STATE AIDS (LOGISTIC CENTRES): THE FRENCH TAX CASE

Subject: State aids
Tax relief
Legitimate expectations

Industry: Headquarters and logistic centers

Parties: Republic of France

Source: Commission Statement IP/03/698, dated 16 May 2003

(Note. The French scheme described here is a variant on an earlier Belgian scheme and represents a way of granting aid, by way of tax relief, to businesses making use of the headquarters and logistic centers in question. The Commission will have none of it, but concedes that earlier decisions on similar cases created legitimate expectations.)

Following an in-depth investigation, the Commission has concluded that the special tax regime available to so-called "Headquarters and Logistic Centres" located in France breaches the European Communities' State aid rules. The Commission started formal proceedings against the scheme in July 2001. These proceedings were part of a large-scale Commission investigation into fiscal aid schemes in twelve Member States. Because at the time of the implementation of the scheme the French authorities as well as the beneficiaries 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.

In its decision, the Commission takes the view that certain aspects of the French scheme constitute State aid. While the Commission does not challenge the use of a flat-rate method to determine taxable profits, it challenges the actual implementation of the method. In particular, the French scheme offers fiscal benefits to the Headquarters and Logistic Centres or to the multinational groups to which they belong, by reducing their normal tax burden. Taxable income is calculated by removing significant items of expenditure (subcontracting costs) from the tax base or by partially excluding the Headquarters and Logistic Centres from the application of the alternative-tax (IFA) a derogation from the French tax code.

The French Tax Code takes into consideration all gainful activities and makes all profitable companies subject to IFA. Under the Headquarters and Logistic Centres scheme, however, a French Headquarters or Logistic Centre operating under an approved agreement may exclude a significant amount of its activities from taxation by subcontracting them to third parties. Similarly, a Headquarters or Logistic Centre is substantively exempt from the advance payment of tax normally imposed under the IFA rules. The Commission has therefore concluded that the French scheme reduces the taxable earnings of the French Headquarters and Logistic Centres and also confers a treasury advantage by exonerating them from the advance-payment of IFA. The above regime results in selective lower effective taxation, which is not allowed by State aid rules.

The French Headquarters and Logistic Centres regime is designed to promote the installation of subsidiaries or branches of multinational groups in France by providing a special agreement concerning the tax treatment of certain intra-group activities of such groups. French subsidiaries and branches of multinational groups may apply to the tax authorities to have their taxable income calculated as a fixed percentage of their expenditures, using the "cost-plus" method. However, under the French scheme, certain subcontracting costs are not taken into account for the cost-plus computation, if they represent less than 50% of the total business costs. Furthermore, the Headquarters and Logistic Centres are partially excluded from the application of the alternative-minimum-turnover-tax Impôt Forfaitaire Annuelle (IFA) provisions of the French tax code.

The scheme applies only to French subsidiaries or permanent establishments of foreign companies operating within a multinational group of companies. These subsidiaries have to agree with the tax authorities that they intend to operate under a special Headquarters and Logistic Centres regime agreement and that are prevalently engaged in providing certain cross-border services. "Prevalently engaged" is defined as having more than 50% of their global business costs connected to cross-border intra-group activities.

The French regime was originally introduced to attract the location of certain activities of multinational groups by increasing their international competitiveness. However, the Commission's investigation has revealed that the tax advantages granted under the regime constitute a selective advantage benefiting only French subsidiaries and branches operating under the above-described agreements. Especially in case of intra-group international activities such as research and development, which are subject to fierce competition and are potentially covered by the scheme, the distortion created by the tax advantage is very substantial. Thus, the negative effect on competition and trade in the single market could be considerable.

The Commission has found that the features of the French Headquarters and Logistic Centres scheme are similar to the Belgian co-ordination centres. With respect to the latter, the Commission had already initiated formal investigation proceedings, following Belgium's refusal to bring the scheme into line with the rules on competition, as recommended in July 2001. In February 2003, the Commission decided that certain special tax breaks provided for by Belgian scheme constituted State aid; but, as the Belgian scheme had, in 1984, not been considered to involve State aid, the Commission has concluded that the French authorities and the beneficiaries of the French Headquarters and Logistic Centres scheme could rely on legitimate expectations. Therefore, under the current decision, the Commission has not ordered recovery of the aid. ■