



INTERNATIONAL CORPORATE TAX

# EU Tax Update

Luxembourg - 27 November 2008

TAX

# Agenda

- ◆ **Earning stripping rules in Europe**
- ◆ **Interesting ECJ cases for Luxembourg**
  - Funds / SICAV
  - Usufruct of shares
  - Use of losses
  - Inheritance tax
- ◆ **State aid issues**
  - Criteria
  - Comparison State aid issues / Code of conduct
  - Related issues

# Earning stripping rules in Europe

# German Earnings Stripping Rules

## ◆ Scope

- Interest on shareholder and related party debt
- Interest on any third party debt

## ◆ Consequence

- Step 1: Interest expense fully deductible up to the amount of interest income
- Step 2: Interest expense exceeding interest income (net-interest) deductible up to 30 % of taxable EBITDA
- Step 3: Remaining interest expense carried forward

# German Earnings Stripping Rules

## ◆ Exceptions from general rule

### – De minimis threshold

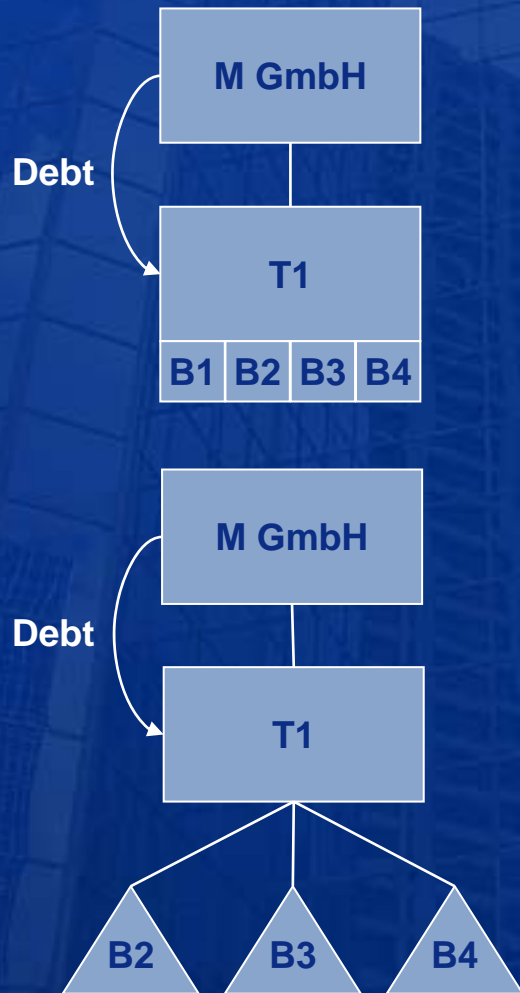
Net interest per annum and per business is less than €1m

### – Escape Clause

- The equity ratio of consolidated group does not exceed equity ratio of the German business by more than 1%
- Additional requirements for corporate entities (Sec. 8a para. 3 KStG)

# German Earnings Stripping Rules

## De minimis threshold



### ◆ Description

- Drop down of branches of activity to partnerships
- Allocation of debt raised at T1 level to partnerships on pro rata basis

### ◆ Summary of tax consequences

- De minimis threshold of € 1 million is available for every single entity (T1, B2, B3 and B4)

### ◆ Benefit

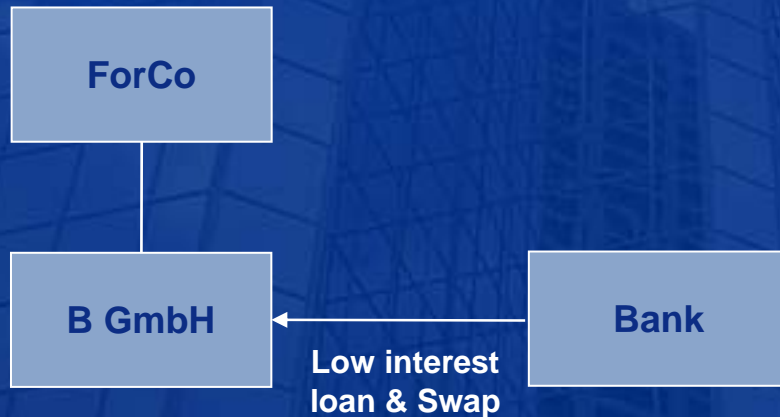
- Multiple use of de minimis threshold

### ◆ Other considerations

- No profit and loss offset for trade tax purposes

# German Earnings Stripping Rules

## Low interest loans



### ◆ Description

- Low interest loan (e.g. Yen – denominated)
- Swap into Euro loan with third party

