Brussels, 12 March 2018

Commission Identifies Members States Engaging in Harmful Tax Practice

The European Commission has identified in its European Semester reports and Aggressive Tax Planning Indicators Report, published last week, Member States where economic indicators suggest that the countries facilitate harmful tax practices, including Belgium, Cyprus, Hungary, Ireland, Luxembourg, Malta and The Netherlands.

Indicators such as foreign direct investment, corporate revenue and net royalty payments as a percentage of GDP, bilateral import price anomalies and dividend repatriation routes were examined as part of the reports, to reveal patterns that signify the existence of aggressive tax planning.

The reports indicate that Cyprus, Malta, and Luxembourg raise more corporate tax relative to their GDP than models predict, and foreign directive investment was several times higher than GDP in Cyprus, Ireland, Luxembourg, Malta and the Netherlands. Ireland was reported as having the highest net royalty payments as a percentage of GDP.

Commission Demands the UK Pay €2.7 Billion Into Budget due to VAT Carousel Fraud

The European Commission has formally demanded the UK pay €2.7 billion for lost custom duties directly into the budget based on recommendations made by the Commission's anti-fraud investigation unit, OLAF, following their investigations into a fraud ring involving the value of clothes and shoes imported from China.

Goods were distributed to criminal networks participating in carousel VAT fraud within Europe after they entered the UK using false invoices and incorrect customs value declarations. The investigation found that the UK failed to take appropriate action to prevent the fraud, and is therefore financially liable for the consequences of the infringements. The fraud is reported to be ongoing.

HMRC have stated they do not agree with the Commission's estimate of the loss, and will respond to the formal demand after further examination of the notice.

Council of EU ECOFIN 13 March Agenda

Ministers attending the Economic and Financial Affairs Council meeting on 13 March are due to discuss the banking union and tax transparency. It is expected that the draft proposal concerning mandatory disclosure rules, aimed at reducing tax avoidance and aggressive tax planning, will be agreed at the meeting, according to the Council of the EU.

European Court of Justice Determines France Must Recover €642 Million in State Aid

The Court of Justice has dismissed an appeal brought by SNCF against the judgment of the General Court that it must repay state aid received in the amount of €642 million excluding interest, on the basis the conditions to the restructuring aid received had been wrongly implemented and the aid was incompatible with the internal market.

In 2001, the Commission gave conditional authorisation for restructuring aid of €503 million to Sernam, a delivery company wholly owned by SNCF. In 2004, the Commission found that the conditions attached to the 2001 restructuring aid had not been complied with, and demanded the recovery of a further €41 million of incompatible aid that had been granted. The conditions to the decision concerning that recovery were that within a set period Sernam would either withdraw from the road transport market, or, alternatively, that within a set period Sernam would sell its assets en bloc at market price through a transparent procedure to a company with no legal link with SNCF. France elected to sell the assets en bloc, to a company created by the management team of Sernam, Financière Sernam.

Following complaints by competitors, in 2012 the Commission issued a decision that the conditions concerning the sale of the assets had not been complied with, and that the restructuring aid was therefore incompatible with the internal market, and should be repaid. SNCF appealed the decision to the General Court, who dismissed the appeal and held that the conditions for the restructuring aid concerning the sale of assets en bloc had not been complied with.

The Court of Justice found that the purpose of the 2004 decision was to eliminate Serman's presence in the market and prevent distortion of competition due to the restructuring aid, and that the General Court had correctly held that conditions had not been complied with. The Court of Justice upheld the decision of the General Court that the deadline set out for the transfer of assets in the 2004 decision was not observed, that the tendering process was not open and transparent, and that the inclusion of liabilities in the sale of assets en bloc was also not compliant with the 2004 decision. It further held that the private investor test was not applicable to the implementation of a compensatory measure. The Court of Justice accordingly dismissed the appeal.

OECD Tax Talk Webcast – 16 March

The OECD Centre for Tax Policy and Administration will be hosting a live webcast on 16 March concerning the tax challenges arising from the digitalisation of the economy. You can register to participate here.

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