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EU Direct Tax Group

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European Commission classifies Hungarian intra-group interest regime as existing aid

On 30 October 2009, the European Commission (Commission) has issued a press release (IP/09/1657) according to which the Commission has ruled that the Hungarian intra-group interest regime constitutes State aid. Furthermore, the Commission decided that the regime classifies as existing aid, which results in the absence of any obligations to repay the aid granted.

In January 2003, the Hungarian authorities implemented a regime which included a favourable taxation of net interest income received from affiliated companies belonging to one corporate group. The measure provides for the possibility to deduct from the taxable base in Hungary 50% of the amount of the net interest received from affiliated companies, which is the balance of interest received from affiliated companies less the interest paid to affiliated companies. Consequently, half of the net interest received will be taxed, while under the normal application of the tax system the whole amount would have to be taxed.

In its press release, the Commission firstly states that the measure constitutes aid as it excludes from its scope several sectors (e.g. the financial sector) and certain types of companies (e.g. small companies). However, the Commission comes to the final conclusion that the regime constitutes existing aid, based on the following circumstances:

- the Hungarian regime was introduced before Hungary's EU accession; and
- the existence of uncertainties regarding the qualification of the scheme as aid at the time of its introduction.

Consequently, there is no obligation to repay the aid granted in the past. Existing aid is generally assessed under the cooperation procedure, however Hungary has already adopted a law repealing the scheme from 1 January 2010, therefore there is no need to open such a procedure.

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