### ◆ Summary of tax consequences

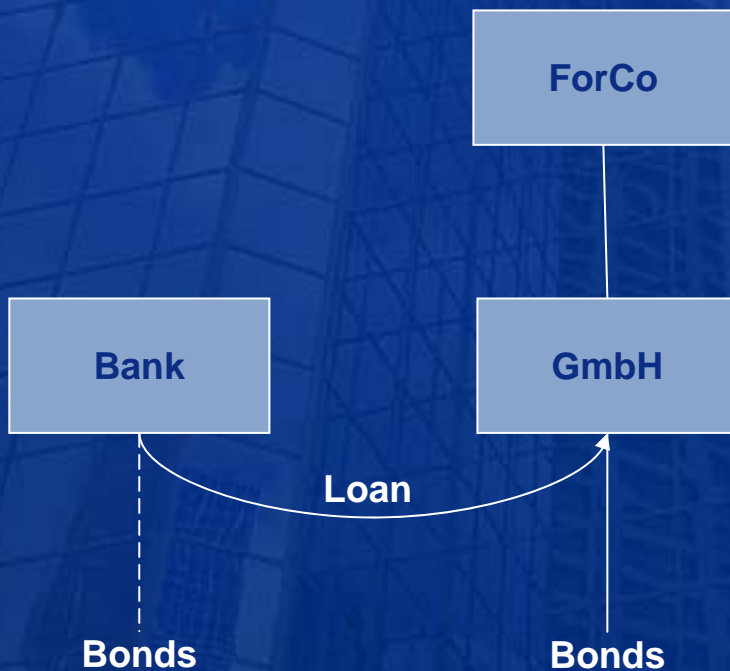
- Swap payment not treated as interest expense for purposes of earnings stripping rules

### ◆ Benefit

- Swap payments are deductible business expenses without limitation of earnings stripping rules

# German Earnings Stripping Rules

## Bond loans



### ◆ Description

- Bank lends bonds to GmbH
- GmbH receives interest onto the bond
- GmbH pays a lending fee to bank

### ◆ Summary of tax consequences

- Interest paid on bonds increases basis for earnings stripping rules
- Lending fee and manufactured payment tax deductible (trade tax: 75%)
- Expenses not treated as "bad" interest expenses for purposes of new rules
- Special anti-abuse provision of Sec. 8b para. 10 CTA only applicable to stock loans

### ◆ Benefit

- Increase of tax basis for earnings stripping rules

### ◆ Other considerations

- Anti-abuse rules to be considered

# UK – Earnings Stripping/Thin Capitalisation

- ◆ No earnings stripping rules
- ◆ Thin capitalisation rules in line with OECD Transfer Pricing Guidelines
- ◆ Thin capitalisation rules apply between two UK companies so no anti-discrimination EU arguments
- ◆ Advance ruling system for foreign groups lending to UK subsidiaries
- ◆ Extensive use of comparables by UK Tax Authorities in thin capitalisation negotiations
- ◆ Special rules to ensure that private equity leveraged arrangements fall within thin capitalisation rules
- ◆ New debt cap rules from 1 April 2009

# France - Earning stripping rules (Thin cap rules) (1/2)

- ◆ Earning stripping rules do not exist as such under French tax law. Nevertheless, French thin cap rules can limit as earning stripping rules the deduction of interests borne by the French subsidiaries.
- ◆ French thin-cap rules apply to all loans and advances between affiliated companies, with direct or indirect shareholdings (notion of majority shareholding or control).
- ◆ From January 1, 2007, two limitations are introduced:
  - Limitation of the rate of deductible interest (“allowable interest”)
    - Maximum interest rate: rate equal to the annual average of the effective rates that credit institutions grant companies for variable-rate loans with an initial term of over two years (a higher rate is accepted if it corresponds to that which the borrowing company could have obtained from independent financial institutions or bodies in similar conditions).
    - Excess portion definitively non deductible
    - Pursuant to Article 8 of the DTT between France and Luxembourg, there is no WHT on constructive dividends.

# France - Earning stripping rules (Thin cap rules) (2/2)

- Limitation of the amount of interest immediately deductible
  - Three tests have to be performed:
    - Equity to debt ratio: 1: 1.5
    - Interest  $\leq$  25% of ( approximately equivalent to) EBITDA
    - Interest expenses (to related entities)  $\leq$  interest income (from related entities).
  - If the three tests are cumulatively exceeded, portion not deductible but carried forward on to future FYs (specific exceptions apply)
- No Thin-cap applicable if yearly interest charges are not in excess of 150K Euro

# « Charasse » provision (1/2)

- ◆ « Charasse » provision apply when company buys, from a (direct or indirect) controlling company, shares of a company which is to be included in the same tax-consolidated group.
- ◆ The parent company of the French group must add back into the groups' taxable profits of the year of the purchase and for the 8 following years, part of the financial expenses of the tax-consolidated group.
- ◆ The amount which has to be added back to the group's taxable profit is determined as follows:
  - Group Financial expenses x Acquisition price of the shares  
Average amount of the group's

## « Charasse » provision (2/2)

- ◆ « Charasse » does not apply if (i) the acquisition of the shares is made from a controlling company which has itself purchased said shares from a third party in order to resell them immediately or (ii) the transfer takes place between companies of the same tax-consolidated group.
- ◆ Further, no add back has to be made with respect to FYs during which:
  - the acquired company is no more member of the tax consolidated group (except in case of merger); or
  - the company holding the shares of the acquired company is no more controlled by the same shareholders.

# US - Interest deduction limitations — summary

- ◆ **Broadly stated, there are seven\* principal regimes that may potentially apply to defer/reduce corporate interest expense deductions for federal income tax purposes**
  - Common law debt versus equity analysis
  - Section 267(a)(3): deduction for interest owed to related non-US person generally deductible only when paid (see also Section 163(e)(3) for similar rules re original issue discount)
  - Earnings stripping provisions (Section 163(j))
  - Transfer pricing provisions
  - Applicable high yield debt obligation provisions (Sections 163(e)(5) and (i))
  - Acquisition indebtedness rules (Section 279)
  - Debt payable in issuer equity rules (Section 163(l))
- ◆ **In addition, various state income tax limitations may apply, in particular to intercompany interest**

\* Other limitations can apply in focused circumstances, e.g., interest on tax deficiencies, etc.

