TRANSFER PRICING
Case Law

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Introduction

If you have read our book, you know that there is an increasing number of disputes regarding the transfer pricing policies of MNEs. These disputes are often fought out in court. The case law resulting therefrom can provide valuable insights on transfer pricing strategies and positions of taxpayers and tax authorities alike. Case law can deepen your understanding of transfer pricing, and help you become more knowledgeable and confident on the matter.

This publication aims to highlight a few interesting transfer pricing cases. It should not be considered as an exhaustive overview of available case law. When you are in the process of designing a transfer pricing policy or facing a dispute, we would always recommend to performing a transfer pricing case law review.

We trust you will enjoy the read.

Case I - Zinc Case

Keywords: business restructuring, transfer pricing documentation, burden of proof

Facts

This case concerns a Dutch taxpayer (**DutchCo**), which is part of a MNE. DutchCo exploits a foundry used for converting zinc concentrates into pure zinc. Until 2003, DutchCo performed all functions, owned all assets, and assumed all risks in relation to these activities. The Company independently concluded agreements required to run all of its operations.

From 2003, DutchCo restructured its operations.

- First, certain non-production activities were transferred to a Global Marketing & Services function, with the aim to achieve economies of scale. The benefits derived from this centralization were accounted for by the Company.

- Then, in 2009, the Company sold its main assets including raw materials, finished/semi-finished products, and accounts receivables to a Belgian associated enterprise (**BelgiumCo**). Furthermore, BelgiumCo and DutchCo concluded a “contract manufacturing” agreement (**the Agreement**). Under the Agreement, the BelgiumCo provided raw materials to DutchCo, which returned a finished product. DutchCo was remunerated on a net cost plus basis for its activities.

- Lastly, in 2010, the MNE centralized their Belgian and United Kingdom corporate headquarters via an associated enterprise in Switzerland (**SwissCo**). Consequently, SwissCo took over the management of production planning, logistics, and sales. SwissCo also took over the activities covered under the Agreement between DutchCo and BelgiumCo. The Agreement was thus terminated. DutchCo received a fee of approx. EUR 28m (**the Fee**) for the termination of the Agreement, and this amount was based on the remaining term of the Agreement of one year.

Dispute

DutchCo reported the Fee in its corporate income tax return for fiscal year 2010. The tax inspector did not agree with the amount of the Fee, and made an upward correction of approx. EUR 156m when issuing the tax assessment for fiscal year 2010.

In the view of the tax inspector, despite the centralization of activities in SwissCo in 2010, DutchCo still performed sales and procurement activities. Accordingly, DutchCo should have been paid a Fee that compensated it for the termination of those activities as well, and not only those covered under the Agreement.

DutchCo filed an appeal against this decision with the Lower Court of Zeeland-West-Brabant (**the Lower Court**)

Ruling[1]

The Court decided in favor of DutchCo:

In the view of the Court, DutchCo had complied with the applicable transfer pricing documentation requirements.[2] Accordingly, a “double” burden of proof existed for the tax inspector. First, the tax inspector had to prove that the transaction took place due to shareholder motives, rather than business motives. Would the tax inspector have succeeded in this regard, he would have had to be able to prove that the transfer price was not at arm’s length.

With respect to the remuneration for the activities of the DutchCo, the Court decided that the sales and procurement functions were no longer performed by DutchCo in 2010. The Court did not see grounds to make a correction to the transfer price on net cost plus base. Building on this, the Court decided that the sales and procurement activities did not need to be taken into account in the calculation of the Fee.

In conclusion, the Court decided that the tax inspector had not satisfied the double burden of proof resting on him and the appeal of DutchCo was well-founded. The tax assessment was reduced with the amount of the upward correction of approx. EUR 156m.

The tax inspector lodged an appeal against the decision of the Court.

Conclusion

This decision sets clear boundaries to arbitrary transfer pricing adjustments, in this case made by the Dutch tax authorities. The leading principle here is that when a taxpayer has done its “homework” and prepared solid transfer pricing documentation to substantiate its controlled transactions, tax authorities cannot easily disregard this fact. This stresses the importance of having a well-thought transfer pricing policy, and laying this down in solid documentation and agreements.

