UPDATES & TIDBITS

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STARBUCKS & FIAT TO REPAY MAX OF €60 MILLION TO E.U.

Concluding a lengthy, two-year investigation, the E.U. has decided that Starbucks Corp. and a Fiat Chrysler Automobiles NV unit must each pay as much as €30 million in back taxes recoverable from illegal tax deals between the companies and the Netherlands and Luxembourg.

The E.U. competition commissioner found that "tax rulings that artificially reduce a company's tax burden are not in line with EU state aid rules." Therefore, "[t]hey are illegal." The commissioner expressed hope that this ruling will prevent further tax deals from being brokered and ensure compliance with corporate taxing obligations.

Fiat Chrysler Automobiles NV claimed any financial levy would be "immaterial" to the multinational group's reported results and held that these agreements were not state aid, but rather rulings of law obtained for certainty.

This decision could also lead to repayment orders for Apple Inc. and Amazon.com Inc., as governments continue to challenge agreements that constitute illegal state aid.

STUDY EXPOSES DOUBLE-DIPPING IN I.P. BOX BENEFITS

A new study revealed that existing European intellectual property ("I.P.") tax regimes may allow multinational corporations both the benefit of relief for investment expenses and reduced income tax rates. The study found that recent efforts to attract research and development ("R&D") activity have led E.U. countries to establish considerably different statutory "I.P. Box" tax rates, ranging from 0% to 15%. Compared to traditional I.P. tax incentives, these I.P. Boxes target the income produced rather than the cost of development.

The European Parliament Directorate-General for Internal Policies conducted a study on the nature of I.P. assets and their use in tax planning, which found that the nature of I.P. enables it to be shifted from one country to another without incurring significant expense. Multinational companies have taken advantage of this flexibility by structuring assets in ways that yield the lowest or no taxation. Furthermore, the study found that through the use of tax planning, multinational companies could utilize R&D tax incentives in one country and then dispose of the resulting I.P. to a subsidiary in a lower-tax country so as to also benefit from a low tax rate on income from the use of the I.P.

Measures suggested to counteract such abusive tax planning include the use of withholding taxes on royalties, deduction limitations, retroactive price adjustment clauses, and controlled foreign corporation rules as a means of limiting incentives for profit-shifting. Implementation of these measures poses an inherent challenge, as it may result in double or even triple taxation of the income.

The study highlights the fact that corporate tax is not harmonized globally and it is this lack of unity that leads to tax base erosion and abusive tax planning. As a result, individual changes to the international taxation system may not be sufficient to tackle the issue.

"Existing European intellectual property ('I.P.') tax regimes may allow multinational corporations both the benefit of relief for investment expenses and reduced income tax rates."

The findings are in line with the "coordinated approach" suggested by the O.E.C.D. to avoid double taxation. The modified nexus approach under the O.E.C.D.'s B.E.P.S. Action Plan will specify the substantial activity criteria used to make sure the benefits only apply where relevant. In addition, the scope of eligible I.P. will be limited and the I.P. Box benefit will be applied to net income instead of gross income. According to the study, this will ultimately lead to standardization of the E.U. I.P. box regimes.