# US - Section 163(j) – “earnings stripping”

- ◆ **Generally intended to limit the benefit of interest deduction to a treaty-exempt affiliate**
- ◆ **Disallows “disqualified interest”**
  - treaty-exempt interest to non-US related person; and,
  - any interest to an unrelated person on debt guaranteed by any non-US related person (and, definition of guarantee is very broad)
- ◆ **Disallowed interest = lesser of disqualified interest or excess interest (determined annually)**
  - excess interest = net interest expense that exceeds 50% of US corporate taxpayer’s “adjusted taxable income” (ATI)
  - disallowed interest carried forward (generally indefinitely)

# US - Earnings stripping rules (continued)

- ◆ Debt/equity safe harbor of  $\leq 1.5$  to 1 — interest deduction not subject to limitation if within this safe harbor
- ◆ Carryforward of disallowed interest generally indefinitely (e.g., change of control may limit future utilization if obligor has “net unrealized built in loss”)
- ◆ Carryforward of excess limitation three years
- ◆ Proposed legislation may increase limitation
  - reduce carryforward period to 10 years
  - reduce ATI threshold to 25% (at least for related person interest)
  - modify certain other taxpayer-favorable special rules within the provision
  - continued monitoring of legislative process to determine if/when implementation of such reforms is likely

# US – debt versus equity

- ◆ In general – The IRS will consider many factors when determining whether an obligation should be classified as debt or equity for US federal income tax purposes, including but not excluded to the names given to the certificates evidencing the obligation; the presence or absence of a fixed maturity date; the source of the payments; the right to enforce payments; the relation to regular corporate creditors; the identity of interest between creditor and shareholder; the ‘thinness’ of the capital structure and the risk involved in making advances. In addition, the US courts have typically looked to three broad categories of factors when making a classification, namely — relationship, form, and quantifiable elements. Ultimately, the IRS and courts have generally applied a facts and circumstances analysis

# US – Certain other interest limitations

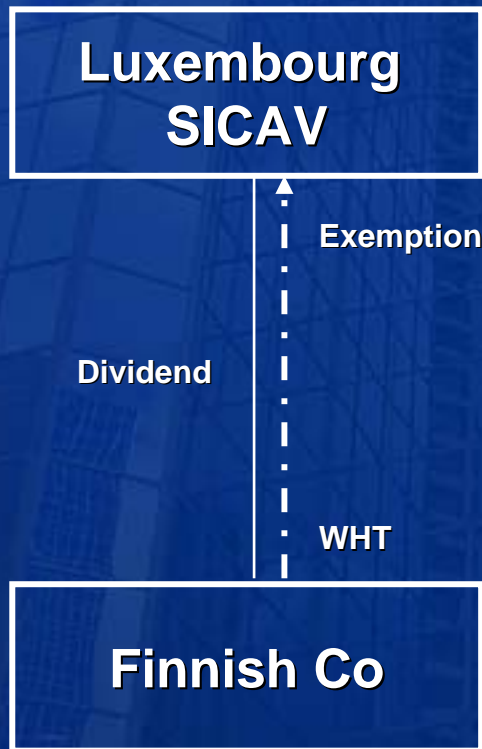
- ◆ Applicable High Yield Debt Obligations - Section 163(e)(5) and (i): Where a debt instrument is classified as an AHYDO, the issuer generally deducts interest only when paid, rather than as accrued. In addition, the holder accrues interest into income ratably over the life of the instrument. If the yield to maturity is in excess of AFR + 6%, deductibility of a portion of interest is permanently disallowed (and treated as a dividend)
- ◆ Corporate Acquisition Indebtedness – Section 279: Generally limits the deductibility of interest on certain subordinated debt incurred as a result of an acquisitions.
- ◆ Debt Payable in Issuer Equity – Section 163(l): No deduction is generally allowed for interest paid or accrued on a disqualified debt instrument (“DDI”). A DDI is generally any corporate debt that is payable in equity (i.e., stock) of the issuer or a related party or equity held by the issuer (or related party)

# Interesting ECJ cases for Luxembourg

# Funds / SICAV investing in another EU Member State

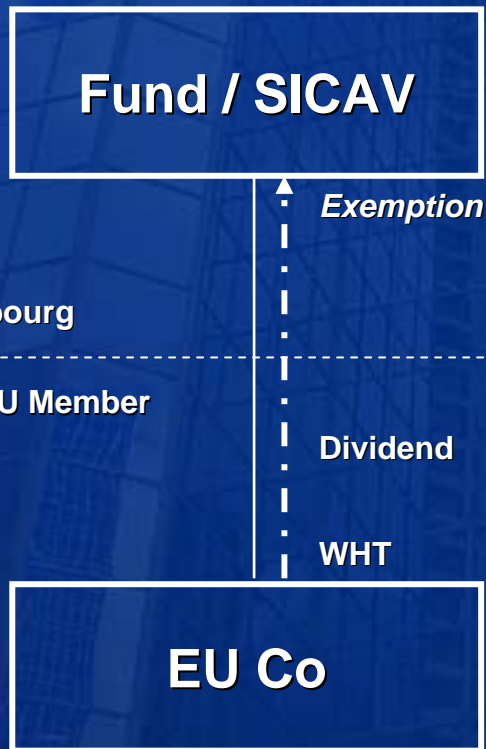
## Aberdeen Property Fininvest Alpha (C-303/07)