1 Dutch tax authorities vs A BV, 19 September 2017, Lower Court Zeeland-West-Brabant, case no 2017: 5965, https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:RBZWB:2017:5965

2 DutchCo had prepared several transfer pricing reports to substantiate the transfer pricing.

Case II - Medtronic Royalty Rate Dispute

Keywords: comparability, transfer pricing methods, intangibles

Facts

Medtronic US (**MUS**) is the parent company of a Puerto Rican manufacturing subsidiary (**MPR**). MUS granted licenses to MPR for the use of intangible property necessary to manufacture medical devices. MUS and MPR used the Comparable Uncontrolled Transaction (CUT) method[3] to calculate the royalty fees paid on their inter-company licensing agreements.

Dispute

The IRS disagreed with the royalty fee paid for the license, and increased the 2005 and 2006 tax bill for MUS by a total amount of USD 1.4bn. It determined that Medtronic should have used the Comparable Profits Method (CPM),[4] rather than the CUT method, to determine the transfer price. Essentially, the IRS took the view that MPR operated as a contract manufacturer (which implies low-risk routine-like activities), and was entitled to a relatively small portion of the profits only.

Ruling[5]

MUS challenged the IRS assessments in US Tax Court (**UTC**), and received a favorable ruling in 2016. Among others, the Tax Court found that the IRS had not put enough weight on MPR’s role of ensuring that the products it manufactured were of good quality. However, the UTC also rejected MUS’ calculation of the royalty fee stating: *“because we have concluded that neither party’s transfer pricing analysis was reasonable, we are left with little help from the parties to determine the proper method.”*

The UTC stated that there is precedence for courts to “determine the proper transfer pricing method,” and proceeded with doing just that: It applied a CUT method with its own adjustments.

The UTC based its CUT on a 1992 license agreement that was part of a litigation settlement between Medtronic and another company, which included cross-licenses and a lump sum payment. This finding, in combination with the conclusions on three other intercompany agreements (and some other factors), led the UTC to conclude that Medtronic had a tax deficiency in 2005 of just USD 26.7m, and an overpayment of USD 12.4m in 2006.

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3 The Comparable Uncontrolled Transaction method is the US term for the CUP method.
4 The Comparable Profits Method is the US term for the TNMM.
5 Commissioner of Internal Revenue vs Metronic Inc., June 9, 2016, United States Tax Court, T.C. Memo. 2016-112, https://www.ustaxcourt.gov/ustcinop/opinionviewer.aspx?ID=10819

Court of Appeals

The IRS appealed the UTC’s decision at the US Court of Appeals to seek a re-evaluation of the transfer pricing method and the calculation of the royalty rate.

The US Court of Appeals ruled that the UTC did not address the comparability between the 1992 license agreement and the licensing agreement in dispute in sufficient detail. Moreover, it failed to address the allocation of risk and product liability expenses between MUS and MPR, even though UTC had rejected the IRS’s Comparable Profit Method due to the risk allocation of its comparable companies.

The US Court of Appeals accordingly vacated the UTC's decision and remanded the case for further consideration.[6]

Conclusion

The Medtronic case confirms two important lessons in transfer pricing:

The first one is that disputes are always around the corner, and it is important to pro-actively take measures to prevent them. It can be argued that Medtronic could have done more, such as a more thorough substantiation of the method selected and transfer price determined. This would have given both the IRS and courts less room for interpretation.

The second lesson is the importance of comparability. Even though the UTC respected the precedent established by previous decisions and adjusted the transfer price, it made an important mistake. It used data that was insufficiently comparable. As we noted in the book, the CUP method (in this case CUT) is the most reliable transfer pricing method. However, it requires transactions to be truly comparable. This is why it often cannot be used.

6 Julie Martin, *“US appellate court sides with IRS in Medtronic transfer pricing royalty rate dispute,”* (MNE Tax, August 20, 2018), https://mnetax.com/us-appellate-court-sides-with-irs-in-medtronic-transfer-pricing-royalty-rate-dispute-29061

Case III - Swiss Paper Trading Case

Keywords: risk allocation, profit shifting, trading, cost plus method

A Dutch company (**DutchCo**) was involved in the trading of paper. It purchased large quantities (mostly) in Finland, to sell in the Netherlands, Belgium, France, and Germany. The purchasing and selling activities were carried out by the director of DutchCo. The Individual, together with his wife, also owned all shares in the company.

