

## NOTICES CONCERNING THE EUROPEAN ECONOMIC AREA

## EFTA SURVEILLANCE AUTHORITY

**Invitation to submit comments pursuant to Article 1(2) in Part I of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice on State aid with regard to taxation of captive insurance companies in Liechtenstein**

(2009/C 72/05)

By means of Decision No 620/08/COL of 24 September 2008, reproduced in the authentic language on the pages following this summary, the EFTA Surveillance Authority initiated proceedings pursuant to Article 1(2) in Part I of Protocol 3 to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice. The Liechtenstein authorities have been informed by means of a copy of the decision.

The EFTA Surveillance Authority hereby gives the EFTA States, EU Member States and interested parties notice to submit their comments on the measure in question within one month from the publication of this notice to:

EFTA Surveillance Authority  
Registry  
35, rue Belliard  
1040 Bruxelles/Brussel  
BELGIQUE/BELGIË

The comments will be communicated to the Liechtenstein authorities. Confidential treatment of the identity of the interested party submitting the comments may be requested in writing, stating the reasons for the request.

## SUMMARY

The case was initiated by the Authority sending a request for information to the Liechtenstein authorities 14 March 2007.

By virtue of Act of 18 December 1997 on the amendment of the Liechtenstein Tax Act <sup>(1)</sup>, the Liechtenstein authorities introduced special tax rules applicable to captive insurance companies.

Pursuant to Article 82(a)(1) of the Tax Act, captive insurance companies pay a capital tax of 1 ‰ on the company's own capital. For capital exceeding 50 million, the tax rate is reduced to 0,75 ‰ and for the capital in excess of 100 million, to 0,5 ‰. The normal capital tax rate is 2 ‰.

Article 82(a) read in conjunction with Article 73 of the Act, implies that captive insurance companies do not pay any income tax.

Moreover, by virtue of Article 88(d)(3) of the Tax Act, shares or parts of captive insurance companies are exempted from payment of the coupon tax, which is normally levied at the rate of 4 ‰.

<sup>(1)</sup> Act of 18 December 1997 on the amendment of the Liechtenstein Tax Act, Law Gazette 1998, No 36.

In the preliminary view of the Authority, captive insurance companies are undertakings in the meaning of Article 61(1) of the EEA Agreement. They provide services to one or a specifically confined group of companies. Providing insurance is a service, which, in principle, is an economic activity. A captive insurance company would normally earn an income for services it provides. That the service is delivered only to one customer or a limited group of customers does not prevent it from being an economic activity.

The relief from income tax and the reduced capital tax fulfil also, in the preliminary view of the Authority, the other conditions that would classify them as State aid in the meaning of Article 61(1) of the EEA Agreement.

Partial or full tax exemption implies a drain on State resources. Advantages are accorded to the companies as they are relieved of charges that would normally be borne out of their budgets. The eligible companies provide services which are traded between the Contracting Parties to the EEA Agreement and thus are open to cross-border competition. The measures are selective as they are applicable only to a designated group of undertakings. The Authority has not found that this selectivity could be said to represent an inherent logic of the tax system.

For the coupon tax, similar reasoning to the above would apply. There is, however, a difference stemming from the fact that the coupon tax is a withholding tax. The exemption from the coupon tax thus confers advantages upon the owners of captive insurance companies. Such owners are normally (large) undertakings. These kinds of undertakings will thus be the direct beneficiaries of the aid measure. Further, the captive insurance companies could be considered to benefit indirectly from coupon tax exemption. They will be more attractive for investors and the measure would therefore make capital more easily accessible.

Support measures caught by Article 61(1) of the EEA Agreement are generally incompatible with the functioning of the EEA Agreement, unless they qualify for a derogation in Article 61(2) or (3) of the EEA Agreement. In the preliminary opinion of the Authority, none of the derogations foreseen under these provisions seem to be applicable to the taxation of captive insurance companies in Liechtenstein. As the measures were enacted after Liechtenstein joined the EEA Agreement, any incompatible aid would normally have to be recovered.

### **Conclusion**

In the light of the foregoing considerations, the Authority decided to open the formal investigation procedure in accordance with Article 1(2) of the EEA Agreement. Interested parties are invited to submit their comments within one month from publication of this Decision in the *Official Journal of the European Union*.

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