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Multinationals seek cover as EU begins tax avoidance battle

Vanessa Houlder in London and Christian Oliver and Jim Brunsden in Brussels

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Starbucks and Fiat took the heat on Wednesday. Now thousands of other multinationals doing business in Europe are asking a similar question: Will they, too, be caught up in a far-reaching Brussels crackdown on tax avoidance?

Much will depend on Margrethe Vestager, the EU's competition commissioner, who on Wednesday declared that the companies' highly-advantageous tax agreements with the Netherlands and Luxembourg, respectively, amounted to illegal forms of state aid.

Ms Vestager's ruling will require Starbucks and Fiat each to make up to €30m in tax repayments on the grounds they had received "selective" benefits from the tax deals.

"Paying one's fair share of tax should be firmly integrated in a company's corporate social responsibility," said Ms Vestager, a Dane, warning that she expected tax rulings to be done "by the book".

The commission is already well advanced in investigations into Apple's tax treatment in Ireland, Amazon's in Luxembourg and a Belgian tax scheme used by other companies. In an ominous statement, it said it "continues to pursue its inquiry into tax rulings practices in all EU member states".

Tax advisers warn that Ms Vestager's judgment will have big implications for large numbers of companies that relied on similar tax rulings from EU governments. Often known as "comfort letters", the rulings are meant to assure companies about the legality of particular tax arrangements — but may no longer be so reassuring.

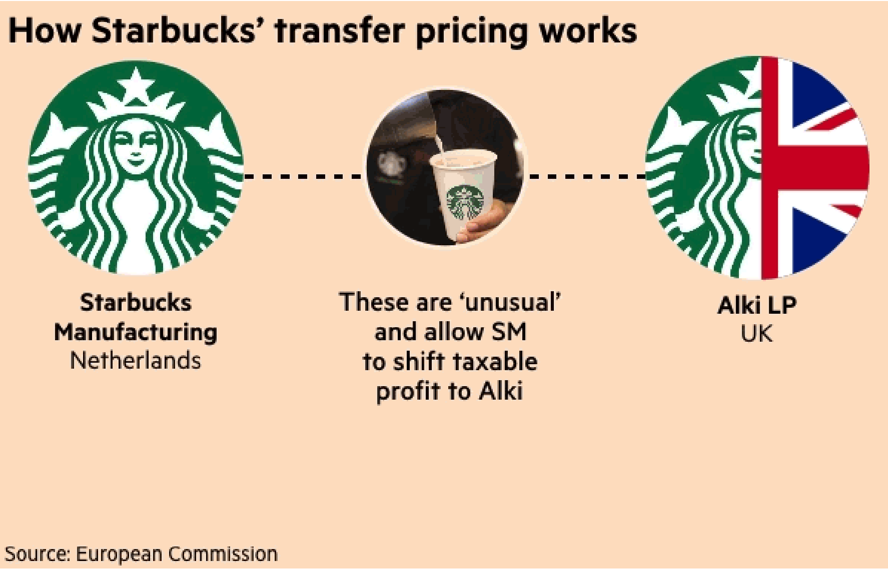
"The general feeling is [the commission] will very much expand these procedures," said Marc Sanders, partner at Taxand Netherlands, tax advisers.

Caroline Ramsay, a state aid specialist at Pinsent Masons, a law firm, said she understood that "truckloads" of documents about rulings had been sent to Brussels and questions were already being asked about specific cases.

"While investigations to date have focused on US companies, the complaints from the US Treasury Department about what they see as the targeting of American companies may well mean that the next wave of state aid cases throws the spotlight on European companies," Ms Ramsay said.

The Starbucks case is particularly troubling, according to tax experts, because the tax ruling process in the Netherlands is long-established and well-respected internationally. The tax treatments involved are considered commonplace in much of the corporate world.

Specifically, the commission condemned the Netherlands for allowing the coffee chain to use a series of internal transactions to shift profits outside the country to other, lower-tax jurisdictions. The commission claimed, for example, that Starbucks' Dutch entity bought its coffee beans at an elevated price from a Swiss subsidiary. Starbucks rejected this, saying there were "significant errors" in the commission's decision.



In the Fiat case, the commission accused Luxembourg of allowing the carmaker's finance arm to place an artificially low value on its capital in order to reduce its taxes. Fiat says there was no preferential treatment.

If nothing else, Mr Sanders predicted the commission's decisions would increase the costs and uncertainty of doing business in Europe. "If they cannot get comfort from rulings they will look to tax advisory firms to provide more detailed transfer pricing reports," he said. "It will mean additional work and additional costs."

Companies relying on similar rulings to those of Starbucks and Fiat will have to decide whether to make a provision in their accounts to reflect the risk of a potential state aid investigation. The commission can review rulings going back up to 10 years and can order the recovery of underpaid taxes, plus interest.

Heather Self, a tax partner at Pinsent Masons, expects very few to make provisions — which would mean an adverse finding was more likely than not — but many more to record a contingent liability. She also expected companies to consider reopening rulings that might be deemed to be illegal state aid. "They may wish to consider a compromise now rather than wait to be on the receiving end of a full EU investigation," Ms Self said.

The decisions against the Netherlands and Luxembourg are likely have a knock-on effect on other jurisdictions. The US Treasury, for example, has signalled concerns that the US may need to credit companies for the extra tax paid in Europe. In a statement, Fiat Chrysler Automobile said the decision would "result in compensating adjustments in other tax jurisdictions" that would need to be agreed between Luxembourg and the tax authorities of the other European countries involved in the intra-group financing arrangements.

But tax advisers said there was much uncertainty over whether companies would be able to offset the extra tax they were forced to pay in one jurisdiction by paying less in others.

Both the Dutch and Luxembourgish government rejected the commission's decisions although they did not immediately say whether they would appeal against them to the European courts. In a statement, the Luxembourg government said the commission had "used unprecedented criteria in establishing the alleged state aid" and had not "established in any way that Fiat Finance and Trade received selective advantages with reference to Luxembourg's national legal framework".

Fiat also said that it had not received any state aid, while Starbucks said that it would appeal against the commission.

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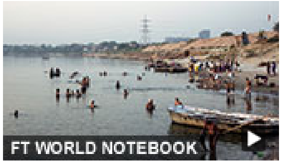

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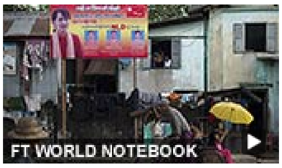

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