Sweetheart Tax Deals on the Rise in Europe, Report Says

by William Hoke

Despite widespread outrage prompted by the disclosures in 2014 of the LuxLeaks tax rulings granted by Luxembourg authorities to multinational companies, the number of sweetheart deals entered into by the Grand Duchy and other European countries has increased by 160 percent from 2013 through 2015, a nongovernmental organization said in a report issued December 7.

In the report, issued by the European Network on Debt and Development (Eurodad), Eurodad equates the disputed term ''sweetheart deals'' with advance pricing agreements between multinational entities and tax authorities to establish how the MNEs' transfer pricing arrangements will be treated for tax purposes in the countries covered by the APAs.

''One might have thought that [the LuxLeaks] revelations would cause fewer deals to be signed by European governments,'' Eurodad said in its report. ''But on the contrary, the number of sweetheart deals in the EU has soared from 547 in 2013, to 972 in 2014, and finally reached 1,444 by the end of 2015.'' The most dramatic spike, according to the report, occurred in Belgium, where the number of preferential APAs rose from 10 in 2013 to 166 in 2014 and to 411 the following year. Luxembourg, which issued the LuxLeaks rulings that sparked the controversy, reported a total of 519 new rulings in 2015, up 50 percent over the prior year.

Eurodad said that while the overall increase in the EU was led by Luxembourg and Belgium, deals are being signed by governments all across Europe. ''One of the few countries that was not using sweetheart deals — Slovenia — has now introduced the legislative basis needed to start signing them,'' the report said.

Eurodad, which describes itself as a network of 47 NGOs from 19 European countries working on issues related to debt, development finance, tax justice, and poverty reduction, said it coordinated the report, which was produced by civil society organizations in a number of European countries. It said the report's statistics on the number of APAs came from data prepared by the European Commission and from the Norwegian tax administration. Because the APAs are confidential, the specific content of the arrangements is not publicly available.

Move Toward Transparency

Eurodad said that while a number of European governments are in favor of greater transparency since a wave of international tax scandals brought the issue of confidential agreements with MNEs to public attention, many other governments remain opposed. ''Despite the LuxLeaks scandal, the number of secret 'sweetheart deals' between European governments and multinational corporations is skyrocketing,'' Eurodad said.

The NGO said, however, that ''a soft breeze of growing political will'' in favor of greater transparency seems to be blowing following the disclosures in April of the Panama Papers, consisting of millions of documents from the confidential client files of a Panamanian law firm that had set up offshore bank accounts and entities for thousands of wealthy and/or politically prominent people. (Prior coverage: *Tax Notes Int'l*, May 16, 2016, p. 615.) Eurodad said that Finland, the Netherlands, and Norway expressed support in 2016 for public registers of beneficial owners and that Denmark, France, Slovenia, and the U.K. have taken steps to introduce them at the national level. ''In both Germany and the Czech Republic, there are clear signs of movement toward increased support for transparency,'' Eurodad added.

Eurodad said there is a similar but weaker tendency on the issue of whether MNEs should publish data on a country-by-country basis, indicating their levels of business activity and the tax payments made in each country in which they operate. ''The group of countries opposing such a proposal (Austria, Czech Republic, Denmark, Germany, Latvia, Slovenia, and Sweden) remains larger than the group that have expressed support for it (France, Netherlands, Spain, and potentially the U.K.),'' Eurodad said in its report. ''However, compared with 2015, support has grown substantially, and it seems this will become one of the major political battles of 2017.''

EU Tax Commissioner Pierre Moscovici said December 7 that the Eurodad report shows that the commission's actions are bearing fruit. In the past, tax rulings were secret and negotiated between a company and a tax authority, whereas today, an NGO can publish statistics on the number of tax rulings issued, said Moscovici in remarks to the European Parliament's Committee of Inquiry into Money Laundering, Tax Avoidance, and Tax Evasion. Going even further, in 2017 EU tax authorities will be automatically informed of the contents of any tax rulings issued by member states under the EU's new directive on automatic information exchange on tax rulings. The growing public interest in tax rulings will also help the EU come up with better legislation on the subject in the future, Moscovici added.