In 1994, this Individual set up a Swiss company (**SwissCo**), as its sole shareholder. The sole director of SwissCo was a certified tax advisor, accountant, and trustee, who also acted as director of various other companies registered at the same address. The Swiss director took care of the corporate housekeeping, including administration, correspondence, invoicing and corporate tax compliance.

As of 1996, part of the purchasing and selling of the paper was carried out through SwissCo. However, the Individual proved to be highly involved in relationship management on behalf of SwissCo, and the purchase and sale of its paper. The Individual was not employed by SwissCo, nor did he receive any instructions from the company.

From witness statements quoted by the Court in the context of a criminal investigation, it followed that the Individual de facto ran SwissCo like DutchCo. The individual decided on a case-by-case basis whether a specific transaction was carried out by either one of the companies. Moreover, both companies had the same suppliers of paper, paper products, logistics providers and buyers. The only difference was the method of invoicing and payment.

The tax inspector issued additional corporate income tax assessments for fiscal years 1996, 1997 and 1998. For fiscal year 1999, he issued a corporate income tax assessment that deviated from the corporate income tax return filed by DutchCo. These decisions were appealed at the Court of Appeal in Amsterdam (the **Court**).

Ruling

The Court considered it plausible that the attribution of profit was not based on commercial consideration, but motivated by the interest of the Individual (and his wife). The aim was to siphon a (large) part of the revenue achieved from trading activities from the tax base in the Netherlands.

The Court of Appeal ruled that the income generated by SwissCo had to be accounted for at the level of the DutchCo. For administrative services, SwissCo was entitled to a cost plus remuneration of 15%. Certain expenses could not be included in the cost basis, such as factoring and insurance fees.[7]

The Supreme Court confirmed the ruling.[8]

7 Court of Appeal Amsterdam, 6 January 2011, No. 05/00727, V-N 2011/15.2.1
8 Supreme Court of the Netherlands, 4 January 2013, Case No. 11/00762, BNB 2013/77, https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:PHR:2011:BT8777

Conclusion

The case is a classic example of tax authorities amending terms and conditions of controlled transactions based on their nature and the substance of the associated enterprises involved. SwissCo in fact did not perform many functions, did not own many assets and did not assume material risks. The Individual took material decisions solely. As such, SwissCo was only entitled to a cost-plus remuneration, and any residual profit was allocated to the DutchCo.

The main goal for transfer pricing rules is to prevent profit-shifting and ensure that profits are allocated where economic activities take place and value is being created. This case confirms that transfer pricing rules are used to fight corporate structures that do not reflect reality.

Case IV - Cameco Case:

Keywords: substance, tax-planning, transfer pricing agreements, timing

Facts

Cameco (**Cameco**) is one of the largest producers of uranium in the world. It started with producing and refining the metal in Canada, but expanded by buying up mining assets around the world, most notably in the US – which is where it sells most of its end-product.

Early 1999, Cameco reorganized its corporate structure. As a reason it cited cost reduction, and in court it admitted that Canadian income taxes were one of the costs it sought to avoid. It reasoned that for trading activities taking place outside of Canada, it didn't make much sense, both from a fiscal and a practical perspective, to use Canada as a base.

In the pipeline those days was the so called "HUE Feed," the end-product of a 1993 nuclear disarmament deal between the US and Russia. The Russians would blend down their highly enriched uranium, and bring it to the market. Cameco, in a joint-venture with several other players, acted as their buyer.

Cameco used a subsidiary in Switzerland (**Cameco CH**), citing the country's sound regulatory environment, experience with the industry (it has reactors of its own) and specific tax benefits. It operated independently, even though only two people worked there, and it obtained support services from Cameco (for which it paid a fee).

It took a long time for the deal to materialize. Next to the obvious strict regulations, the price of uranium was so low that Cameco wasn't sure the deal would be profitable. Eventually, the deal fell through. Meanwhile, Cameco CH also bought Uranium from other parties (including Cameco), and supplied most of it through Cameco US to the US market.

From 2003 onwards, the price of uranium started to increase suddenly. From hovering around USD 10 per pound for over a decade, it exploded to USD 130 by the end of 2006. Cameco made significant profits, and made them in Switzerland. This triggered the interest of the Canadian tax authorities.

