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Commission launches large scale state aid investigation into business taxation schemes

The European Commission decided today to launch aid investigations under Article 88(2) of the EC Treaty for 11 corporate tax schemes in 8 Member States. The Commission believes that these tax arrangements could constitute state aid and has doubts whether such aid would be compatible with the EC Treaty. In addition, the Commission invited 4 further Member States to put an end to existing fiscal advantages that are no longer justified following the economic changes of the EU single market.

In 1997, the EU's Council of Economy and Finance Ministers adopted a Code of conduct for direct business taxation with the objective of tackling harmful tax competition. On that occasion, the Commission committed itself to the strict application of the state aid rules. Further to this commitment , the Commission published in 1998 a notice on the application of State aid rules to measures relating to direct business taxation (OJ C 384 of 10.12.1998; see IP/98/983) stressing its determination to apply these rules rigorously in the respect of equality of treatment.

Commissioner Mario Monti declared: "I welcome the Member States' dedication to put an end to tax measures that are harmful within the European Union. The Commission firmly support this exercise in ensuring that the state aid rules are applied consistently and equally to all fiscal legislation. The current launch of investigations is the beginning of a longer-term exercise that will ensure that no tax measures in the EU are being used to support companies in a way that is incompatible with the single market. This exercise is by no means an interference with Member States' competence in tax matters. The Commission, as guardian of competition rules, must control State aid in the Community, whatever its form (grants, guarantees, preferential tax schemes, etc.). Member States themselves have repeatedly asked the Commission to fully exercise its role also in the area of fiscal state aid."

The present exercise concerns 15 tax provisions in 12 Member States and mainly focuses on preferential tax arrangements granted to multinational companies or to companies active in the insurance and financial sector.

11 measures are the object of a formal investigation procedure. The Commission has doubts whether the preferential tax arrangements granted exclusively to multinational companies, or to companies active in the financial services sector, comply with state aid rules, because they only seem to unjustifiably relieve beneficiaries of a part of their normal tax burden. Although some of these tax provisions were, or are about to be abolished, they benefited and may still benefit the recipients and have therefore to be investigated together with the other tax provisions that are continuing.

It should be noted that the launch of a formal state aid investigation does not prejudge its eventual outcome but allows for a thorough and also transparent examination: A description of the aid is published in the Official Journal and interested third parties are invited to comment. At the end of the inquiry, the Commission adopts a final decision. This may be either positive (aid can continue to be implemented), negative (aid can no more be implemented and, in case it has already been paid, may have to be recovered from the beneficiaries) or positive subject to stated conditions.

In 4 further cases, the Commission proposes that the Member States concerned put the tax provisions in conformity with the EC rules. These four measures were either already in force before the accession to the European Union, or were in the past declared by the Commission as not being state aid or being compatible with the EU rules and are now, due to the evolution of the Common market, considered as non compatible state aid. Member States have now to decide whether they can agree to the Commission's proposals. If they refuse, the Commission will then have to open, also for these four tax provisions, the formal investigation procedure.

As the scrutiny of existing or planned tax legislation continues, case by case, the launch of further formal state aid investigations and proposals for bringing existing schemes into line with the Treaty cannot be excluded.

Finally, it is also worth noting that state aid investigation in the field of tax measures do not constitute a new domain of activity for the Commission. As a matter of fact, the Commission scrutinises all forms of state aid, be it fiscal or other. .

Annex

Tax provision for which the Commission has decided to open the formal State aid investigation procedure:

Germany	Special Fiscal Regime for Control and Co-ordination Centres of Foreign Companies
Spain	Special Fiscal Regime for Bizkaia Co-ordination Centres
France	Headquarters and Logistics Centres Regime
	Régime des Centrales de trésorerie
Ireland	Tax exemption on Foreign Income
Luxembourg	Co-ordination Centres Regime
	Finance Companies Regime
The Netherlands	Special Fiscal Regime for International Financing Activities
Finland	Åland Island Captive Insurance Regime
United Kingdom	Gibraltar Qualifying Offshore Companies Rules
	Gibraltar Exempt Offshore Companies Rules

Tax provisions for which the Commission is proposing Member States appropriate measures in order to put an end to their incompatibility with state aid rules:

Belgium	Fiscal regime of Co-ordination Centres
Greece	Fiscal regime for offices of Foreign Companies
Italy	Tax incentives linked to the Trieste Financial Services and Insurance Centre
Sweden	Foreign Insurance Companies Taxation Regime