



# Euro Tax Flash from KPMG's EU Tax Centre



[Background](#)

[Preliminary findings](#)

[Next steps](#)

[EU Tax Centre comment](#)

## **European Commission opens in-depth State aid investigation into tax rulings granted to Inter IKEA by the Netherlands**

### **State aid – Tax Rulings – The Netherlands – Arm's Length Principle**

On December 18, 2017, the European Commission announced that it was opening in-depth investigations into two tax rulings granted by the Netherlands to Inter IKEA (see the European Commission's [Press Release](#)). The European Commission has concerns that the tax rulings may have given an unfair tax advantage to Inter IKEA, in violation of EU State aid rules, and has decided to initiate a formal investigation procedure in order to validate its preliminary view. The European Commission will reach a final decision at the end of the formal investigation.

Below we will summarize the main elements of the press release issued by the European Commission. It should be noted that this press release reflects the opinion of the European Commission only and that the decision to open a formal investigation does not prejudice the outcome of such investigation.

### **Background**

The investigations into these tax rulings follow a series of State aid investigations recently launched by the European Commission and is the second one focusing on the Netherlands.

Tax rulings have increasingly become the center of attention as their investigation is one of three relevant EU initiatives in the areas of tax transparency (see [ETF 247](#)) and tackling harmful tax competition between Member States and tax avoidance (see [ETF 253](#)). In December 2014 the European Commission ordered all Member States to list all their tax rulings granted since January 1, 2010. Following this request, 15 Member States were asked to provide more detailed information on some of their rulings in December 2014. Since then, the Commission has opened in-depth investigations into tax rulings granted to several

multinational groups, as well as the Belgium excess profit ruling system. The investigation should be seen in light of the EU Commission's on-going examination of the McDonald's (see [ETF 264](#)) and GDF Suez (see [ETF 302](#)) cases as well as the negative decisions rendered on tax rulings issued by Luxembourg and the Netherlands in October 2015 (see [ETF 262](#)), by Belgium in January 2016 (see [ETF 271](#)) and more recently by Ireland (see [ETF 300](#)) and Luxembourg (see [ETF 339](#)).

In particular, the European Commission had announced its intention to request further information on the group's tax arrangements in April 2016, following the publication of a report by the Green/EFA group of the European Parliament.

### **Preliminary findings**

The European Commission's concerns relate to the tax treatment of the group entity in the Netherlands following two tax rulings granted by the Dutch tax authorities in 2006 and 2011. The European Commission is concerned that certain elements of the two tax rulings may have provided an unfair advantage in comparison to other companies subject to the same national taxation rules in the Netherlands. In particular, the Commission will assess whether certain inter-group payments as well as the price for the inter-group acquisition of intellectual property rights reflected economic reality, i.e. whether or not the conditions agreed were at arm's length.

### **Next steps**

As part of the standard procedure in State aid investigations, the European Commission will publish a non-confidential version of this preliminary decision. The opening of an in-depth investigation gives interested third parties and the Member States concerned an opportunity to submit comments. It does not prejudge the outcome of the investigation. There is no legal deadline for completing an in-depth investigation and its actual length depends on many factors, including the complexity of the case, the information provided and the level of cooperation from the Member State concerned. The European Commission will reach a final decision at the end of the formal investigation.

### **EU Tax Centre comment**

The decision to open a formal investigation is not surprising, as the European Commission had already indicated in April 2016 that it had requested further information from the group. The Dutch Ministry of Finance already indicated in a letter to the Dutch parliament that the Netherlands will cooperate with the European Commission's inquiry. The decision to open a formal investigation does, however, not prejudge the outcome of such investigation.

Should you have any queries, please do not hesitate to contact [KPMG's EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.



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