The Minister of National Revenue (**MNR**) argued that Cameco had improperly shifted its profits to Switzerland, and made a total adjustment to Cameco's income that exceeded CAD 483 million for its 2003, 2005, and 2006 taxation years. He took the following three positions:

1) Cameco had engaged in sham transactions.
2) These transactions would not have been entered into between persons dealing at arm's length, (per paragraphs 247(2)(b) and (d) of the Income Tax Act).
3) And even if they would have been entered into, the transfer prices applied were not at arm's length (per paragraphs 247(2)(a) and (c) of the Income Tax Act).

Cameco appealed to the Canadian Tax Court.

Ruling[9]

Judge John R. Owen combed through the facts in detail, and rejected all three positions.

First of all, he cited existing jurisprudence and concluded that for something to be considered a *“sham,”* a certain *“element of deceit”* is required. He noted that *“there was nothing unusual about the way in which the Cameco Group operated,”* and that *“trading in uranium is a serious business that is subject to worldwide regulation and scrutiny and it is beyond belief that this regulatory authority*[10] *would authorize what the Respondent* (MNR) *in substance alleges are fictitious transactions.”*

In response to an allegation that the board only approved decisions when they were in the interest of the group (as opposed to self-interest) he noted that *“no reasonable person would expect a wholly owned subsidiary to act in a manner that is at odds with the interests of the ultimate parent corporation or of the broader corporate group.”*

The transfer pricing re-characterization rules also did not apply. Cameco’s arrangements were *“commercially rational”* and the parties entered into the various transactions for the bona fide business purpose of earning profit.

On the fact that Cameco had sought to lower its Canadian income tax, he referred to the Canadian foreign affiliate regime and its goal *“to allow Canadian multinationals to compete in international markets through foreign subsidiaries without attracting Canadian income tax.”* The Court added that *“there is nothing exceptional, unusual or inappropriate about the Appellant’s decision...”* (to structure the transaction via a Swiss subsidiary).

The Court accepted the CUP method as applied by Cameco’s expert witness as the most reliable way to assess arm's length terms and conditions, and took into account the difficult market, and the long time-frame of these kinds of deals.

The Court criticized MNR’s expert witnesses for not relying on objective market price benchmarks at the time of the transaction, stating that they *“did not undertake the transfer pricing analysis required by the traditional transfer pricing rules and that their expert evidence is to a significant degree based on hindsight and on assumptions...”*

On a final note, the Court observed that the profit earned by the foreign subsidiaries came from price risks assumed by them, and were as such, justified.

The MRE has appealed the rulings on transfer pricing, but not on the decision that the sham doctrine did not apply.

9 CAMECO CORPORATION vs HER MAJESTY THE QUEEN, September 26th, 2018, Canadian Tax Court, Ottawa, Case no. 2018 TCC 195, https://decision.tcc-cci.gc.ca/tcc-cci/decisions/en/344951/1/document.do

10 The deal was approved by the Swiss Swiss nuclear energy regulator, the BfE (Bundesamt für Energie).

Conclusions

This ruling provides several interesting insights.

- In order to ensure a strong position, it is important that transactions are well defined so that comparables can be found. Moreover, when challenging the arm's length nature of a transaction, facts and figures at the time of transacting should be considered.

- Recharacterization of transactions does not apply (at least in Canada) where the taxpayer's arrangements are commercially rational, even if a tax-oriented purpose exists in the overall arrangements. It can furthermore be concluded that tax motivation doesn't undermine pricing established through appropriate benchmarking.

- It stresses the importance of paying attention to transfer pricing agreements. A chance exists that activities as described in agreements are analysed and discussed in detail during a dispute. In this case this not only served to analyse the arm's length price of a controlled transaction; the Minister also used the agreement to support the position that Cameco CH was controlled by Cameco (Canada) in substance. Care is advised when drafting transfer pricing agreements to not only clearly define what is, but also what isn't included in the activities.

- This case is a clear example of how tax authorities attempt to use transfer pricing rules to tackle what they consider *"unfair"* tax practices. However, that ship doesn't always sail.

Case V - European Commission[11] State Aid Decision on Car-Manufacturing Company Fiat

Keywords: profit shifting, group financing

Fiat Finance and Trade, based in Luxembourg, provides financial services, such as intra-group loans, to other car companies within the Fiat Group. It engages in many different transactions with Fiat Group companies in Europe.

