



EUROPEAN COMMISSION

PRESS RELEASE

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State aid: Commission extends in-depth investigation into Gibraltar corporate tax regime to include tax rulings practice

The European Commission has extended the scope of an ongoing in-depth investigation opened in October 2013 to verify whether the new Gibraltar corporate tax regime selectively favours certain categories of companies, in breach of EU state aid rules (see [IP/13/955](#)). The Commission will now also examine the Gibraltar tax rulings practice. The extension of an in-depth investigation gives interested third parties an opportunity to submit comments on the measures under assessment. It does not prejudice the outcome of the investigation.

The new Gibraltar income tax act (ITA 2010) introduced, among other changes, a tax rulings practice which allows companies to ask for advance confirmation of whether certain income, generated by companies incorporated in Gibraltar or that carried out an activity which generates income, are subject to taxation in Gibraltar.

The Commission has assessed 165 tax rulings granted by the Gibraltar tax authorities to different companies in 2011, 2012 and up to August 2013.

Based on the information submitted by the UK authorities, it appears that the Gibraltar tax authorities grant formal tax rulings without performing an adequate evaluation of whether the companies' income has been accrued in or derived from outside Gibraltar and therefore is exempted from taxation in Gibraltar. Even if the Gibraltar tax authorities are given considerable margin of manoeuvre under the ITA 2010, a misapplication of its provisions cannot be excluded at this stage.

The Commission has concerns that potentially all assessed rulings may contain state aid, because none of them are based on sufficient information so as to ensure that the level of taxation of the activities concerned is in line with the tax paid by other companies, which generate income that is to be considered accrued in or derived from Gibraltar.

The Commission therefore has doubts as regards the compatibility with EU state aid rules of the way in which Gibraltar tax authorities have applied the ITA 2010 using tax rulings. The Commission has therefore extended its ongoing in-depth investigation with regard to the ITA 2010, which was initiated in October 2013 (see [IP/13/955](#)) to also cover the tax rulings practice. The Commission will now continue investigating to determine whether its concerns are confirmed.

Background

The new Gibraltar corporate tax scheme under the ITA 2010 was introduced in 2011. It is based on the territorial principle: all activities deriving from or accrued in Gibraltar should be taxed in Gibraltar. Section 42 of the ITA 2010 introduces a tax rulings practice which

allows companies to ask in advance for confirmation if companies that are incorporated in Gibraltar or carried out an activity which generates income are liable to pay taxes in Gibraltar.

The Commission examined the Gibraltar corporate tax system on various occasions in the past. In July 2001 the Commission opened an in-depth investigation under the state aid rules in respect of a specific tax regime exempting companies without any trade or business in Gibraltar and not owned by Gibraltar residents from corporate tax (see [IP/01/982](#)). Companies that fulfilled these conditions but had a physical presence in Gibraltar paid a tax rate of between 2-10% on profits. Gibraltar subsequently abolished this scheme which was considered to favour offshore companies.

In August 2002, the UK notified an envisaged corporate tax reform, applicable to all companies in Gibraltar and consisting of a payroll tax, a business property occupation tax and a registration fee. In March 2004, the Commission found that the proposed tax reform selectively favoured certain categories of companies in breach of EU state aid rules (see [IP/04/404](#)). In November 2011, the EU Court of Justice upheld the Commission's decision, concluding that the combined effect of the tax measures would create a selective advantage for "offshore companies", which have no employees and do not occupy business property in Gibraltar (case [C-106/09 P](#), see also [Court's press release](#)).

The non-confidential version of today's decision will be published in the EU Official Journal and made available under the case number [SA.34914](#) in the [State Aid Register](#) on the [DG Competition](#) website. New publications of state aid decisions on the internet and in the Official Journal are listed in the [State Aid Weekly e-News](#).

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