



28th January 2016

The European Commission
Secretary General
c/o The European Commission
Representation in the United Kingdom
Europe House
32 Smith Square
London SW1P 3EU

Dear Secretary General,

We are writing to you to request that the European Commission initiates an investigation into administrative measures taken by the UK government to selectively lower the tax rate of companies operating within its jurisdiction.

We call on the European Commission to investigate in particular the deal over past tax liability with Google as announced by the UK Chancellor of the Exchequer. We further call on the Commission to investigate the scope and extent of any other such deals with companies operating in the UK and the lawfulness of any such deals.

We believe that the deal announced by the UK Chancellor could constitute unlawful state aid under the terms of the EC Treaty. We further believe that other such deals, which would also give rise to the same concerns may also have been concluded by the UK Government.

Background

On January 23rd the UK Chancellor George Osborne announced via a tweet from Davos that the UK Government had reached a 'deal' over its past tax liability.¹

The deal was disclosed at the request of the company which said it would pay £130m to cover their tax liability over the previous 10 years.

Subsequent analysis of the deal by the Tax Justice Network based on the proportion of global profits that the company generates from the United Kingdom suggested that this was equivalent to a corporation tax rate of around 3%.

¹https://twitter.com/George_Osborne/status/690809603009937408

reply to:
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Over the relevant period the standard rate of UK corporation tax rate varied between 20% and 30%.

It is impossible to say for certain how the company managed to achieve such a substantial discount on the standard rate of tax, as the details of the deal remain confidential. However, it is our understanding that the UK government may have selectively applied (or failed to apply) the rules on permanent establishment.

The fact that the deal was only disclosed at the request of the company, suggests that the UK government may have concluded an unknown number of similar deals with other companies. These deals are by their nature done on an ad-hoc basis and are not available generally to companies in the UK.

Relevant European Legislation and Agreements

Article 87 (ex 92) of the EC Treaty prohibits state aid that threatens to distort the European Single Market.

The Commission set out how article 87 applies to taxation in a notice issues in 1998, “Commission Notice on the Application of the State Aid Rules”²

In summary the actions taken by the member state, in order to be considered state aid, must be specific or selective rather than general in nature. In addition the measure is not required to be a direct subsidy, the state forgoing potential revenue that is due to it is considered to be equivalent to the consumption of state resources. The beneficiary of the aid must be an economic actor within the community that acts in competition with other economic actors.

The commission notice places a particular obligation on the European Commission to act when it comes to administrative measures (such as a specific deal made by a company and the revenue authority.) Paragraph 22 of the notice states:

“Every decision of the administration that departs from the general tax rules to the benefit of individual undertakings in principle leads to a presumption of State aid and must be analysed in detail.”

Finally, it should be recalled that the Code of Conduct on Business Taxation adopted by ECOFIN in December 1997 obliged states to avoid and to roll back harmful tax practices. The criteria as to what constituted a harmful tax practice, amongst other things included:

“Whether the tax measures lack transparency, including where legal provisions are relaxed at an administrative level in a non-transparent way”³

² Official Journal C 384 , 10/12/1998 P. 0003 – 0009

³Section B (5) of the Code of Conduct on Business Taxation 1997

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Conclusion

It is the view of the Tax Justice Network that the 'deal' announced in the UK Chancellor of the Exchequer's tweet demonstrates that the UK may have adopted a harmful tax practice under the terms of the Code of Conduct, and the selective application of this is contrary to the TEC.

These tax practices are not only harmful to trade within the European Union, but also harmful to the British public, who have had to suffer severe cuts to public services on the basis that the government has not been able to raise sufficient revenues to fund those services.

It is our belief that the nature of deal announced by the Chancellor suggests that similar deals may have already been reached between the government and other, unknown companies, or may be in the process of being negotiated.

The treaties and past decisions of the European Commission place an obligation on the Commission to act and to start an investigation on both the deal announced with Google, and any other deals of a similar nature that have been concluded or are in the process of negotiation.

Yours faithfully



John Christensen
Executive Director

reply to:

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