### Facts



- ◆ In Finland, the Parent Subsidiary Directive is not applied to dividends paid to a Luxembourg SICAV, since:
  - The SICAV is not mentioned on the list of company forms attached to the Directive, and
  - The SICAV is exempt from CIT in Luxembourg.
- ◆ Breach of the freedom of establishment and the free movement of capital? Since:
  - A Luxembourg SICAV is comparable to a Finnish limited liability company or Finnish investment fund, and
  - A dividend paid to the latter entities would be exempt from WHT

# Luxembourg funds / SICAV investing in another EU Member State



- ◆ Case of a Luxembourg established fund or SICAV investing in another EU Member State
- ◆ Luxembourg fund / SICAV suffers a WHT without possibility of credit
- ◆ Potential breach of the freedom of establishment and the free movement of capital where
  - No WHT is levied on dividend payments to a domestic investment fund which may be comparable to the fund / SICAV

# Investment funds – French investments

Status of KPMG claimants' claims	No response / Queries raised
Relevant litigation challenging French WHT rules proceedings through domestic courts/ referred to the ECJ	Denkavit (C-170/05)
Status of EU Commission action taken against France in respect of taxation of outbound dividends	No known current action
Other comments, e.g. informal feedback received from local tax authorities	<p>At this stage, the French tax authorities appear reluctant to accept that foreign investment funds are in the same situation as French investment funds (WHT applied on outbound dividends paid to a Luxembourg investment fund: 25%)!</p> <p>Following the claims filed in 2005 by German investment funds, the French Tax Authorities have requested that these funds provide documents establishing that the investors have appointed the management companies as their legal representatives before the French Tax Authorities</p>
Statute of limitations	1 year to 3 years from end of year in which dividend was paid
Amounts at stake (sole KPMG UK claimants)	Roughly EUR 78m

# Investment funds – German investments

Status of KPMG claimants' claims	No response
Relevant litigation challenging German WHT rules proceedings through domestic courts/ referred to the ECJ	Expected shortly!
Status of EU Commission action taken against Germany in respect of taxation of outbound dividends	The EU Commission has issued Germany with a Reasoned Opinion dated 23 July 2007 (Press Release IP/07/1152) – the second step in infringement proceedings brought against Germany regarding its discriminatory taxation of outbound dividend payments (not specifically for investment funds)
Other comments, e.g. informal feedback received from local tax authorities	As of 2009 onwards, the WHT rate will be 26.37% (including the solidarity surcharge). When a German investment fund receives a German source dividend, this WHT will be fully refunded to the investment fund. In contrast, where a foreign investment fund receives a German source dividend, solely the treaty refund would apply (if the foreign investment fund is eligible under the treaty)
Statute of limitations	4 years from end of year in which income is accrued
Amounts at stake (sole KPMG UK claimants)	Roughly EUR 56m

# Investment funds – Spanish investments

Status of KPMG claimants' claims	No response / queries raised
Relevant litigation challenging Spanish WHT rules proceedings through domestic courts/ referred to the ECJ	N/A Expected shortly?
Status of EU Commission action taken against Spain in respect of taxation of outbound dividends	<p>The EU Commission has issued Spain with a Reasoned Opinion dated 25 July 2006 (Press Release IP/06/1060) – the second step in infringement proceedings brought against Spain regarding its discriminatory taxation of outbound dividend payments (not specifically for investment funds)</p> <p>The EU Commission has issued Spain with a Reasoned Opinion dated 6 May 2008 (Press Release IP/08/712) - the second step of the infringement procedure brought against Spain about its rules under which dividends paid to foreign pension funds are taxed more heavily than dividends paid to domestic pension funds.</p> <p>Following the above, the EU Commission referred Spain to the ECJ on 22 January 2007, case reference number: 2004/4354 (Press Release IP/07/66) – the third step in infringement proceedings (the ECJ case has not been registered at the ECJ yet)</p>
Other comments, e.g. informal feedback received from local tax authorities	The Spanish Tax Authorities reject claims and open the way for appeals before the Administrative Courts as soon as all claims are filed together with supporting documentation.
Statute of limitations	4 years since payment or filing date
Amounts at stake (sole KPMG UK claimants)	Roughly EUR 56m

