State aid: Commission opens in-depth investigation into tax exemptions for companies in the Madeira Free Zone

In particular, the Commission has concerns that tax exemptions granted by Portugal to companies established in the Madeira Free Zone are not in line with the Commission decisions and EU State aid rules.

Commissioner Margrethe **Vestager**, in charge of competition policy, said: "*Our regional aid rules are particularly flexible when it comes to supporting the EU's outermost regions, including Madeira. Under these rules, fiscal aid can only be granted if it contributes to the creation of real economic activity and jobs in the assisted region. We will now investigate whether the Zona Franca Madeira fiscal aid scheme approved by the Commission in the past has been applied correctly by Portugal*."

The Madeira Free Zone

The Madeira Free Zone (*Zona Franca da Madeira, "ZFM")* was created by Portugal in 1987 to support economic development in its outermost region Madeira. The ZFM's objective is to attract investment to and create jobs in Madeira.

In this context, Portugal put in place a regional aid scheme providing support to companies establishing themselves in the ZFM through:

- corporate income tax reductions on profits resulting from activities performed in Madeira; and
- other tax reductions, such as an exemption from municipal and local taxes, as well as exemption from transfer tax payable on real estate for setting up a business in the ZFM.

The Commission approved successive versions of the ZFM regional aid scheme under EU State aid rules on several occasions between 1987 and 2014.

EU State aid rules provide ample scope for Member States to support the economic development of outermost regions, such as Madeira, and to address the structural challenges of companies active in such regions.

At the same time, in order for such measures to be fit for purpose, State aid must be granted exclusively to companies generating economic activity and real jobs in the outermost regions. That is why under the approved ZFM regional aid scheme, the amount of aid granted to companies through corporate income tax reductions or other tax reductions is linked to the number of jobs that they create in Madeira.

The Commission's investigation

As part of its standard monitoring of the implementation of State aid decisions, the Commission has carried out a preliminary assessment of how Portugal applied the ZFM aid scheme until its expiry at the end of 2014, taking into account the framework of the 2007 and 2013 Commission decisions approving the scheme.

At this stage, the Commission has concerns that the Portuguese authorities may have failed to respect some of the basic conditions under the 2007 and 2013 decisions. In particular, the Commission has doubts that Portugal complied with the requirements that:

- the company profits benefitting from the income tax reductions originated exclusively from activities carried out in Madeira; and
- the beneficiary companies actually created and maintained jobs in Madeira.

The Commission will now investigate further to find out whether its initial concerns are confirmed. The opening of an in-depth investigation gives Portugal and interested third parties an opportunity to submit comments. It does not prejudge the outcome of the investigation.

Background

Each year, the Commission selects a number of State aid measures in order to monitor whether Member States implement them in compliance with EU State aid rules. In this context, the Commission asked Portugal for information on the implementation of the ZFM scheme in 2012 and 2013.

The scheme in question expired at the end of 2014. Portugal has informed the Commission that, since 2015, it has implemented a similar aid scheme on the basis of the 2014 General Block Exemption Regulation (GBER). Under this Regulation, Member States can implement regional operating aid schemes for companies established in outermost regions, without notification and approval by the Commission, as long as certain conditions are respected.

Article 349 of the Treaty on the Functioning of the European Union acknowledges the special characteristics of the outermost regions and affords them a special status. All outermost regions, including Madeira, have been granted special regional aid status to help address their specific handicaps – remoteness, insularity, small size, difficult topography and climate, economic dependence on few products.

In recognition of the serious nature of the structural disadvantages that the companies located in these regions face, the Commission has established specific State aid rules for the outermost regions, within both the Regional Aid Guidelines and the GBER.

In particular, these regions are all automatically considered assisted areas where the economic situation is extremely unfavourable in relation to the rest of the European Union as a whole. Due to this status, all companies with economic activity in these areas may benefit from additional bonuses of up to

20% on top of the normal regional investment aid ceilings. Additionally, Member States can provide operating aid to companies located in these regions to compensate them for the additional costs they are facing in these remote regions.

The non-confidential version of the decision will be made available under the case number SA.21259 in the State aid register on the Commission's competition website once any confidentiality issues have been resolved. New publications of state aid decisions on the internet and in the Official Journal are listed in the State Aid Weekly e-News.