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.

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