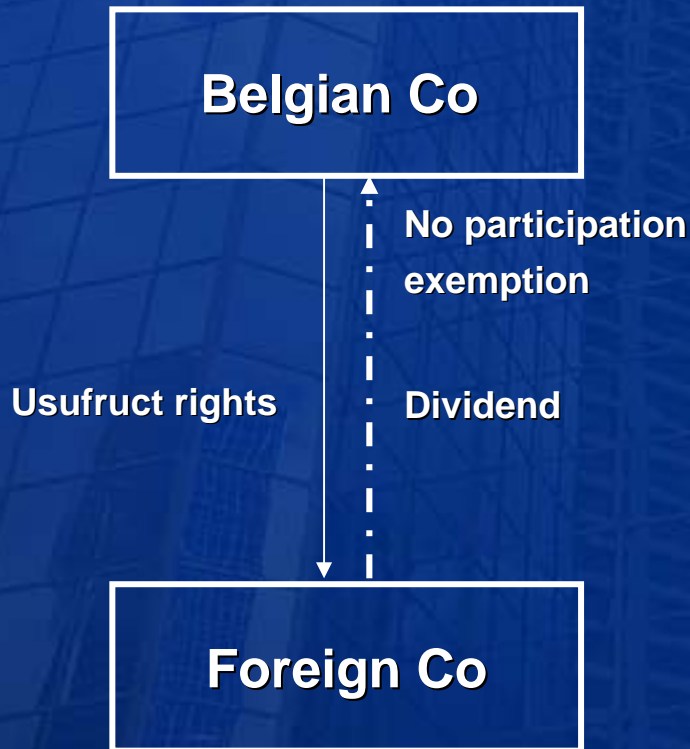
# Investment funds – Dutch investments

Status of KPMG claimants' claims	No response
Relevant litigation challenging Dutch WHT rules proceedings through domestic courts/ referred to the ECJ	Amurta (C-379/05)
Status of EU Commission action taken against the Netherlands in respect of taxation of outbound dividends	<p>The EU Commission has issued the Netherlands with a Reasoned Opinion dated 25 July 2006 (Press Release IP/06/1060) – the second step in infringement proceedings brought against the Netherlands regarding its discriminatory taxation of outbound dividend payments (not specifically for investment funds)</p> <p>Following the above, the EU Commission announced on 22 January 2007 (Press Release IP/07/66) that in reaction to the Reasoned Opinion, the Netherlands had modified its legislation for dividends paid to other Member States, however not to EEA/EFTA countries which provide appropriate assistance (i.e. exchange of information)</p> <p>The EU Commission has therefore referred the Netherlands to the ECJ only with respect to taxation of outbound dividend payments to EEA/EFTA countries (C-521/07)</p>
Other comments, e.g. informal feedback received from local tax authorities	A response may be expected following the ECJ ruling in Orange European Smallcap Fund (C-194/06) delivered on 20 May 2008
Amounts at stake (sole KPMG UK claimants)	Roughly EUR 86m

# Investment funds – Italian investments

Status of KPMG claimants' claims	No response
Relevant litigation challenging Italian WHT rules proceedings through domestic courts/ referred to the ECJ	No information
Status of EU Commission action taken against the Netherlands in respect of taxation of outbound dividends	<p>The EU Commission has issued Italy with a Reasoned Opinion dated 25 July 2006 (Press Release IP/06/1060) – the second step in infringement proceedings brought against Italy regarding its discriminatory taxation of outbound dividend payments (not specifically for investment funds)</p> <p>Following the above, the EU Commission referred Italy to the ECJ on 22 January 2007, case reference number C-540/07 (Press Release IP/07/66) – the third step in infringement proceedings</p> <p>The European Commission has also issued a Reasoned Opinion dated 26 June 2008 (Press Release IP/08/1022) - the second step of the infringement procedure brought against Italy about their rules under which dividends paid to foreign pension funds are taxed more heavily than dividends paid to domestic pension funds.</p>
Other comments, e.g. informal feedback received from local tax authorities	Until now the Italian Tax authorities have not actively addressed the WHT issue
Statute of limitations	48 months of the date on which the tax was withheld
Amounts at stake (sole KPMG UK claimants)	Roughly EUR 26m

# Usufruct rights over shares and part. exempt. Les Vergers du Vieux Tauves (C-48/07) – AG's opinion



- ◆ The question is whether the mere holding of a usufruct right over shares in the capital of a foreign company entitles the parent company to benefit from the participation exemption
- ◆ The Parent Subsidiary Directive applies to the holder of the usufruct rights over the shares since
  - Directive to be interpreted in light of its objective to facilitate the cross-border grouping of companies by the elimination of an economic double taxation of dividends in the EU
  - Directive defines a “parent company” as
    - a company that “has a holding in the capital” of its subsidiary
    - that can benefit from the participation exemption to the extent that it receives distributed profits “by virtue of its association with its subsidiary.”
- ◆ Possible impact for Luxembourg since the tax authorities refuse such benefit to the holder of the usufruct rights

# Use of losses

## Overview / comparison of recent European case law

Decision	Facts	Principle	Comments
<b>Deutsche Shell case</b> <b>(C-293/06)</b> <b>February 28, 2008</b>	Non-deductibility of a <b>currency exchange loss</b> resulting from the repatriation of start up capital of an exempt foreign PE	<b>Non-justified restriction on the freedom of establishment</b> since it constitutes a real economic loss which by its nature can only be incurred at the level of the Head office	This decision only concerns currency exchange losses
<b>Lidl Belgium case</b> <b>(C-414/06)</b> <b>May 15, 2008</b>	Non-deductibility of <b>foreign PE losses</b> from the taxable basis of the head office	<b>Restriction on the freedom of establishment</b> when: <ul style="list-style-type: none"> <li>- impossibility for a company to use losses generated by a foreign PE, <b>and</b></li> <li>- such losses cannot be offset in future in the State where the PE is located</li> </ul> <b>Restriction justified</b> by the need to preserve the balanced allocation of the power to impose taxes between Member States and to prevent losses being used twice  Luxembourg tax legislation provides for an unlimited carry-forward of a foreign PE's ⇒ <b>Proportionate</b>	The ECJ followed the same reasoning as in the <i>Marks &amp; Spencer</i> case (C-446/03), which concerned group relief for a foreign subsidiary's losses
<b>Krankenheim case</b> <b>(C-157/07)</b> <b>October 23, 2008</b>	German tax regime applicable prior to 1999: <ul style="list-style-type: none"> <li>- <b>allowed</b> a German head office to <b>use losses</b> generated by a foreign PE</li> <li>- <b>recapture of those losses</b> when the PE became profitable again</li> </ul>	<b>Restriction to freedom of establishment</b>  Germany withdrew the benefit of the tax advantage (loss relief) only for German co. with a foreign PE  <b>Restriction justified</b> by the need to <b>guarantee the coherence</b> of the German tax system	Decision only concerns the recapture method  The principle stated in the <i>Lidl Belgium case</i> (C-414/06) remains intact

