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EU Direct Tax Newsalert

EC's final decision on State aid to certain Spanish professional football clubs

On 4 July 2016, the European Commission (EC) issued a Press Release communicating the issuance of its final decision on the formal State aid investigation concerning the tax treatment of certain Spanish professional football clubs. Following the concerns raised in the opening decision, the EC concluded that the lower corporate income tax rate applicable to four football clubs (Real Madrid CF, FC Barcelona, Athletic Bilbao and Atlético Osasuna) constitutes unlawful State aid. Consequently, the Kingdom of Spain was requested to recover the tax unpaid by the football clubs.

Background

Back in the 1990's, the "ley del deporte" (Sports Act) obliged all Spanish sport clubs to convert their legal form into sport limited companies (a newly created form of legal entity for clubs performing professional activities). This legislative amendment was triggered due to the previous inadequate economic management of the sport clubs and the lack of accountability of the managers for the economic losses incurred by their clubs. However, the Sport Act allowed those sport clubs which had not incurred losses in the previous 4-5 year period to maintain their legal form as sport clubs. As a result, only the four football clubs referred above were not obliged to convert into sport limited companies.

As sport clubs are regarded as non-profit entities in Spain, these four football clubs were subject to corporate income tax at a rate of 25%, which is lower than the standard corporate income tax rate applicable to sport limited companies (35% at that time). As per 2016, the same tax rate (25%) applies both to sport clubs and sport limited companies.

Key reasons

The EC concluded that the lower corporate income tax rate applicable to the four football clubs constitutes State aid in the form of foregone income on the part of the Kingdom of Spain. According to the Press Release and the opening decision, the EC's reasoning seems to be as follows:

- The application of this lower corporate income tax rate depended on the legal form of the football club. Only four sport clubs were not obliged to convert into sport clubs, being thus treated as non-profit entities and therefore entitled to the lower corporate income tax rate.
- Despite the fact that the four football clubs were considered to be non-profit entities, they were carrying out economic activities. In fact, some of these clubs earn the highest income in the Spanish "La Liga". In the EC's view, as professional football is considered to be a commercial activity, it should comply with the EU competition rules.
- The lower corporate income tax rate benefits the four football clubs, despite being in a comparable factual and legal situation to sport limited companies. Irrespective of their legal form, both sport clubs and sport limited companies pursue the same economic objective in a highly competitive market.
- The Kingdom of Spain has not put forward any justification for this different treatment. The application of the lower corporate income tax rate was dependent on the legal form of the clubs. All but four football clubs were obliged to convert into sport limited companies and could not reconvert their status. Therefore, the special tax regime was only applicable to the four football clubs;
- In the EC's view, the Kingdom of Spain has granted an unjustified tax advantage, which distorts the competition between football clubs.

In the same Press Release the EC makes reference to two other (not tax related) State aid investigations concerning Real Madrid and three other Spanish football clubs, which have also resulted in negative State aid decisions with recovery obligation, as well as a separate investigation concerning five Dutch football clubs, where the EC has concluded that the support measures granted to them were in line with State aid rules.

Takeaway

It is now for the Spanish authorities to determine the exact amount of aid to be recovered. The non-confidential version of the EC's decision will be published shortly.