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EU Direct Tax Newsalert

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

On 7 March 2019, the European EC appears concerned that the Commission (EC) issued a press release unilateral announcing the opening of a State aid applied on the interest-free loans by investigation into tax rulings granted by the Luxembourg company represents a the Luxembourg tax authorities to a selective advantage to the group Luxembourg subsidiary of Huhtamäki group in relation to the less tax than other stand-alone or treatment of interest-free loans granted group companies whose transactions by another Irish subsidiary of the group are priced in accordance with market to the Luxembourg company.

Background

formal investigation concerns three of high profile cases concerning State rulings obtained by the Luxembourg aid and taxation and it is the first one subsidiary from the Luxembourg tax that concerns the treatment of interestadministration in 2009, 2012 and 2013. free loans.

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 interestfree 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 would have otherwise party 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

downward the because it would allow the group to pay terms.

Takeaway

According to the EC's press release, the The decision is the latest in a number

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 potentially also in relation to other prior cases dealing with arm's length transactions and transfer pricing.



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