



13 February 2017

1. GDF Suez – Luxembourg: Fiscal State Aid

Until 3 March, the European Commission will be receiving comments on the fiscal state aid alleged to have been provided by Luxembourg to GDF Suez (Case No. SA 44888/2016).

In this case, the Commission is challenging 2 tax rulings issued by the Luxembourgish tax authorities to GDF Suez Group (currently Engie) in 2008 and 2010.

Both rulings concern tax treatment of intra-group *interest-free mandatorily convertible loans*, i.e. loans allowing the lender to become shareholder of the borrower upon conversion.

According to the rulings in question, the borrowing companies were taxed on fixed margin while the difference between their profits and the fixed margin were considered deductible expense. The Commission is challenging such deductibility, highlighting that the aforementioned loans are equity rather than debt instruments. Furthermore it is challenging the agreed non-taxation of the deductible amounts at ultimate owner level.

The relevant announcement of the European Commission may be found in this [Link](#).

2. C-283/15: X vs Netherlands – Tax Allowance for Personal and Family Circumstances

The case concerned the applicability of *Schumacker* case (C-279/93) in a new situation.

The facts involved a taxpayer receiving income from two states, at a proportion 60% - 40%, while being tax resident in third state. Such taxpayer's income in the state of tax residence was so low that did not permit such state to take into account his personal and family circumstances.

The ECJ ruled that the fact that the taxpayer received the major part of his income within several states (instead of one) other than that of tax residence does not affect application of the *Schumacker* principles. The decisive criterion is whether it is impossible for the state of residence to take into account for tax purposes the personal and family circumstances of the relevant taxpayer, due to absence of sufficient taxable income therein.

The ECJ also clarified that the injunction applies to any state of activity of the taxpayer, in proportion to the income earned within its jurisdiction, irrespective of whether the remaining part of the income is earned in a member state or in a non-EU country.

The ECJ ruling may be found in this [Link](#).

3. C-21/16: Euro Tyre BV — Sucursal em Portugal vs Portugal – VAT Exemption of Intra-community Supplies of Goods

The case concerned the refusal of Portuguese tax authorities to exempt from VAT sales effected by branch of Dutch company and classified thereby as intra-community supplies.

The argument forwarded was that at the time of the transaction the purchaser was neither registered for intra-community in its state of residence nor registered in the VIES system.

The ECJ stressed that the above registration requirements are formalities which may not undermine the seller's right to VAT exemption where the substantive conditions for intra-community supply are fulfilled. Substantially, it is required that goods are dispatched or transported to an EU destination outside the Member State of origin, by/on behalf of the seller or the purchaser, for another taxable person (or non-taxable legal person) acting as such in a Member State different from the Member State of origin of the goods (art. 138(1) of VAT Directive).

The ECJ ruling may be found in this [Link](#).

4. AMCHAM in Support of Ireland's Appeal on Apple State Aid Case

The American Chamber of Commerce (AMCHAM) of Ireland declared its full support to Ireland's decision to submit an appeal to the General Court of the EU against the European Commission's decision condemning Apple to pay € 13 billion as illegal state aid.

The relevant (opening) statement (to the Oireachtas Finance Committee on EU State Aid Investigation) may be found in this [Link](#).

5. OECD DD Guidance for Meaningful Stakeholder Engagement in the Extractive Sector

The OECD published guidance to address challenges in relation to engagement with stakeholders in the mining, oil and gas sector, in recognition of the important social and environmental implications connected with extractive operations. Such guidance is relevant to responsible business conduct, as per the OECD Guidelines for MNEs.

OECD's initiative aims at assisting relevant companies with the identification and management of risks related to stakeholder engagement and subsequently with avoiding relevant adverse impact, e.g. human rights infringements or economic setbacks.

The relevant announcement of the OECD may be found in this [Link](#).

In addition, of cross-border interest are:

- In Australia, the consultation regarding the potential impact of the country becoming a party to the Multilateral Instrument closed on 6 February 2017.

The relevant announcement by the Australian government may be found in this [Link](#).

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