantial number of individual rulings. This brings the total to 21 (out of 28) Member States that have already received a request for detailed information.

Requesting these rulings does not prejudice whether this will lead to individual State aid investigations concerning the recipients of these tax rulings.

On the basis of the additional information, the Commission wants to assess whether Member States operate tax rulings to grant companies selective tax advantages that breach EU State aid rules.

### Fiscal State aid and tax rulings

The Commission states that tax rulings, which are comfort letters issued by tax authorities to an individual company are not as such a problem under EU State aid rules. A tax ruling grants upfront legal certainty to companies. However, the Commission is to review whether such tax rulings result in a Member State granting selective advantages to specific companies or groups of companies. The latter could be selective and distort competition in the Single Market in breach of EU State aid rules.

The Commission's information request to Member States follows the Commission's agenda to fight against tax avoidance and harmful tax competition. In view of this, the Commission launched a proposal in March 2015 to require Member States to automatically exchange information on tax rulings with each other and the Commission.

<sup>1</sup> Belgium, Cyprus, Ireland, Luxembourg, Malta, Netherlands, UK

<sup>2</sup> Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Lithuania, Portugal, Romania, Slovakia, Spain and Sweden

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