European Commission - Press release

State aid: Commission opens in-depth investigation into UK tax scheme for multinationals

Brussels, 26 October 2017

The European Commission has opened an in-depth probe into a UK scheme that exempts certain transactions by multinational groups from the application of UK rules targeting tax avoidance. It will investigate if the scheme allows these multinationals to pay less UK tax, in breach of EU State aid rules.

Commissioner Margrethe **Vestager** in charge of competition policy said: *"All companies must pay their fair share of tax. Anti-tax avoidance rules play an important role to achieve this goal. But rules targeting tax avoidance cannot go against their purpose and treat some companies better than others. This is why we will carefully look at an exemption to the UK's anti– tax avoidance rules for certain transactions by multinationals, to make sure it does not breach EU State aid rules."*

The general purpose of the UK's Controlled Foreign Company (CFC) rules is to prevent UK companies from using a subsidiary, based in a low or no tax jurisdiction, to avoid taxation in the UK. In particular, they allow the UK tax authorities to reallocate all profits artificially shifted to an offshore subsidiary back to the UK parent company, where it can be taxed accordingly. CFC rules in general are an effective and important feature of many tax systems to address tax avoidance.

However, since 2013, the UK's CFC rules include an exception for certain financing income (i.e. interest payments received from loans) of multinational groups active in the UK – the *Group Financing Exemption*. Generally speaking, financing income is often used as a channel for profit shifting by multinationals, given the mobility of capital. The UK's Group Financing Exemption exempts from reallocation to the UK, and hence UK taxation, financing income received by the offshore subsidiary from another foreign group company. Thus, a multinational active in the UK can provide financing to a foreign group company via an offshore subsidiary. Due to the exemption, it pays little or even no tax on the profits from these transactions, because:

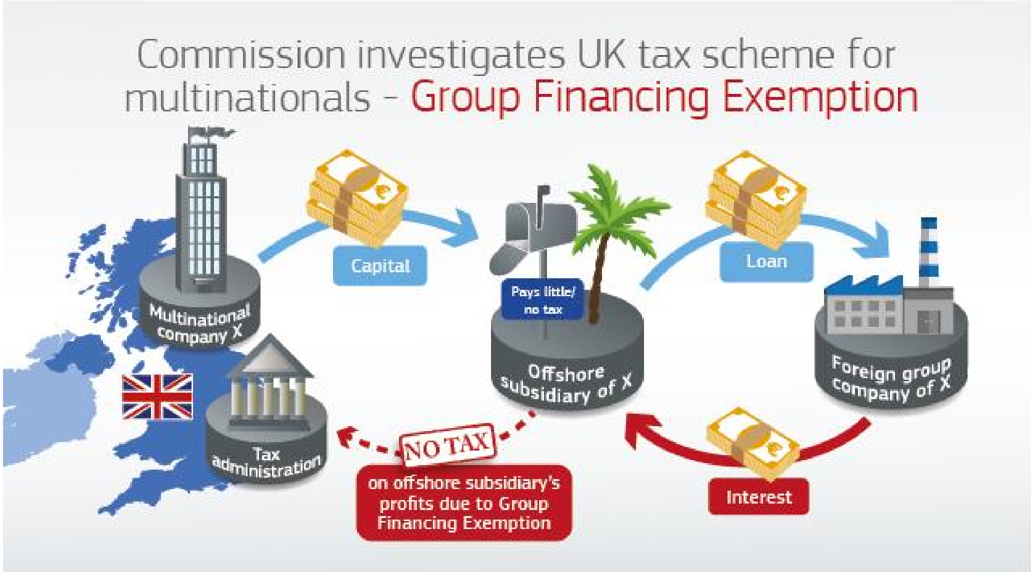
- the offshore subsidiary pays little or no tax on the financing income in the country where it is based; and
- the offshore subsidiary's financing income is also not (or only partially) reallocated to the UK for taxation due to the exemption.

On the other hand, the CFC rules reallocate other income artificially shifted to offshore subsidiaries of UK parent companies to the UK for taxation.

The Commission's State aid investigation does not call into question the UK's right to introduce CFC rules or to determine the appropriate level of taxation. The role of EU State aid control is to ensure Member States do not give some companies a better tax treatment than others. The case law of the EU Courts makes clear that an exemption from an anti-avoidance provision can amount to such a selective advantage.

At this stage, the Commission has doubts whether the Group Financing Exemption complies with EU State aid rules. In particular, the Commission has doubts whether this exemption is consistent with the overall objective of the UK CFC rules.

The opening of an in-depth investigation gives the UK and interested third parties an opportunity to submit comments. It does not prejudge the outcome of the investigation.



Background on CFC rules

The UK's Group Financing Exemption was introduced with the reform of the UK CFC regime under the Finance Act 2012. In order to benefit from the tax exemption, companies do not need a tax ruling. The scheme entered into force on 1 January 2013.

Following the adoption of the Anti-Tax Avoidance Directive (ATAD), all EU Member States are expected to introduce CFC rules in their legislation as of 1 January 2019. The ATAD does not provide for specific exemptions like the Group Financing Exemption, which is under investigation.

Background on the Commission's State aid investigations on tax

As long as the UK is an EU Member State, it has all the rights and obligations of the membership. In particular, EU competition law, including EU State aid rules, continue to apply in full to the United Kingdom and in the United Kingdom until it is no longer a member of the EU.

Since June 2013, the Commission has been investigating individual tax rulings or under tax schemes of Member States under EU State aid rules. 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 at 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. In October 2017, the Commission concluded that Luxembourg granted undue tax benefits of up to €250 million to Amazon. 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).

The non-confidential versions of the decisions will be made available under the case number SA.44896 in the State Aid Register on the Commission's competition website once any confidentiality issues have been resolved. New publications of state aid decisions on the internet and in the Official Journal are listed in the State Aid Weekly e-News.

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