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Judgment of the General Court in Case T-131/16 RENV | Belgium v Commission

Tax rulings: the tax exemptions granted by Belgium to companies forming part of multinational groups constitute an unlawful aid scheme

The General Court thus confirms the decision of the European Commission which found, in 2016, that that tax scheme infringed the EU rules on State aid

Since 2005, Belgium has applied a tax scheme that exempts certain 'excess' profits of Belgian entities which form part of multinational corporate groups. Those entities can obtain an advance ruling (tax ruling) from the Belgian tax administration, in particular if they centralise activities, create employment or make investments in Belgium. In that context, 'excess' profits, that is, profits exceeding the profit that would have been made by comparable standalone entities operating in similar circumstances, are exempted from corporate income tax.

In 2016, the European Commission found that that exemption system constituted a State aid scheme that was unlawful and incompatible with the internal market. ¹ It ordered the recovery of the aid thus granted from 55 beneficiary companies.

Upon application by Belgium and several beneficiary companies, the General Court of the European Union annulled the Commission's decision on 14 February 2019. ² On appeal, however, the Court of Justice set aside the judgment of the General Court on 16 September 2021, finding that the Commission had correctly determined that there was an aid scheme. ³ The Court of Justice referred the case back to the General Court in order for the General Court to rule on the classification of that scheme as State aid within the meaning of Article 107 TFEU.

It is in that context that the General Court has today ruled for the second time in this case. ⁴ It has determined that the Commission was right to find, in 2016, that the Belgian tax scheme relating to excess profit infringes EU State aid rules.

Thus, the General Court rejects all of the arguments put forward by Belgium to challenge the Commission's decision, including with regard to the financing of the scheme at issue through State resources or the alleged failure to take into account the tax rules applicable in Belgium.

¹ Decision (EU) 2016/1699 of 11 January 2016 on the excess profit exemption State aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium (OJ 2016 L 260, p. 61).

² See press release [No 14/19](#).

³ See press release [No 158/21](#).

⁴ The General Court has today also dismissed the 29 actions brought against the European Commission's decision by Soudal, Magnetrol International, Puratos and Others, Capsugel Belgium, Atlas Copco, Siemens Industry Software, BASF Antwerpen, Ansell Healthcare Europe, VF Europe, Esko-Graphics, Trane, Kinopolis Group, Belgacom International Carrier Services, Punch Powertrain, Zoetis Belgium, Luciad, Anheuser-Busch Inbev and Ampar, Ineos Aromatics, Victaulic Europe, Eval Europe, SJM Coordination Center, Vasco Group and Astra Sweets, Flir Systems Trading Belgium, ZF CV Systems Europe, Henkel Belgium, Mayekawa Europe, Celio International, Dow Silicones and Vinventions.

According to the General Court, the Commission did demonstrate that the scheme at issue granted tax advantages to its beneficiaries.

Furthermore, the General Court considers that the Commission correctly concluded that that scheme was selective in that it differentiated between operators who were in a comparable factual and legal situation. Thus, the entities forming part of a multinational group which benefited from the excess profit exemption were treated differently from other entities subject to Belgian corporate income tax that did not benefit from it.

The General Court also confirms the Commission's finding that the scheme at issue was selective because it was not open to companies that had decided not to make investments, centralise activities or create employment in Belgium. The scheme at issue was, moreover, also selective because it was not open to undertakings that were part of a small group.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text and, as the case may be, the résumé](#) of the judgment are published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎(+32) 2 2964106

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