

State Aids and Tax rulings: An assessment of the Commission's recent decisional practice

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ABSTRACT: Tax rulings are binding decisions that taxpayers may seek from tax authorities to determine in advance how certain transactions will be treated fiscally. However, tax rulings can have an “alternative use”: that of granting a particularly advantageous fiscal treatment to specific taxpayers, typically large multinational groups willing to invest and create jobs in the tax jurisdiction concerned, without extending it to other taxpayers and without triggering a tax war with other jurisdictions. This article focuses on the European Commission's enforcement of State aids rules against certain EU Member States in respect of tax rulings issued to a number of multinational companies. After a brief account of the economic rationale for tax rulings and their potential relevance in the context of EU tax competition, the article provides an overview of the Commission's individual and general measures regarding tax rulings and their alleged use by Member States as confidential incentive measures designed to attract multinational investors in return for significant fiscal advantages. The central part of the article provides an analytical assessment of the Commission's on-going and closed proceedings on tax ruling practices, having regard to the four constituent elements of the notion of State aid. Regard is then had to the peculiar challenges involved with the recovery of State aids granted in the form of tax rulings and, finally, to the systemic implications of the Commission's initiatives for the division of competences between the EU and its Member States and for the establishment of a fiscal union.

KEYWORDS: tax rulings, transfer pricing, State aids, tax competition, ALP

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