# Inheritance tax on immovable property – deduction of liabilities - Arens Sikken (C-43/07)



IT Testator

- ◆ Compatibility of Netherlands Inheritance rules with the free movement of capital
- ◆ The basis for taxation amounts to net value of all movable and immovable assets, i.e. the gross value of assets minus all the liabilities of the deceased person, who was resident in the Netherlands
- ◆ For a non-resident decedent with immovable property located in the Netherlands, the basis for taxation amounts to gross value, i.e. no deduction for liabilities is made; a justification of the restriction was not recognized by the ECJ, thus Art. 56 EC was interpreted as precluding such national rules
- ◆ The Luxembourg Inheritance tax law applies comparable rules, providing that no specific reason could justify the different treatment, the domestic rules are not compliant with Art. 56 EC

# State aid issues

# Applicable legislation

# References

- ◆ Articles 87-89 of the EC Treaty
- ◆ Council Regulation 659/1999 of 22 March 1999 on control and recovery
- ◆ Commission Notice 98/C 384/03 of 11 November 1998 on the application of the State aid rules to measures relating to direct business taxation
- ◆ Commission Report C(2004)434 of 9 February 2004 on the implementation of the above notice
- ◆ Commission Regulations, Guidelines and Communications particularly concerning exemption regimes
- ◆ Commission decisions and ECJ decisions
- ◆ Commission's Vademecum Community rules on state aid, 15 February 2007

# Criteria of qualification of a tax measure as State aid

# Article 87 EC Treaty (Article 107 new consolidated Treaty)

- ◆ **Aid which satisfies the following criteria is incompatible with the common market:**
  - Any aid in any form whatsoever
  - Granted by a Member State or through State resources
  - Which distorts or threatens to distort competition and affects trade between Member States (Switzerland?)
  - By favouring certain undertakings or the production of certain goods
  
- ◆ **Unless the aid qualifies for exemption:**
  - Regional aid
  - Industry-specific aid (audiovisual production, broadcasting, coal, shipbuilding, agriculture, transport, etc.)
  - Block exemptions (*de minimis* aid, aid for SMEs, R&D, environmental protection, employment, training, etc.)

# The notion of Advantage

- ◆ **Advantage which relieves recipients of charges that are normally borne from their budgets, e.g., through a reduction in their tax burden**
- ◆ **Types of tax advantages**
  - Reduction in the tax base (special deductions, special or accelerated depreciation arrangements, entering of reserves on the balance sheet)
  - Total or partial reduction in the amount of tax (exemption, credit)
  - Deferment, cancellation or rescheduling of tax debt
- ◆ **Recipients**
  - All companies which have actually benefited from it
  - Not individuals

# Use of State resources

## ◆ From who?

- National, regional or local authorities
- Public banks and foundations
- Private or public intermediate bodies

## ◆ Through

- Tax provisions of a legislative, regulatory or administrative nature
- Practice of the tax authorities

# Selective measures as opposed to general measures

- ◆ **General measures are open to all companies operating within a Member State on an equal access basis:**
  - Tax measures of purely technical nature (rate, depreciation, loss carry-over, prevention of double taxation or tax avoidance)
  - Measures pursuing general economic policy through reduction of tax burden related to certain production costs (R&D, environment, training, employment)
- ◆ **The fact that some companies / sectors benefit more than others from general measures is irrelevant**

# Selective measures

- ◆ **Favoring certain sectors or types of companies**
  - Favoring certain sectors
  - Applying only to large or multinational companies
  - Favoring head offices or firms providing intra-group services
  - Favoring non-resident companies
  - Favoring public undertakings
- ◆ **Applying only to companies set up after a certain date**
- ◆ **Applying only to specific regions within a Member State**
- ◆ **Applying on the basis of the Tax Authorities' discretionary power**

# Selective measures justified by « the nature or general scheme of the tax system »

- ◆ Measures which depart from the standard system for reasons inherent to the logic of the tax system or necessary for its functioning and effectiveness
- ◆ Examples:
  - Progressive nature of an income tax scale
  - Exemption of non-profit-making undertakings
- ◆ Rarely accepted by the EU Commission

# Effect on trade and competition

- ◆ Potential strengthening of the competitive position of one or more companies in a sector open to EU competition
- ◆ Also where opportunity to penetrate other EU Member State's market is reduced
- ◆ Irrelevant
  - Relatively small amount (except *de minimis* aid)
  - Recipient's small size or share of the EU market
  - Export of all production outside the EU
  - Existence of comparable or rival tax measures in other EU Member States
- ◆ Switzerland
  - => Commission's decision C/2007/411 of February 13, 2007 on the basis of 1972 Free Trade Agreement between the EU and Switzerland