Belgium

Edoardo Traversa of Liedekerke Wolters Waelbroeck Kirkpatrick in Brussels said the report gives a relatively balanced view of recent measures and policy positions adopted by the Belgian government in the area of international taxation. ''However, I would be very cautious in using the words 'sweetheart deals' to characterize any advance ruling in the area of transfer

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pricing,'' he said. ''The fact that those rulings have increased in the last year is actually a rather positive sign. It means that tax administrations control more systematically how multinational groups value the transactions between associated companies.''

Traversa said transfer pricing rulings can be considered to be sweetheart deals only when one tax jurisdiction assumes that most of the income generated from a transaction has to be allocated to a nonresident company in a country that does not tax the income. ''[That] is what the European Commission stressed in several state aid decisions,'' he said. ''But if the income is taxed in the other country at a similar level, there is no real gain for the taxpayer. Advance rulings merely avoid double taxation of cross-border income. There is always a certain room for maneuver in their application, but this does not amount to total arbitrariness or political opportunity like the term 'sweetheart deals' seems to suggest.''

Traversa said he expects the number of APAs to increase in coming years, a trend he sees as positive because of the essential role that the agreements play in countering base erosion and profit shifting. ''Therefore, on this particular issue, I think that the report is misleading,'' he said. ''LuxLeaks has changed a lot in the way domestic tax administrations grant tax rulings, and one should recognize it.''

Luxembourg

Oliver Hoor of ATOZ Tax Advisers in Luxembourg said the LuxLeaks scandal has had a significant impact on the Grand Duchy's tax ruling practices. ''Based on our experience, rulings do not play any important role in Luxembourg anymore,'' he said.

Hoor took exception to Eurodad's categorization of APAs. ''The term 'sweetheart deals' referring to APAs is either naive or disingenuous,'' he said in an email. ''It's hard to know which, since — in a spirit of transparency — the report does not actually list authors but states that it is a collective responsibility of a large number of associations. It fails to explain what is wrong about taxpayers receiving upfront confirmation of the transfer pricing policies that they adopt. This has been recognized as a positive development, as it allows tax authorities in Europe and around the world to verify the transfer pricing policies upfront.''

Hoor also objected to the report's repeated references to secret tax deals, saying that tax rulings and APAs are now exchangeable within the EU and with tax treaty countries. ''Hence, there is full transparency with all the tax authorities that are concerned,'' he said. ''Starting from the position that not publishing something involves secrecy is a point of view, but it should not be presented as objective in any way.''

He said he doubts the Eurodad report will have an impact on the guidance that Luxembourg tax authorities provide to MNEs. ''With all the current developments in the European Union in regard to [the OECD's base erosion and profit-shifting project], the EU Anti-Tax-Avoidance Directive, country-by-country reporting, exchange of tax rulings, etc., we do not believe that this will further increase the pressure on Luxembourg, [which has taken] a great step forward in terms of tax transparency and adhering to all international standards in tax matters over the last years,'' Hoor said.

'Problematic' Tax Treaties

In the report, Eurodad said European governments are continuing to sign ''very problematic tax treaties'' with developing countries. ''These treaties can help to facilitate corporate tax dodging and impose restrictions on tax systems in developing countries,'' Eurodad said. ''The bottom line is that these countries keep paying a high price for a global tax system that they did not create.''

Eurodad said the vast majority of the countries covered by its report oppose the creation of an intergovernmental tax body under the auspices of the United Nations to give developing countries a voice when global tax standards are negotiated. (Prior coverage: *Tax Notes Int'l*, May 30, 2016, p. 846.) ''Some governments might have thought that this issue would fall off the international political agenda, after a dramatic year in 2015, when developed countries managed to block a strong push from developing countries to get an intergovernmental U.N. tax body,'' Eurodad said. ''However, the developing countries are showing no intention to let this issue go.''

Hoor said the report's description of tax treaties with developing countries as ''very problematic'' is fundamentally biased. ''These tax treaties are negotiated between sovereign states with their eyes open and reflect the balance of interests of both states and a desire to improve trade,'' he said. ''A developing country can easily revoke a treaty if the terms are harmful. Most development specialists agree that trade is the most important means for developing countries to improve their status, so encouraging trade by double tax treaties should be encouraged, not discouraged.''

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