



2024/2674

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COMMISSION DECISION (EU) 2024/2674

of 26 July 2024

on State aid SA.39235 (2015/C) – Hungary – Taxation of advertisement turnover

(notified under document C(2024) 5283)

(Only the Hungarian text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(2), first subparagraph thereof,

Whereas:

1. Procedure

- (1) In July 2014, the Commission became aware that Hungary had adopted Act XXII of 2014 on advertisement tax ⁽¹⁾ (hereinafter: 'the Act on advertisement tax') on the basis of which turnover from advertising activities was taxed (hereinafter: 'the advertisement tax'). By letters of 13 August and 1 December 2014, the Commission sent information requests to the Hungarian authorities, to which they replied by letters of 2 October and 16 December 2014.
- (2) By letter of 2 February 2015, the Commission informed the Hungarian authorities that it envisaged issuing a suspension injunction decision in accordance with Article 11(1) of Council Regulation (EC) No 659/1999 ⁽²⁾. By letter of 17 February 2015, the Hungarian authorities submitted their comments on that letter.
- (3) By decision of 12 March 2015, the Commission initiated the procedure laid down in Article 108(2) TFEU (hereinafter: 'the Opening Decision') and issued a suspension injunction in accordance with Article 11(1) of Regulation (EC) No 659/1999 in respect of the measure at issue.
- (4) The Opening Decision and the suspension injunction were published in the *Official Journal of the European Union* ⁽³⁾. The Commission invited interested parties to submit their comments on that measure.
- (5) The Commission received comments from three interested parties and forwarded them to the Hungarian authorities who were given the opportunity to react.
- (6) On 21 April 2015, the Hungarian authorities sent a draft proposal to the Commission for an amendment to the Act on advertisement tax. On 8 May 2015, the Commission requested information from Hungary on that planned amendment.
- (7) On 4 June 2015, Hungary amended the Act on advertisement tax. On 5 July 2015, that amendment entered into force.
- (8) By letter of 6 July 2015, Hungary provided observations on the Opening Decision and on the interested parties' comments, as well as clarifications on the amendment to the Act on the advertisement tax.

⁽¹⁾ Act XXII of 2014 was adopted by the Hungarian Parliament on 11 June 2014 and entered into force on 18 July 2014.

⁽²⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 83, 27.3.1999, p. 1, ELI: <http://data.europa.eu/eli/reg/1999/659/oj>), repealed and replaced by Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9., ELI: <http://data.europa.eu/eli/reg/2015/1589/oj>).

⁽³⁾ OJ C 136, 24.4.2015, p. 7.

- (9) On 4 November 2016, by its decision on the measure implemented by Hungary on the taxation of advertisement turnover ⁽⁴⁾ (the 'Final Decision'), the Commission closed the formal investigation procedure by concluding that the measure amounted to unlawful and incompatible State aid and ordered the recovery of the aid.
- (10) On 16 December 2016, the Hungarian authorities informed the Commission services that, in accordance with recital 96 of the Final Decision, they intended to adopt an Act abolishing the advertisement tax and replace it with a new one for the future.
- (11) By application lodged at the Registry of the General Court on 16 January 2017, Hungary brought an action for annulment against the Final Decision (Case T-20/17).
- (12) On 16 December 2016, 26 January and 17 February 2017, the Commission services and Hungary exchanged correspondence, leading to a conference call that took place on 27 February 2017 to discuss the abolition of the advertisement tax.
- (13) On 15 May 2017, Hungary retroactively abolished the advertisement tax for the period up to 30 June 2017, and replaced it with a new advertisement tax (see recital (23) below). That amendment to the Act on advertisement tax entered into force on 1 July 2017 ⁽⁵⁾.
- (14) By judgment of 27 June 2019 in case T-20/17 Hungary v Commission ⁽⁶⁾, the General Court annulled the Final Decision, having concluded that the Commission had failed to prove the existence of State aid within the meaning of Article 107(1) TFEU.
- (15) On 23 July 2019, Hungary further amended the Act on advertisement tax by suspending the tax until December 2022 ⁽⁷⁾.
- (16) On 6 August 2019, the Commission lodged an appeal against the judgment of the General Court. By judgment of 16 March 2021 in case C-596/19 P ⁽⁸⁾, the Court of Justice dismissed the Commission's appeal and upheld the judgment of the General Court.
- (17) Following the annulment of the Final Decision by the General Court as confirmed by the Court of Justice, the formal investigation procedure is still open, and must be closed by decision.

