

# EU General Court finds Belgian excess profit ruling system is compatible with EU State aid rules

February 18, 2019

## In brief

The General Court of the European Union (GCEU) rendered its [judgment T-131/16 and T-263/16](#) regarding the compatibility of the Belgian excess profit ruling system ('Belgian EPR') with the EU State aid rules. The GCEU judgment, issued on February 14, 2019, annulled the European Commission's (EC's) final decision, and found that the EC had erred in qualifying the measure as an 'aid scheme.'

## In detail

### **Background and facts**

In its [final decision](#) in the case SA 37667, adopted on January 11, 2016, the EC concluded that the Belgian EPR constituted unlawful aid under EU State aid rules. In addition, the decision obliged the Belgian government to recover the alleged unlawful aid provided to several economic operators, amounting to approximately EUR 700 million.

The GCEU now has annulled the EC's decision and ruled that the EC erroneously considered that the Belgian EPR constituted a so-called 'State aid scheme' on a number of grounds.

First, the GCEU specifies that the Belgian tax authorities had a margin of discretion

over all of the essential elements of the exemption system in question, allowing them to influence the amount and the characteristics of the exemption and the conditions under which it was granted.

Accordingly, granting of the contested aid could not be done automatically through legislation but required additional implementation measures by the tax authorities, thus precluding the existence of an aid scheme.

Further, since the EC approached the Belgian EPR as a State aid scheme, rather than assessing each of the individual rulings involved, the GCEU noted that the EC had limited its review to only 22 of the 66 total rulings

involved. The GCEU ruled that the EC had therefore erred as it failed to demonstrate why the selected sample was representative. In the GCEU's view, the EC should have conducted a more detailed review in order for the EC to reach definitive conclusions.

The GCEU also reiterates that while direct taxation, as EU law currently stands, falls within the competence of the Member States, the Member States must exercise that competence consistently with EU law, including State aid law. Moreover, the GCEU holds that even though Member States can take the necessary measures to prevent double taxation, the

Belgian EPR did not appear to pursue this objective.

### The takeaway

One or more parties to the case (including the EC) likely will file an appeal of GCEU's decision. If the appeals are considered admissible and well-founded, the Court of Justice of the EU can, in turn, annul the GCEU's decision and decide on the

case itself. Otherwise, it must refer the case back to the GCEU. If that happens, a final decision in this case can be expected in a few years.

This judgment is the GCEU's first review of a series of recent EC State aid decisions that assess whether tax rulings and transfer pricing rules can be selective and unlawful State aid. Each case has its own facts, so

taxpayers will need to await each of the individual judgments.

The EU State aid rules have caused significant uncertainty for taxpayers as to the correct application of tax rulings and transfer pricing rules within the EU. This judgment is only a first step in providing further clarity and guidance on the application of the State aid rules.

### Let's talk

For a deeper discussion of how this might affect your business, please contact:

#### United States

Pam Olson  
(202) 414-1401  
[pam.olson@pwc.com](mailto:pam.olson@pwc.com)

William Morris  
(202) 312-7662  
[william.h.morris@pwc.com](mailto:william.h.morris@pwc.com)

Maarten Maaskant  
(646) 471-0570  
[maarten.p.maaskant@pwc.com](mailto:maarten.p.maaskant@pwc.com)

#### State Aid Working Group

Pieter Deré – PwC Belgium  
+32 9 2688321  
[pieter.dere@pwc.com](mailto:pieter.dere@pwc.com)

Isabel Verlinden – PwC Belgium  
+32 027104422  
[isabel.verlinden@pwc.com](mailto:isabel.verlinden@pwc.com)

Stefaan de Baets – PwC Belgium  
+32 027104719  
[stefaan.de.baets@pwc.com](mailto:stefaan.de.baets@pwc.com)

## Our insights. Your choices.

Select 'Tax services' as your *Services and solutions* of interest to receive more content like this.

[Set your preferences today](#)

© 2019 PricewaterhouseCoopers LLP, a Delaware limited liability partnership. All rights reserved. PwC refers to the United States member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details.

#### SOLICITATION

This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors.

At PwC, our purpose is to build trust in society and solve important problems. PwC is a network of firms in 158 countries with more than 250,000 people who are committed to delivering quality in assurance, advisory and tax services. Find out more and tell us what matters to you by visiting us at [www.pwc.com/US](http://www.pwc.com/US).