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EU tax: Brussels set for multinational crackdown

By Christian Oliver in Brussels

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Margrethe Vestager, the EU's competition commissioner, looks set to launch the international community's most punitive attack on corporate tax avoidance as early as next Wednesday, with rulings that could impose heavy costs on multinationals.

Ms Vestager is understood to have postponed her first trip to China this week so she can finalise cases concerning Fiat in Luxembourg and Starbucks in the Netherlands. Cases involving Apple in Ireland and Amazon in Luxembourg appear to be on a slower track.

Why are these decisions so important?

Ms Vestager is changing the rules. Cracking down on tax avoidance has traditionally been handled by toothless, gentlemanly agreements in forums such as the G20 and OECD. The commission is now using one of its strongest weapons — state aid — to tackle the problem. Essentially this means that countries offering sweetheart deals in the form of tax rulings, or agreements, to multinationals are effectively giving them illegal subsidies. These rulings are often nicknamed comfort letters. Ms Vestager's first decisions follow lengthy investigations and can be appealed by countries through the European courts. Her decisions are being watched closely because tax rulings have become a standard corporate practice, with thousands of companies using them.

So the countries and companies will be fined?

Not exactly. Ms Vestager has the power to issue recovery orders. This means that the country must claw back the unpaid tax from the companies. Some lawyers reckon that she could theoretically issue a verdict without a recovery order, though this is still seen as highly unlikely.

Aren't recovery orders good news for the countries?

The national treasuries will certainly benefit in the short term. However, the countries are far more concerned about long-term consequences, particularly investment flight. Ireland does not want the technology industry to be scared away. Luxembourg's tax haven status is one of its major attractions to investors.

How much money are we talking about?

Billions of euros, in all. Still, the verdicts may well not make the sums immediately clear. The decisions are more likely to define a methodology to be used to calculate the difference between what the companies paid and what they would have done without a tax ruling.

How little were these companies paying?

Here are the figures from the commission's initial concerns:

Fiat Group's profit was €896m in 2012 while the tax base was between €2.3m and €2.8m.

Starbucks global post-tax income was €1.08bn in 2012, while its tax is estimated at between €600,000 and €1m.

Apple's pre-tax global income was €25bn in 2011, while it paid tax of between €2m and €20m internationally.

Amazon's operating turnover in 2013 was €13.6bn, while its taxable income in its Luxembourg hub was €75m.

So what happens next?

All the countries and companies insist that they have done nothing wrong. EU officials expect lengthy court battles as the countries will almost certainly appeal the decisions.

But aren't comfort letters themselves simply illegal?

No. The commission accepts that some form of tax planning is essential to companies with complex cross-border operations. The malpractice comes when a country allows a company to engineer its tax so that it pays virtually nothing anywhere.

What will the main arguments be in court?

The court cases promise to be complex because competition policy is a novel — almost revolutionary — way to tackle tax issues. Under state aid laws, one of the key points the commission has to prove is that the letters were tailored “selectively” to certain sectors and were not simply available to anyone.

It will also have to deal with highly technical questions about how much tax a company would ordinarily have paid without a ruling. Another dispute is likely to hinge on how much of the profit is taxable in one country if the intellectual property is generated elsewhere.

Additional reporting by Vincent Boland and Duncan Robinson

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