2. Background and Description of the measure

- (18) The measure assessed in the Opening Decision is the advertisement tax introduced in Hungary by the Act on advertisement tax which entered into force on 18 July 2014, with further amendments on 4 July and 18 November 2014 (hereinafter: 'the Act').
- (19) The tax featured a steep progressive structure, with rates ranging from 0 % for companies with low advertising turnover to 50 % for companies with high advertising turnover, as follows ('the 2014 version'):
 - for the part of the turnover below HUF 0,5 billion: 0 %;
 - for the part of the turnover between HUF 0,5 billion and 5 billion: 1 %;
 - for the part of the turnover between HUF 5 billion and 10 billion: 10 %;
 - for the part of the turnover between HUF 10 billion and 15 billion: 20 %;
 - for the part of the turnover between HUF 15 billion and 20 billion: 30 %;
 - for the part of the turnover above HUF 20 billion: 50 % ⁽⁹⁾.

⁽⁴⁾ Commission Decision (EU) 2017/329 of 4 November 2016 on the measure SA.39235 (2015/C) (ex 2015/NN) implemented by Hungary on the taxation of advertisement turnover (OJ L 49, 25.2.2017, p. 36, ELI: <http://data.europa.eu/eli/dec/2017/329/oj>).

⁽⁵⁾ The amending law is Act XLVII of 2017 (adopted on 15 May 2017 and in force as of 1 July 2017).

⁽⁶⁾ Judgment of the General Court of 27 June 2019, *Hungary v Commission*, T-20/17, ECLI:EU:T:2019:448.

⁽⁷⁾ Act LXXIII of 2019 of 23 July 2019.

⁽⁸⁾ Judgment of the Court of Justice of 16 March 2021, *Commission v Hungary*, C-596/19 P, ECLI:EU:C:2021:202.

⁽⁹⁾ The top bracket was increased from 40 % to 50 % as from 1 January 2015 by Act LXXIV of 2014.

- (20) After the adoption of the Opening Decision, Hungary amended the Act on advertisement tax by Act LXII of 2015 of 4 June 2015, replacing the progressive scale of six tax rates by a dual rate system as follows (hereinafter: '2015 version'):
- for the part of the turnover below HUF 100 million: 0 %;
 - for the part of the turnover above HUF 100 million: 5,3 % ⁽¹⁰⁾.
- (21) In November 2016 the Commission closed the formal investigation procedure by adopting the negative Final Decision.
- (22) The Final Decision assessed both the 2014 and the 2015 versions of the advertisement tax. The Commission considered that the 2015 version was based on the same principle of progressivity and had the same effect of favouring smaller undertakings over larger ones as the 2014 version of the tax.
- (23) After the adoption of the Final Decision, in 2017, Hungary modified the advertisement tax by a further amendment to the Act on advertisement tax ⁽¹¹⁾. The amending law:
- replaced the advertisement tax declared incompatible by the Final Decision (that is to say the tax in its 2014 and 2015 versions) with a new version of the advertisement tax ⁽¹²⁾;
 - provided that tax declared and paid between 18 July 2014 and 30 June 2017 under the abolished advertisement tax were to be considered an overpayment of taxes under the Hungarian Tax Code and was subject to the tax refund rules of the Tax Code ⁽¹³⁾.

