

# Fiscal State Aid

**Screening with Croatia and Turkey**  
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# What is fiscal aid?

- Same definition: article 87(1) EC
- State Aid delivered via the tax system.
- Revenue foregone rather than cash grants, guarantees or soft loans.

# Rules on fiscal aid

- Commission Notice on the application of the State Aid rules to measures relating to direct business taxation (OJ C284 of 10.12.1998).
- Report on the application of the Commission Notice (2004).  
[http://europa.eu.int/comm/competition/state\\_aid/others/business/rapportaidesfiscales\\_en.pdf](http://europa.eu.int/comm/competition/state_aid/others/business/rapportaidesfiscales_en.pdf)
- Not about Tax Harmonisation:
  - tax rates in other Member States are irrelevant
  - the only reference is the national tax system

# Key issues

- Selectivity is the key element.
- What is the normal tax regime?
- Regional selectivity, sectoral selectivity?
- Other conditions limiting tax benefit:
  - Size
  - Turnover
  - Number of employees
  - etc

# Material selectivity

Examples of materially selective measures:

- Limited to one sector
- Limited to the whole industrial sector
- Limited to newly created companies, SMEs or MNEs, turnover requirements
- Limited to certain activities:
  - offshore
  - intra-group activities

# Regional selectivity

- Reduction of a national corporate tax in a given region is selective.
- Basque measures in favour of newly created companies found selective by the Court.
- Commission decision on Gibraltar tax reform

# Justification by the nature or the general scheme of the system

- Different effects may arise from the nature of a tax system and not be considered “selective”.
- Commission notice recognises that the progressive nature of a profit tax scale is justified by the redistributive purpose of tax.
- Court applies this concept restrictively (see GIL insurance C-308/01).

# Compatibility of fiscal state aid

- Fiscal state aid is not different from other state aid, same rules apply:
  - as a general rule fiscal aid not linked to investment (operating aid) is forbidden
  - operating aid only limited to assisted areas in limited number of cases and under strict conditions
  - Operating aid to financial services always forbidden



# Code of Conduct and State Aid (1)

- Code of Conduct adopted by Council in 1997
- Political undertaking aimed at eliminating so called “harmful tax competition” between MS
- “Harmful” and state aid concepts differ ...
- ... but they can match

# Code of Conduct and State Aid (2)

Example of cases dealt with:

- Gibraltar exempt and qualifying offshore companies
- Belgian Coordination Centres
- Dutch International Financing activities
- Trieste Insurance and Financial Services Centre

# Examples of typical cases

- Dutch International Financing Activities regime
  - limited to intra-group financing
  - Eligible companies active in at least 4 countries or 2 continents
  - advantage: tax free reserve up to 80% of profits
- Belgian coordination centres
  - Limited to intra-group activities
  - Eligible companies: assets > €25m and turnover > €250m
  - Advantage: reduced tax base (effective tax rate around 2%)

# Conclusions

- Fiscal state aid not different from other forms of aid
- Fiscal state aid is not about tax harmonisation
- Commission pays special attention to measures that are also harmful tax measures