# State Aid versus Code of Conduct Scope

<b>Code of Conduct</b> (political agreement)	<b>State aid</b> (legal requirement)
<p>Report of November 1999: identification of 66 tax measures with harmful features</p> <p>The code of conduct proposed five main characteristics for identifying a harmful measure</p> <ul style="list-style-type: none"> <li>◆ Advantages are <b>available only to non-residents</b> or for transactions carried out with non residents;</li> <li>◆ Advantages are <b>ring-fenced from the domestic market</b>;</li> <li>◆ Advantages are <b>granted without any real economic activity</b> or substantial economic presence in the state offering the advantage;</li> <li>◆ <b>Rules</b> for calculating profit of multi-national groups <b>depart from internationally accepted principles</b> (i.e. OECD transfer pricing guidelines and model treaty commentary);</li> <li>◆ Tax measures <b>lack transparency</b> or legal provisions are relaxed at an administrative level in a non-transparent way.</li> </ul>	<p><b>Favoring certain sectors or types of companies</b></p> <ul style="list-style-type: none"> <li>◆ Favoring certain sectors</li> <li>◆ Applying only to large or multinational companies</li> <li>◆ Favoring head offices or firms providing intra-group services</li> <li>◆ Favoring non-resident companies</li> <li>◆ Favoring public undertakings</li> </ul> <p><b>Applying only to companies set up after a certain date</b></p> <p><b>Applying only to specific regions within a Member State</b></p> <p><b>Applying on the basis of the Tax Authorities' discretionary power</b></p>

# State Aid versus Code of Conduct Consequences

## Code of conduct

The Code is not a legally binding instrument but it clearly does have political force; by adopting this Code, the Member States have undertaken to

- Roll back existing tax measures that constitute harmful tax competition
- Refrain from introducing any such measures in the future ("standstill")
- Information exchange
- Evaluation to assess tax measures
- Promotion to encourage in particular third states to abolish harmful tax measures

### General phasing out

- According to the timeline for rollback, the phasing out of harmful tax measures should start in 2002 and should be completed on December 31, 2005
- Some measures have been granted an extension to December 31, 2010 (e.g. Lux 1929 Holdings)

## State aid

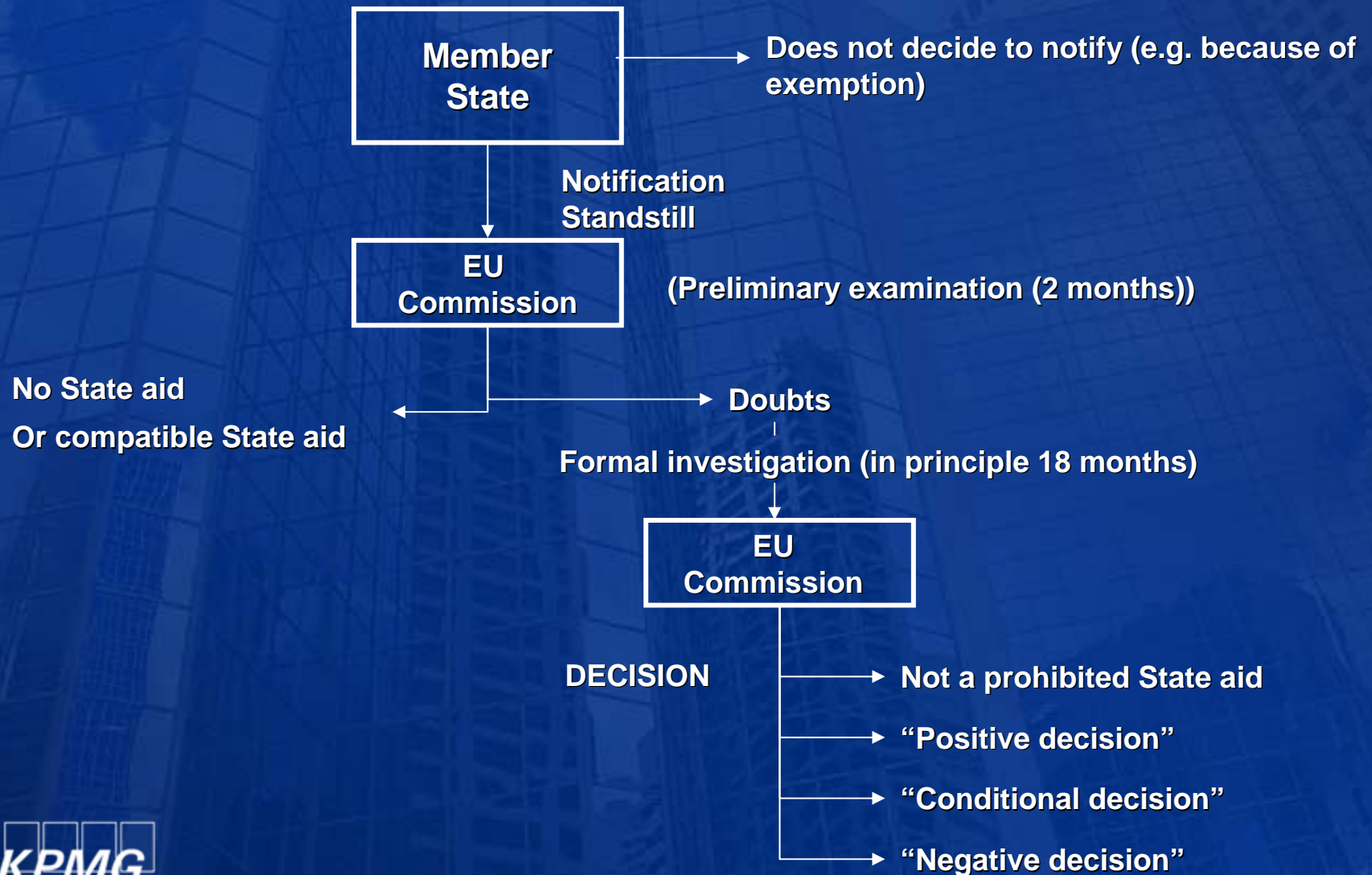
### **Distinction between existing aid and new aid**

