



BRUSSELS | 17 DECEMBER 2018



## EU Commission Publish McDonald's Decision

The European Commission published today a [non-confidential version](#) of the decision establishing that Luxembourg did not provide for a selective tax treatment to McDonald's in breach of the EU State aid rules.

In September, the Commission [formally closed](#) a [three-year long investigation](#) that aimed to establish that a Luxembourg tax ruling interpreting the US- Luxembourg Double Tax Treaty amounted to State aid. The case was of paramount importance for the EU Commission, aiming to establish that double-non taxation could amount to State aid by virtue of favourable interpretation of a Double Taxation Treaty provision. It transpires that by not pursuing the McDonald's line of inquiry further, the Commission have set a limit to the fiscal State aid investigations: disparities among tax systems and arbitrage resulting from divergent interpretation of (conflicting) taxation laws could not be addressed by enforcing the EU State aid rules.



## EU Parliament Seeks to Extend DST Scope

A plenary session of the European Parliament in Strasbourg [reached conclusions](#) seeking to extend the scope of the Digital Services Tax ("DST") proposals by adding further digital content to the taxable services. The European Parliament also sought to reduce the taxation threshold to any entity generating revenues within the EU of more than EUR 40 000 000 during the relevant financial year. Under the EU Parliament resolution, the list of services that qualify as taxable revenue for DST purposes would include the supply of "content on a digital interface such as video, audio, games, or text using a digital interface", regardless of whether the content is owned by that entity or if it has acquired the rights to distribute it. It is understood that online platforms such as Netflix would fall within scope. It should be noted that the European Parliament has only consultative role on matters of EU taxation.

Considering that the EU finance ministers were again [unable to reach agreement](#) concerning the DST proposals at the 5 December ECOFIN, a modified [proposal](#) was put forward by Germany and France. The proposal sought to amend the DST by applying the 3% turnover tax to digital advertisement services from 1 January 2021, if no international solution has been agreed upon by that date, and expire by 2025.

The Austrian Presidency of the EU has recommended that Member states continue work on the matter on the basis of the latest compromise text, incorporating appropriate aspects of the Franco-German proposal.



## EU Parliament Calls for Expedited Settlement of Cross-Border Commercial Disputes

The last plenary session of the European Parliament saw the approval of the Legal Affairs Committee report that invites the European Commission to consider a European Expedited Civil Procedure (EECP) for cross-border commercial disputes. The main goal of the [proposal](#) is to introduce a voluntary procedure in order to provide European companies with a possibility to reach a settlement of cross-border commercial (business-to-business) disputes within a reasonable time frame. It is intended that the EECP would be voluntary and would include short, pre-determined deadlines and limited appeal possibilities.

Commenting, for the European Parliament, Tadeusz Zwiefka MEP said: "Cross-border commercial litigations can last years. During this period, companies lose time, money and very often, the amount under dispute is frozen. The base for predictable and safe business is legal certainty and I call on European Commission to come forward with a legislative act on expedited procedures. I encourage as well member states to establish specialized chambers or courts that could deal with the cross border commercial disputes. It would be also interesting to look into the possibility of establishing a European commercial court, to serve as a specialised, international forum for cross-border disputes."



## EU Wins WTO Tax Subsidies Dispute With Brazil

The World Trade Organisation ("WTO") Appellate Body [confirmed](#) the initial ruling of 2017 that Brazilian tax incentives are not in line with WTO rules as they favour domestic products. As a consequence of the ruling, Brazil will now have to bring its tax measures in compliance with WTO rules and remove the prohibited measures without delay.

Back in August 2017, the WTO dispute settlement panel issued a ruling under which the Brazilian were declared discriminatory tax subsidies against the EU automotive, ICT and electronic products by way of granting prohibited import and export subsidies to Brazilian companies. The dispute also covered fiscal incentives contingent on Brazilian firms meeting certain export performance requirements. The European Union filed the complaint in respect of certain measures concerning taxation and charges in the automotive sector, the electronics and technology industry, goods produced in Free Trade Zones, and tax advantages for exporters. The European Union claimed that the measures are inconsistent with the GATT 1994, SCM Agreement and Articles 2.1. and 2.2. of the TRIMs Agreement.

The EU is Brazil's second biggest trading partner accounting for more than 18% of its total trade. For many sectors of the Brazilian economy, the EU is the largest foreign investor. The EU initiated the WTO dispute in December 2013. In July 2015, Japan launched a parallel dispute against the same Brazilian programmes and the two cases were joined. The WTO reports issued in both cases are substantially similar.

The Understanding on Dispute Settlement at the WTO provides WTO Members with a set legal framework for resolving disputes that arise in implementing WTO agreements. Ideally disputes are resolved through negotiations. If this is not possible, WTO Members can request a Panel to settle the dispute. The Panel's report can also be appealed before the WTO Appellate Body on questions of law. If a Member does not comply with the recommendations from dispute settlement, then trade compensation or sanctions, for example in the form of increases in customs duties, may follow.



## OECD: Increased Transparency on Tax Rulings

As part of efforts to improve tax transparency, the OECD BEPS Inclusive Framework has assessed 92 individual jurisdictions' progress in spontaneously exchanging information on tax rulings, in accordance with Action 5 of the OECD BEPS project. The [OECD's 2017 Peer Review Reports on the Exchange of Information on Tax Rulings](#) show that more than 16,000 tax rulings have been identified and almost 21,000 exchanges of information having taken place to date.



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The selection of the remitted material has been prepared by  
Piergiorgio Valente/ Aleksandar Ivanovski/ Brodie McIntosh/ Filipa Correia



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