3. Repeal of the measure

- (24) As regards the tax in force and already paid since the entry into force of the Act on advertisement tax, Act XLVII of 2017 provided that, for tax years up to 30 June 2017:
- *'the tax declared and paid (...) shall be deemed to be overpayment within the meaning of the Tax Code, the reimbursement of which shall be subject to the tax refund rules of the Tax Code. The state tax authority shall notify the taxable persons, referred to in Section 3(1) who are entitled to a tax refund under this Section, of the possibility and the conditions for reimbursement of the advertisement tax';*
 - *'tax declared but not paid for tax years completed by 30 June 2017 shall not be paid'.*
- (25) The provisions of the Hungarian Tax Code in force when Act XLVII of 2017 entered into force ⁽¹⁴⁾ define 'overpayment' as the situation in which the taxpayer 'has at their disposal an amount in the tax account which exceeds their obligation to pay the tax'.
- (26) Therefore, when the advertisement tax had been paid by the taxpayer, the effect of the provisions referred to in recitals 24 and 25 was that a tax credit arose in the taxpayer's account.
- (27) The Tax Code sets out different possibilities for the taxpayers to use the tax credit resulting from an overpayment.

⁽¹⁰⁾ The amendment introduced a system of optional retroactive application: taxpayers could choose, for the past, either to be subject to the 2015 dual rate system or to remain subject to the 2014 progressive scale of six rates.

⁽¹¹⁾ The amending law is Act XLVII of 2017 (adopted on 15 May 2017 and in force from 1 July 2017).

⁽¹²⁾ Section 1 of Act XLVII of 2017]

⁽¹³⁾ Section 2 of Act XLVII of 2017.

⁽¹⁴⁾ Act XCII of 2003 on the system of taxation, adopted on 10 November 2003 (Section 43). The Commission observes that the Tax Code has been subsequently modified, but without altering the substance of the relevant provisions (Act CL of 2017 on the system of taxation, adopted on 14 November 2017 and in force from 1 January 2018 (Section 74)).

- (28) First, the taxpayer can request that the overpayment is used to cover tax liabilities of a different tax category ⁽¹⁵⁾. Second, the taxpayer can request a refund of the overpayment, provided that they do not have a tax debt and have complied with their tax return obligations ⁽¹⁶⁾. Third, the overpayment may remain with the tax authorities to cover future tax liabilities of the same tax category ⁽¹⁷⁾.
- (29) The adoption of Act XLVII of 2017 therefore ensured the cancellation of the entirety of the advertisement tax debt due over the period from 2014 until 30 June 2017, and that the advertisement tax paid over that period was reimbursed to the taxpayers or used to cover other tax liabilities of those taxpayers.
- (30) Last, the Commission observes that, in its judgment in case C-596/19 P, the Court of Justice acknowledged ⁽¹⁸⁾ that Act XLVII of 2017 had retroactively repealed the tax measure at issue ⁽¹⁹⁾.
- (31) In light of the above, the Commission concludes that, due to the retroactive abolition of the advertisement tax subject to the formal investigation procedure by Hungary and, accordingly, the cancellation of the relevant tax debt and the reimbursement of the tax paid, the formal investigation procedure has become without object.

4. Conclusion

The procedure laid down in Article 108(2) TFEU has become without object due to the repeal of the measure by Hungary with retroactive effect and should therefore be closed.

HAS ADOPTED THIS DECISION:

Article 1

The procedure initiated on 12 March 2015 pursuant to Article 108(2) TFEU in case SA.39235 has become without object and is hereby closed.

Article 2

This Decision is addressed to Hungary.

Done at Brussels, 26 July 2024.

For the Commission
Margrethe VESTAGER
Executive Vice-President

⁽¹⁵⁾ Act XCII of 2003 on the system of taxation, adopted on 10 November 2003 [Section 43(5)]: *The tax authority shall, on request, account the amount of the overpayment in the tax account indicated by the taxpayer*.

⁽¹⁶⁾ Act XCII of 2003 on the system of taxation, adopted on 10 November 2003 [Section 43(6)]: *'If the taxpayer does not have a tax debt and has complied with its tax return obligations, it may make provision for a refund of the remaining amount'*.

⁽¹⁷⁾ Act XCII of 2003 on the system of taxation, adopted on 10 November 2003 [Section 43(6)]: *'In the absence of any provision, the tax authority shall account for the overpayment for the payment of the tax subsequently due. The tax authority may reimburse the remaining amount only if the payer does not have a public-law debt which it has recorded and which is to be recovered by way of taxes'*.

⁽¹⁸⁾ See paragraph 22 of the judgment of the Court.

⁽¹⁹⁾ See also, to the same effect, paragraph 31 of the judgment of the General Court in case T-20/17 cited above.