
European Commission opens formal State aid investigation into Luxembourg's tax treatment of GDF Suez (now Engie)

September 20, 2016

In brief

On September 19, 2016 the European Commission (EC) announced, in a press release, a formal State aid investigation into tax rulings granted by the Luxembourg tax authorities to GDF Suez group (now Engie) ('the group'). The EC will investigate the treatment of certain financing transactions between four Luxembourg group subsidiaries. The press release describes the reasons why the EC believes that the tax treatment applied to those transactions could represent State aid.

This decision (not yet published) represents only the EC's preliminary assessment in this matter and confirms that the investigation does not question the general Luxembourg tax regime.

In detail

Background

The formal investigation concerns the treatment of certain interest-free convertible loans issued by two Luxembourg group subsidiaries ('borrowers') to two other Luxembourg group companies ('lenders'). According to the press release:

- the borrowers recorded in their accounts provisions for interest payments which were deductible at their level
- upon conversion of the loans into shares at the

level of the lenders, the shares incorporate the value of the provisioned interest and therefore generate a profit for the lenders, but given the conversion of the loan into shares, the profit generated was not subject to tax at the level of the lender as it was considered a dividend associated to the shares.

Key reasons

The EC considers at this stage that the tax treatment resulted in tax benefits which are not available to other taxpayers, primarily because

it qualifies the same financial transaction both as equity and as debt, giving rise to double non-taxation.

After this preliminary assessment, the press release mentions that the EC will now assess whether the Luxembourg tax authorities departed from provisions of national law in the concerned tax rulings issued to the group. The EC will also assess whether, by doing so, the group obtained an advantage not available to other companies subject to the same national tax rules.

Next steps

The Member States and taxpayers concerned now have the option of presenting their own arguments, after which the EC will render its final decision in the case. Based on other investigations, we expect that the final decision will not be issued for several months.

In the meantime, we await the publication of the detailed opening decision in order to determine the case's full implications.

The EC's general observations

Note that in the press release the EC summarizes its recent investigations into national tax rulings, classified into three categories:

- transfer prices, which in its view do not reflect economic reality
- profit allocation methods, which again in its view do not reflect economic reality and
- application of national law, which in its view is inconsistent and gives rise to a double non-taxation.

Let's talk

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

Pam Olson
(202) 414-1401
pam.olson@pwc.com

Calum Dewar
(646) 471 5254
calum.m.dewar@pwc.com

Michael Urse
(216) 875 3358
michael.urse@pwc.com

Maarten Maaskant
(646) 471 0570
maarten.p.maaskant@pwc.com

Doug McHoney
(312) 298 2527
douglas.mchoney@pwc.com

Horacio Pena
(646) 471-1957
horacio.pena@pwc.com

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