The Commission's investigation[12] showed that a tax ruling issued by the Luxembourg authorities in 2012 provided a unique and exclusive advantage to Fiat Finance and Trade, resulting in a reduced tax burden of EUR 20 – 30m since 2012.

Source

When analyzing Fiat Finance and Trade's activities, it can be argued that they are comparable to those of a bank. Therefore, the taxable profits for the company can be determined in a similar way as for a bank, as a calculation of return on capital deployed by the company for its financing activities. However, the tax ruling endorsed an artificial and extremely complex methodology from which the result did not reflect market conditions. It artificially lowered the taxable profits of Fiat Finance and Trade in two ways:

- Due to several economically unjustifiable assumptions and downward adjustments, the capital used as a base for the financing activities approximated by the tax ruling was much lower than the company's actual capital.
- It charged remuneration for its financing activities below market rates.

11 In the beginning of June 2014, the European Commission announced that certain transfer pricing rulings given by European Union (EU) Member States to particular taxpayers may have violated the EU's restriction on State Aid as included in article 107(1) of the Treaty on the Functioning of the European Union. In this respect, investigations were started into several transfer pricing rulings between EU Members States and multinationals.

12 Commission Decision on State Aid A.38375 (2014/C ex 2014/NN) which Luxembourg granted to Fiat , October 21, 2015, http://ec.europa.eu/competition/state_aid/cases/253203/253203_1757564_318_2.pdf

The result? Fiat Finance and Trade only paid taxes on a small portion of its actual accounting capital at a very low remuneration. So why is this a problem?

As a matter of principle, if taxable profits are calculated based on capital, the level of capitalization in the company has to match financial industry standards. Additionally, applied remuneration must correspond to market conditions.

The Commission's assessment showed that in the case of Fiat Finance and Trade, if the estimations of capital and remuneration applied had corresponded to market conditions, the taxable profits declared in Luxembourg would have been 20 times higher.

Note: The government of Luxembourg has filed an appeal to the European Commission’s decision at the European Court of Justice (**ECJ**).[13]

Conclusions

This State Aid Decision provides some interesting insights.

- Taxpayers must be very careful when making comparability adjustments for the purposes of determining a transfer price. A comparability adjustment should have a very solid basis to be accepted.

- The European Commission is very critical about corporate structures that facilitate MNEs to have a lower corporate tax bill. This is evident from the way the European Commission interprets the arm’s length principle, which is not necessarily in line with the guidance set forth by the OECD.

13 Luxembourg v. Commission, Case T-755/15, 2016 O.J. C 59/48 (action brought on Dec. 30, 2015 by Luxembourg seeking to annul Fiat Decision); Fiat Chrysler Finance Europe v. Commission, Case T-759/15, 2016 O.J. C 59/49 (action brought on Dec. 29, 2015 by Fiat Chrysler Finance seeking to annul Fiat Decision), http://europa.eu/rapid/press-release_IP-15-5880_en.htm

Case VI - European Commission State Aid Decision on Amazon

Keywords: profit shifting, royalty payments

The European Commission concluded that Luxembourg granted undue tax benefits to Amazon of around EUR 250m.[14] This is illegal under EU State aid rules because it allowed Amazon to pay substantially less tax than other businesses. Luxembourg must now recover the illegal aid.

Following an in-depth investigation launched in October 2014, the Commission concluded that a tax ruling issued by Luxembourg in 2003, and prolonged in 2011, lowered the tax paid by Amazon in Luxembourg without any valid justification. The tax ruling enabled Amazon to shift the vast majority of its profits from an Amazon group company that is subject to tax in Luxembourg (**Amazon EU**) to a company which is not subject to tax (**Amazon Europe Holding Technologies**). In particular, the tax ruling endorsed the payment of a royalty from Amazon EU to Amazon Europe Holding Technologies, which significantly reduced Amazon EU's taxable profits.

The Commission's investigation showed that the level of the royalty payments, endorsed by the tax ruling, was inflated and did not reflect economic reality. On this basis, the Commission concluded that the tax ruling granted a selective economic advantage to Amazon by allowing the group to pay less tax than other companies subject to the same national tax rules. In fact, the ruling enabled Amazon to avoid taxation on three quarters of its profits from all Amazon sales in the EU.

