

European Commission opens in-depth State aid investigation into tax treatment of Inter IKEA by the Netherlands

On December 18, 2017 the European Commission ('Commission') announced that it had opened an in-depth investigation into tax rulings granted by the Netherlands to Inter IKEA in 2006 and 2011 (see [press release](#)). The Commission considers that these rulings might have given an unfair advantage to Inter IKEA in violation of EU State aid rules and has decided to initiate a formal investigation procedure. The opening of an in-depth investigation does not prejudice the outcome of the investigation. The Commission will adopt a final decision at the end of the formal investigation.

Preliminary findings

The Commission considers at this stage that the treatment approved in two specific tax rulings may have resulted in tax benefits favoring Inter IKEA, which are not available to other companies subject to the same national taxation rules in the Netherlands. In particular, the Commission will assess whether certain inter-group payments as well as the price for the inter-group acquisition of intellectual property rights reflected economic reality, i.e. whether or not the conditions agreed were at arm's length.

Background

The procedure is one of a series of State aid investigations launched by the Commission and the second one focusing on the Netherlands (see [our previous memo](#)). Tax rulings have increasingly become the prime focus of the Commission. In its press release, the Commission reiterated that tax rulings as such are not a problem under EU State aid rules, if they simply confirm that tax arrangements between companies within the same group comply with the relevant tax legislation. However, tax rulings that confer a selective tax advantage to specific companies can distort competition within the EU's Single Market, in breach of EU State aid rules.

Our comment

As part of the standard procedure in State aid investigations, the next step will see the Commission publishing a non-confidential version of this preliminary decision. This may take a couple of months. The opening of an in-depth investigation also gives interested third parties and the Member States concerned an opportunity to submit comments. It does not prejudice the outcome of the investigation. There is no legal deadline for completing an in-depth investigation and its actual length depends on many factors, including the complexity of the case, the information provided and the level of cooperation from the Member State concerned. The Commission will adopt a final decision at the end of the formal investigation.

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