EU Direct Tax Newsalert

EU Commission requires Belgium and France to abolish tax exemptions for ports

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On 27 July 2017, the European Commission (EC) published a press release concerning two formal decisions in which it requires Belgium and France to abolish the corporate tax exemptions granted to their ports, so as to align their tax regimes with the EU's State aid rules. According to the EC, the profits earned by port operators should be taxed under the normally applicable national corporate tax regime in order to avoid distortion of competition. The details of the decisions are not yet publicly available; however, it follows from the press release that no recovery is due as a result of the characterization of the aid granted to the port operators as existing aid.

Background

In July 2014, the EC expressed concerns as to the non-taxation of ports in Belgium, France and the Netherlands. In January 2016, the EC adopted three opening decisions requiring these Member States to abolish their existing regimes for the (non)taxation of ports in order to comply with EU State aid provisions. The Netherlands accepted and complied with the EC's opening decision, and subsequently introduced a new regime per January 2017. Belgium and France disagreed with the EC however which led to the opening of formal investigation procedures in July 2016, which were concluded on 27 July 2017.

Under Belgian law, several sea and inland waterway ports (namely Antwerp, Bruges, Brussels, Charleroi, Ghent, Liège, Namur and Ostend, as well as along the canals in Hainaut Province and Flanders) are exempt from corporate income tax. These ports fall under a specific corporate tax regime, which has its own applicable taxable base and rates, ultimately leading to an overall lower level of taxation for Belgian ports as compared to other companies in Belgium.

On a similar note, under French law, ports (such as Bordeaux, Dunkerque, La Rochelle, Le Havre, Marseille, Nantes-Saint-Nazaire and Rouen as well as Guadeloupe, Guyane, Martinique and Réunion, the Port autonome de Paris, and ports operated by chambers of industry and commerce) are fully exempt from corporate income tax.

It follows from the EC's press release that in the EC's view, the corporate tax exemptions granted to Belgian and French ports provide them with a selective advantage in breach of the State aid rules. In its press release, the EC considers that ports are comparable to other economic operators and that the tax exemptions do not pursue a clear objective of public interest, such as the promotion of mobility or multimodal transport. The EC argues that the tax savings generated as a result of the non-taxation are being used by the port operators to fund any type of activity or to subsidise the prices charged by the ports to customers, to the detriment of competitors and fair competition. The EC holds that insofar as port operators generate profits from economic activities, such profits should be taxed under the normally applicable corporate income tax regime.

Takeaway

Belgium and France must abolish the corporate tax exemptions for their ports by the end of 2017 and ensure that all ports are subject to the normally applicable rules starting from 1 January 2018. Because the corporate tax exemption for ports already existed before the accession of France and Belgium to the EU, these measures are considered as existing aid. so there will be no recovery procedure. The press release is currently the only information available. The non-confidential versions of these EC decisions will be made available online under the case numbers SA.38393 (Belgian ports) and SA.38398 (French ports) in the EC's State Aid Register once confidentiality issues have been resolved. The final decisions may contain interesting insights on how the EC treats comparability and existing aid.