European Commission - Press release

State aid: Commission finds Luxembourg gave illegal tax benefits to Amazon worth around €250 million

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The European Commission has concluded that Luxembourg granted undue tax benefits to Amazon of around €250 million. This is illegal under EU State aid rules because it allowed Amazon to pay substantially less tax than other businesses. Luxembourg must now recover the illegal aid.

Commissioner Margrethe **Vestager**, in charge of competition policy, said "*Luxembourg gave illegal tax benefits to Amazon. As a result, almost three quarters of Amazon's profits were not taxed. In other words, Amazon was allowed to pay four times less tax than other local companies subject to the same national tax rules. This is illegal under EU State aid rules. Member States cannot give selective tax benefits to multinational groups that are not available to others*."

Following an in-depth investigation launched in October 2014, the Commission has concluded that a tax ruling issued by Luxembourg in 2003, and prolonged in 2011, lowered the tax paid by Amazon in Luxembourg without any valid justification.

The tax ruling enabled Amazon to shift the vast majority of its profits from an Amazon group company that is subject to tax in Luxembourg (**Amazon EU**) to a company which is not subject to tax (**Amazon Europe Holding Technologies**). In particular, the tax ruling endorsed the payment of a royalty from Amazon EU to Amazon Europe Holding Technologies, which significantly reduced Amazon EU's taxable profits.

The Commission's investigation showed that the level of the royalty payments, endorsed by the tax ruling, was inflated and did not reflect economic reality. On this basis, the Commission concluded that the tax ruling granted a selective economic advantage to Amazon by allowing the group to pay less tax than other companies subject to the same national tax rules. In fact, the ruling enabled Amazon to avoid taxation on three quarters of the profits it made from all Amazon sales in the EU.

Amazon's structure in Europe

The Commission decision concerns Luxembourg's tax treatment of two companies in the Amazon group – Amazon EU and Amazon Europe Holding Technologies. Both are Luxembourg-incorporated companies that are fully-owned by the Amazon group and ultimately controlled by the US parent, Amazon.com, Inc.

- **Amazon EU** (the "operating company") operates Amazon's retail business throughout Europe. In 2014, it had over 500 employees, who selected the goods for sale on Amazon's websites in Europe, bought them from manufacturers, and managed the online sale and the delivery of products to the customer.Amazon set up their sales operations in Europe in such a way that customers buying products on any of Amazon's websites in Europe were contractually buying products from the operating company in Luxembourg. This way, Amazon recorded all European sales, and the profits stemming from these sales, in Luxembourg.
- **Amazon Europe Holding Technologies** (the "holding company") is a limited partnership with no employees, no offices and no business activities. The holding company acts as an intermediary between the operating company and Amazon in the US. It holds certain intellectual property rights for Europe under a so-called "cost-sharing agreement" with Amazon in the US. The holding company itself makes no active use of this intellectual property. It merely grants an exclusive license to this intellectual property to the operating company, which uses it to run Amazon's European retail business.

Under the cost-sharing agreement the holding company makes annual payments to Amazon in the US to contribute to the costs of developing the intellectual property. The appropriate level of these payments has recently been determined by a US tax court.

Under Luxembourg's general tax laws, the operating company is subject to corporate taxation in Luxembourg, whilst the holding company is not because of its legal form, a limited partnership.Profits recorded by the holding company are only taxed at the level of the partners and not at the level of the holding company itself. The holding company's partners were located in the US and have so far deferred their tax liability.

Amazon implemented this structure, endorsed by the tax ruling under investigation, between May 2006 and June 2014. In June 2014, Amazon changed the way it operates in Europe. This new structure is outside the scope of the Commission State aid investigation.

The scope of the Commission investigation

The role of EU State aid control is to ensure Member States do not give selected companies a better tax treatment than others, via tax rulings or otherwise. More specifically, transactions between companies in a corporate group must be priced in a way that reflects economic reality. This means that the payments between two companies in the same group should be in line with arrangements that take place under commercial conditions between independent businesses (so-called "**arm's length principle**").

The Commission's State aid investigation concerned a tax ruling issued by Luxembourgto Amazon in 2003 and prolonged in 2011. This ruling endorsed a method to calculate the taxable base of the operating company. Indirectly, it also endorsed a method to calculate annual payments from the operating company to the holding company for the rights to the Amazon intellectual property, which were used only by the operating company.

These payments exceeded, on average, 90% of the operating company's operating profits. They weresignificantly (1.5 times) higher than what the holding company needed to pay to Amazon in the US under the cost-sharing agreement.

To be clear, the Commission investigation did not question that the holding company owned the intellectual property rights that it licensed to the operating company, nor the regular payments the holding company made to Amazon in the US to develop this intellectual property. It also did not question Luxembourg's general tax system as such.

