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PRESS RELEASE

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State aid: Commission investigates transfer pricing arrangements on corporate taxation of Amazon in Luxembourg

The European Commission has opened an in-depth investigation to examine whether the decision by Luxembourg's tax authorities with regard to the corporate income tax to be paid by Amazon in Luxembourg comply with the EU rules on state aid. The opening of an in-depth investigation gives interested third parties and the Member States concerned an opportunity to submit comments. It does not prejudge the outcome of the investigation.

Commission Vice President in charge of competition policy Joaquín Almunia said: "*National authorities must not allow selected companies to understate their taxable profits by using favourable calculation methods. It is only fair that subsidiaries of multinational companies pay their share of taxes and do not receive preferential treatment which could amount to hidden subsidies. This investigation concerning tax arrangements for Amazon in Luxembourg adds to our other in-depth investigations launched in June. I welcome that* cooperation *with Luxembourg has improved significantly.*"

Algirdas Šemeta, Commissioner for Taxation, said: "*Fair tax competition is fundamental for a healthy Single Market and our common economic prosperity. As we work together to restore growth and competitiveness, it is essential to tackle the harmful tax practices which erode the tax bases of EU Member States. Fair play in taxation must be the rule*."

Tax rulings are comfort letters by tax authorities giving a specific company clarity on how its corporate tax will be calculated. In particular, they are used to confirm transfer pricing arrangements, i.e. the prices for goods sold or services provided by one subsidiary of a corporate group to another subsidiary of the same group. This influences the allocation of the group's taxable profit between its subsidiaries located in different countries. As such, tax rulings are not problematic.

However, tax rulings on transfer pricing arrangements may involve state aid within the meaning of EU rules if they are used to provide selective advantages to a specific company or group of companies. Indeed, prices for intra-group transactions have to be correctly estimated based on market prices. If this is not the case groups of companies could have the possibility to underestimate their taxable profit, whereas other companies which buy and sell goods or services from the market rather than within the group would be disadvantaged. This may constitute state aid within the meaning of EU rules.

The tax ruling in favour of Amazon under investigation dates back to 2003 and is still in force. It applies to Amazon's subsidiary Amazon EU Sàrl, which is based in Luxembourg and records most of Amazon's European profits. Based on a methodology set by the tax ruling, Amazon EU Sàrl pays a tax deductible royalty to a limited liability partnership established in Luxembourg but which is not subject to corporate taxation in Luxembourg. As a result, most European profits of Amazon are recorded in Luxembourg but are not taxed in Luxembourg.

At this stage the Commission considers that the amount of this royalty, which lowers the taxable profits of Amazon EU Sàrl each year, might not be in line with market conditions. The Commission has concerns that the ruling could underestimate the taxable profits of Amazon EU Sàrl, and thereby grant an economic advantage to Amazon by allowing the group to pay less tax than other companies whose profits are allocated in line with market terms. The Commission will now continue investigating to determine whether its concerns are confirmed.

Luxembourg did not fully comply with the Commission's request for information as part of its information gathering exercise in relation to tax ruling practices in some Member States but only provided a limited sample. In June 2014 the Commission therefore initiated infringement proceedings against Luxembourg by issuing letters of formal notice (see IP/14/309). Although the Luxembourgish authorities have still not fully complied with the Commission's information request, in August 2014 Luxembourg did provide information on a number of cases requested by the Commission, including Amazon.

Background

According to Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), state aid which affects trade between Member States and threatens to distort competition by favouring certain undertakings is in principle incompatible with the EU Single Market. Selective tax advantages may amount to state aid. The Commission does not call into question the general tax regime of Luxembourg.

In June, the Commission has already opened three in-depth investigations into individual tax rulings relating to transfer pricing arrangements in Luxembourg (Fiat Finance and Trade), The Netherlands (Starbucks) and Ireland (Apple) (see IP/14/663).

The non-confidential versions of the decisions will be made available under the case number SA.38944 in the State Aid Register on the 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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