STATE AIDS (BUSINESS CENTRES): THE BISCAYE CASE

Subject: State aids
Tax concessions
Reimbursement

Industry: General business activities (see report below)

Parties: Basque province of Biscaye

Source: Commission Statement IP/02/1236, dated 26 August 2002

(Note. Tax systems are a notorious vehicle for the introduction of special concessions to businesses, giving them an unfair advantage over competitors and constituting a form of State aid. But it is a fine dividing line between what concessions are permissible and what are not: the third paragraph in the report below has to be read rather carefully to appreciate how the line must be drawn. Moreover, the Commission itself has changed its tune in recent years. Giving as its reasons the new circumstances of the "single market", it has taken a tougher stance in the past twelve months than it had previously; and it is because of the uncertainty created by its earlier approval of similar concessions in Belgium that it has decided, quite fairly, not to insist on reimbursement of the amounts involved in effect in the Biscaye case.)

The Commission has declared illegal the special tax regime available to so-called coordination centres located in the Spanish province of Biscaye, in the Basque region. The scheme was abolished by the Spanish government earlier this year after the Commission started formal proceedings against it and 10 other special corporate tax regimes in July 2001 over concerns that they were distorting competition and trade in the European Union. Under EU rules, the Commission must take a decision once it has started formal proceedings. Because at the time of the implementation of the scheme the Biscaye authorities had legitimate reasons to believe that the scheme was not a state aid, the Commission has decided not to seek the reimbursement of the fiscal advantages that might have been received. But the Commission pointed out that the case marked further progress in abolishing disguised state aid to businesses through special tax arrangements; and that the Spanish authorities had already abolished the scheme.

A coordination centre provides banking, marketing, insurance, logistics and other services to the companies of the international group to which it belongs. The Biscaye special tax provision provided for an alternative method to calculate the income tax applicable to the co-ordination centres based in the province -- the so-called "cost plus". It was available only to companies which satisfied certain capital, turnover and employment requirements.

The cost plus method is an alternative method of taxation, which is normally aimed at overcoming the difficulty of assessing cross-border commercial

transactions between companies belonging to a same group and at limiting the scope for avoiding tax. In the cost plus method, the taxable profit is obtained by applying on all the expenses (the cost) incurred by the coordination centre a margin (the cost plus) expressed in percentage terms. Although this method of taxation does not constitute state aid *per se*, its practical application can give rise to State aid, for example when certain expenses are not taken into consideration for the determination of the taxable profit or by applying an inappropriately low margin.

The Commission has concluded that the Biscaye regime excluded financial costs from the calculation to determine the tax base. This reduced the tax burden on companies approved under the scheme and was not compatible with EU state aid rules.

The Biscaye regime was modelled on the Belgian coordination centres scheme, itself considered as not being an aid by the Commission in 1984, but for which a formal investigation was initiated in February 2002, following the refusal by Belgium of the appropriate measures proposed by the Commission in July 2001 (see below). The Biscaye authorities, therefore, had legitimate reasons to believe that the scheme did not constitute aid at the time it was implemented. Therefore the Commission has not ordered recovery of the aid. The Biscaye coordination centres scheme was abolished on 30 April 2002.

On 11 July 2001, the Commission started formal investigation procedures into 11 special taxation arrangements for companies in eight Member States, including the Biscaye coordination centres. In addition, the Commission invited four Member States to put an end to existing fiscal advantages no longer justified in the light of the economic changes in the European Union's single market. These include the Belgian coordination centres. Existing aid refers to measures which were either in force before the accession of a country 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 single market, considered as state aid. Besides Biscaye and Belgium, the Commission last year also took issue with the coordination centres of France, Germany and Luxembourg. ■

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