

Communiqué (12.06.2014)

Luxembourg continues to defend its advance rulings on tax matters and the regime of intellectual property taxation

On June 11th 2014, the European Commission opened a formal investigation procedure and issued two formal notices concerning alleged State aid against Luxembourg. This initiative by the Commission follows extensive communication between the European Commission and the Luxembourg authorities over recent months during which the Luxembourg authorities had provided the European Commission with the relevant information. However, the Luxembourg authorities expressed doubts over the legality of certain aspects of the requests for information from the European Commission and consequently limited the communication to those aspects it considered in line with European law.

Following the two orders of the European Commission to the Luxembourg authorities to provide the missing information, Luxembourg brought two actions for annulment of these injunctions, challenging their legal basis.

Luxembourg regrets that the formal investigation procedures opened by the European Commission ignore the motives that led the Luxembourg authorities to apply for this annulment on these matters. The European Commission has not provided any new evidence to dispel the serious doubts about the legality of the requests and the extent of the powers of the Commission.

The Ministry has also pointed out that the Commission does not question the legal principles applied by the Luxembourg tax authorities to give advance rulings based on requests by taxpayers seeking legal certainty as to the tax treatment of certain transactions. The Commission nevertheless considers that it cannot be excluded that the measures in question could constitute State aid in tax matters in individual cases.

The Luxembourg authorities remain willing to engage in a constructive discussion with the European Commission on specific cases and on the basis of evidence available to the Commission. Therefore, in terms of the formal review process for alleged State aid regarding a specific taxpayer, the Luxembourg authorities will respond to additional comments and detailed questions from the European Commission, whilst being fully confident in the advance agreement concerning transfer prices of said taxpayer to be fully compliant with the arm's length principle.

Luxembourg is confident that the upcoming procedural steps will enable the authorities to successfully defend their position and demonstrate that both in terms of advance rulings on tax matters and the regime of intellectual property taxation, Luxembourg has not granted corporations any illegal State aid.

Communiqué from the Ministry of Finance / Luxembourg