Commission assessment

The Commission's State aid investigation concluded that the Luxembourg tax ruling endorsed an unjustified method to calculate Amazon's taxable profits in Luxembourg. In particular, the level of the royalty payment from the operating company to the holding company was inflated and did not reflect economic reality.

- The **operating company** was the only entity actively taking decisions and carrying out activities related to **Amazon's European retail business**. As mentioned, its staff selected the goods for sale, bought them from manufacturers, and managed the online sale and the delivery of products to the customer. The operating company also adapted the technology and software behind the Amazon e-commerce platform in Europe, and invested in marketing and gathered customer data. This means that it managed and added value to the intellectual property rights licensed to it.
- The **holding company** was an **empty shell** that simply passed on the intellectual property rights to the operating company for its exclusive use. The holding company was not itself in any way actively involved in the management, development or use of this intellectual property. It did not, and could not, perform any activities, to justify the level of royalty it received.

Under the method endorsed by the tax ruling, the operating company's taxable profits were reduced to a quarter of what they were in reality. Almost three quarters of Amazon's profits were unduly attributed to the holding company, where they remained untaxed. In fact, the ruling enabled Amazon to avoid taxation on three quarters of the profits it made from all Amazon sales in the EU.

On this basis, the Commission concluded that the tax ruling issued by Luxembourg endorsed payments between two companies in the same group, which are not in line with economic reality. As a result, the tax ruling enabled Amazon to pay substantially less tax than other companies. Therefore, the Commission decision found that Luxembourg's tax treatment of Amazon under the tax ruling is illegal under EU State aid rules.

The infographic is available in high resolution here.

Recovery

As a matter of principle, EU State aid rules require that incompatible State aid is recovered in order to remove the distortion of competition created by the aid. There are no fines under EU State aid rules and recovery does not penalise the company in question. It simply restores equal treatment with other companies.

In today's decision, the Commission has set out the methodology to calculate the value of the competitive advantage granted to Amazon, i.e. the difference between what the company paid in taxes and what it would have been liable to pay without the tax ruling. On the basis of available information, this is estimated to be around €250 million, plus interest. The tax authorities of Luxembourg must now determine the precise amount of unpaid tax in Luxembourg, on the basis of the methodology established in the decision.

Background

Since June 2013, the Commission has been investigating the tax ruling practices of Member States. It extended this information inquiry to all Member States in December 2014. In October 2015, the Commission concluded that Luxembourg and the Netherlands had granted selective tax advantages to Fiat and Starbucks, respectively. In January 2016, the Commission concluded that selective tax advantages granted by Belgium to least 35 multinationals, mainly from the EU, under its "excess profit" tax scheme are illegal under EU State aid rules. In August 2016, the Commission concluded that Ireland granted undue tax benefits of up to €13 billion to Apple. The Commission also has two ongoing in-depth investigations into concerns that tax rulings may give rise to state aid issues in Luxembourg, as regards McDonald's and GDF Suez (now Engie).

This Commission has pursued a far-reaching strategy towards fair taxation and greater transparency and we have recently seen major progress. Following Commission proposals on tax transparency of March 2015, new rules on automatic exchange of information on tax rulings entered into force in January 2017. Member States have also agreed to extend their automatic exchange of information to country-by-country reporting of tax-related financial information of multinationals. A proposal is now on the table to make some of this information public. New EU rules to prevent tax avoidance via non-EU countries were adopted in May 2017 completing the Anti-Tax Avoidance Directive (ATAD) which ensures that binding and robust anti-abuse measures are applied throughout the Single Market.

In terms of ongoing legislative work, the Commission's proposals for a relaunched Common Consolidated Corporate Tax Base in October 2016 would act as a powerful tool against tax avoidance in the EU. In June 2017, the Commission proposed new transparency rules for intermediaries - including tax advisors - who design and promote tax planning schemes for their clients. This legislation will help to bring about a much greater degree of transparency and deter the use of tax rulings as an instrument for tax abuse. Finally, just this September the Commission launched a new EU agenda to ensure that the digital economy is taxed in a fair and growth-friendly way. Our Communication set out the challenges Member States currently face when it comes to acting on this pressing issue and outlines possible solutions to be explored ahead of a Commission proposal in 2018. All of the Commission's work rests on the simple principle that all companies, big and small, must pay tax where they make their profits.

The non-confidential version of the decisions will be made available under the case number SA.38944 in the state aid register on the Commission's Competition website once any confidentiality issues have been resolved. The State Aid Weekly e-News lists new publications of State aid decisions on the internet and in the EU Official Journal.

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Press contacts:

Ricardo CARDOSO (+32 2 298 01 00)
Yizhou REN (+32 2 299 48 89)

General public inquiries: Europe Direct by phone 00 800 67 89 10 11 or by email

Attachments

Amazon_Lux_en.pdf

Photos & Videos

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Press conference of Margrethe Vestager, Member of the EC, on two state aid cases