EU Direct Tax Newsalert
European Commission opens State aid investigation into Luxembourg's tax treatment of Huhtamäki

PwC's EU Direct Tax Group

EUDTG is PwC's pan-European network of EU law experts. We specialise in all areas of direct tax, including the fundamental freedoms, EU directives and State aid rules. You will be only too well aware that EU direct tax law is moving quickly, and it's difficult to keep up. But, it is crucial that taxpayers with an EU or EEA presence understand the impact as they explore their activities, opportunities and investment decisions. Find out more on: www.pwc.com/eudtg

Interested in receiving our free EU tax news? Send an e-mail to eudtg@nl.pwc.com with "subscription EU Tax News".

For more detailed information, please do not hesitate to contact:

Alina Macovei – PwC Luxembourg
+ 352 49 48 48 3122
alina.macovei@lu.pwc.com

Sami Douenias – PwC Luxembourg
+352 49 48 48 3060
sami.douenias@lu.pwc.com

Jonathan Hare – PwC UK
+44 (0)20 7804 6772
jonathan.hare@pwc.com

Emmanuel Raingeard – PwC France
+33 155 574 014
emmanuel.raingeard@pwcavocats.com

Or contact any of the other members of **PwC's State Aid Working Group**.

or your usual PwC contact

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 the Huhtamäki 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.