Please refer to the below chart of the Amazon structure as relevant for the dispute:

Source:

14 Commission Decision COMP/SA.38944, 2015 O.J. C 44/13, http://europa.eu/rapid/press-release_IP-17-3701_en.htm

Note: Amazon has filed an appeal to the European Commission's decision at the ECJ.

Conclusions

- The European Commission is very critical about corporate structures that facilitate MNEs to have a lower corporate tax bill. This is evident from the way the European Commission interprets the arm's length principle, which is not necessarily in line with the guidance set forth by the OECD.

- Royalty payments to associated enterprises must reflect economic reality. From the European Commission's point of view, economic reality is not present if the structure is set up with the purpose of avoiding taxation. Taxpayers are advised to ensure that there is sufficient economic substance in the associated enterprise that is receiving a royalty. The OECD has further provided guidance on this.[15]

15 OECD, "*Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports*," (OECD/G20 BEPS Project, OECD Publishing, Paris, October 05 2015, https://doi.org/10.1787/9789264241244-en.

Case VII - European Commission state aid decision on Starbucks

Keywords: profit shifting, service fees, royalties

Starbucks Manufacturing EMEA BV (**Starbucks Manufacturing**), based in the Netherlands, is the Starbuck's group's only coffee roasting company located in Europe. It sells and distributes roasted coffee and coffee-related products (e.g. cups, packaged food, pastries) to Starbucks outlets in Europe, the Middle East and Africa.

An investigation by the EU Commission[16] showed that a tax ruling issued by the Dutch authorities in 2008 gave a unique and exclusive advantage to Starbucks Manufacturing, which reduced its tax burden since 2008 by EUR 20-30m. In particular, the ruling artificially lowered taxes paid by Starbucks Manufacturing in two ways:

- Starbucks Manufacturing pays a very substantial **royalty** to Alki (a UK-based company in the Starbucks group) for coffee-roasting know-how.
- It also pays an **inflated price** for green coffee beans to Switzerland-based Starbucks Coffee Trading SARL (**Starbucks Trading**).

This arrangement is demonstrated in the following image:

Source

16 Commission Decision on State Aid SA.38374 (2014/C ex 2014/NN) implemented by the Netherlands to Starbucks, October 21, 2015, http://ec.europa.eu/competition/state_aid/cases/253201/253201_1762441_575_2.pdf

The Commission's investigation established that the royalty paid by Starbucks Manufacturing to Alki cannot be justified as it does not adequately reflect market value. In fact, only Starbucks Manufacturing is required to pay for using this know-how – no other Starbucks group company, nor independent roasters to which roasting is outsourced are required to pay a similar royalty for using this know-how in essentially the same way.

In the case of Starbucks Manufacturing, however, the existence and level of the royalty means that a large part of its taxable profits are shifted to Alki, which, as a transparent entity, is not liable to pay corporate tax in the UK.

As mentioned, the investigation also revealed that Starbucks Manufacturing's tax base is reduced by the inflated price it pays for green coffee beans to Starbucks Trading. It turns out that its margin on beans has more than tripled since 2011.

Due to this high key cost factor in coffee roasting, Starbucks Manufacturing's roasting activities alone doesn't generate enough profit to cover the royalty fees it pays to Alki for coffee-roasting know-how. The royalty fee therefore mainly shifts profits to Alki generated from sales of other products sold by Starbucks Manufacturing to associated enterprises, such as tea, pastries, and cups. In fact, these sales represent most of the turnover of Starbucks Manufacturing.

Note: In a letter dated the 27th November 2015, the Minister and State Secretary of Finance granted a reaction to the Commission's final decision. They stated that the ruling practice is important for maintaining an attractive business climate and that any decision against the ruling practice could have a negative impact on the business climate. The Netherlands has filed an appeal to the ECJ.[17] The ECJ will ultimately clarify whether the tax ruling constitutes prohibited state aid.

Conclusions

The European Commission is very critical about corporate structures that facilitate MNEs to have a lower corporate tax bill. This is evident in the way that the European Commission interprets the arm’s length principle, which is not necessarily in line with guidance set forth by the OECD.

17 Netherlands v. Commission, Case T-760/15, 2016 O.J. C 59/50 (action brought on Dec. 23, 2015 by the Netherlands seeking to annul the Starbucks Decision).