- **Existing aid** because entered into force before EC Treaty, abolishment of alteration of the measure within a period of time (i.e. kind of **phasing out**)
- **New aid** means aid that is not existing aid, including alterations to existing aid; if implemented without prior authorization, it's unlawful and should it prove to be incompatible, **must in principle be recovered** (i.e. reimbursement and interest payments), unless the recovery would be contrary to a general principle of Community law or the Commission's behaviour has given rise to legitimate expectations (strict interpretation – only in exceptional cases)

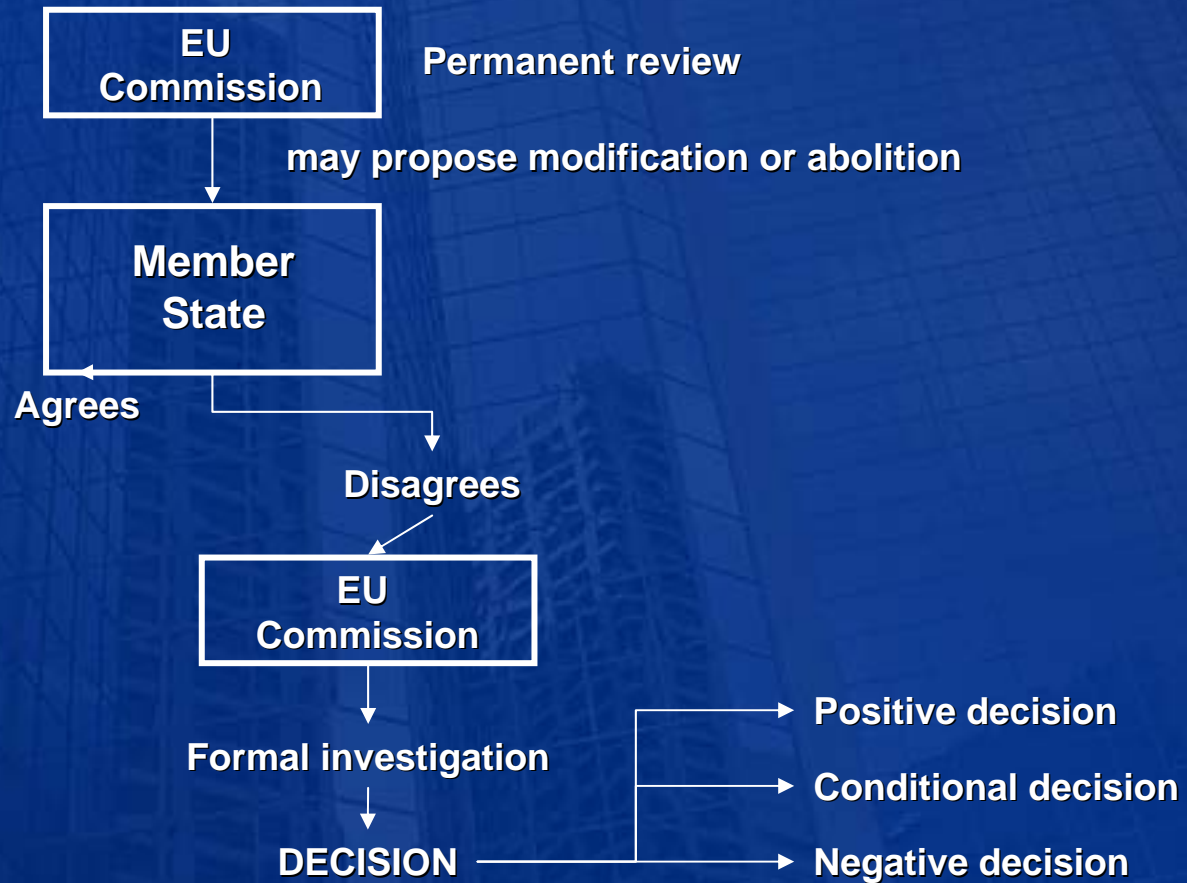
The power of the Commission to recover aid shall be **subject to a period of 10 years**

# How is State aid controlled?

# New aid



# Existing aid



# Contact us

- ◆ Philippe Neefs, Luxembourg [philippe.neefs@kpmg.lu](mailto:philippe.neefs@kpmg.lu)
- ◆ Sebastien Labbe, Luxembourg [sebastien.labbe@kpmg.lu](mailto:sebastien.labbe@kpmg.lu)
- ◆ Oliver Dörfler, Germany [odoerfler@kpmg.com](mailto:odoerfler@kpmg.com)
- ◆ Hans Bosma, EU Tax Centre [bosma.hans@kpmg.nl](mailto:bosma.hans@kpmg.nl)

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