

Luxembourg Tax Alert

Four-year investigation finds no impermissible state aid was granted by tax rulings

21 September 2018

Following a four-year investigation, the European Commission concluded on 19 September 2018 that Luxembourg did not provide any impermissible state aid in the McDonald's case.

In the context of ensuring free competition in the EU single market, the European Commission monitors whether EU member states grant unfair advantages—state aid—that would distort free competition in the single market, and regulates the issue of state aid.

In 2015, the European commission launched an in-depth state aid investigation relating to Luxembourg tax rulings granted to a McDonald's Luxembourg entity in 2009, in connection with a US branch of the entity.

The European Commission analyzed whether the Luxembourg tax authorities selectively derogated from the provisions of domestic tax law and the Luxembourg-US tax treaty to provide the Luxembourg entity an advantage not available to other companies subject to the same tax rules, resulting in the double non-taxation of the income attributed to the US branch of the Luxembourg entity.

The European Commission [announced](#) on 19 September 2018 that the non-taxation in Luxembourg of certain profits allocated to the US branch was in line with domestic tax law and the Luxembourg-US tax treaty. The commission also found that the Luxembourg tax authorities did not misapply the treaty, and that the tax advantage the Luxembourg entity received—which results from a mismatch between Luxembourg and US tax laws—could not be considered as a distortion of free competition in the single market.

The Luxembourg government welcomed the European Commission's decision. The Minister of Finance issued a statement in response to the commission's decision, which states the decision strengthens Luxembourg's position that, while the application of the rules might have resulted in a situation that no longer reflects the current spirit of the national and international tax framework, such an application does not constitute state aid.

Your contacts

Raymond Krawczykowski

Partner | Tax Leader

Tel: +352 45145 2500

rkrawczykowski@deloitte.lu

Bernard David

Partner | International Tax Leader

Tel: +352 45145 2799

bdavid@deloitte.lu

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte advisor.

About Deloitte Touche Tohmatsu Limited:

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/lu/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte has in the region of 200,000 professionals, all committed to becoming the standard of excellence.

© 2018 Deloitte General Services

Designed and produced by MarCom at Deloitte Luxembourg