



COMMISSION RECOMMENDATION on making State financial support to undertakings in the Union conditional on the absence of links to non-cooperative jurisdictions

DG TAXUD – Unit D1: *Company Taxation Initiatives*

Brussels, 15 September 2020

Outline

- Rationale
- Subject-Matter & Scope
- Legal Aspects
- « Negative » Conditions
- Additional Restrictions
- Carve-outs
- Implementation, enforcement & follow-up

Why this Recommendation?

- Commission: **clear stance against tax havens** in recent years
- **Unprecedented action** at national and Union level to support MS' economies and facilitate recovery
- **State Aid** under the Temporary Framework
- **Action to prevent misuse** of public financing (due to the volume of financial support)
- **Solutions in a coordinated fashion** to tackle tax avoidance, fraud and discrepancies

Subject-Matter & Scope

- **Any type of State financial assistance** available to all undertakings or selective measures that amount to State Aid within the Temporary Framework (2020)
- Applies within groups of **controlled entities**; test for control to be determined under national law
- **No limitation to specific sectors** of the economy

Legal Aspects

- Recommendation: **autonomous Act** of the Commission
- Legal base: Article 292 TFEU
- Addressed to all Member States
- No legally binding effect
- Joint initiative with DG.COMP
- Refers always to latest update of Annex I (EU List)

« Negative » Conditions for receiving Financial Support

*The undertaking should **not**:*

- ✓ *Be **tax resident** in, or incorporated under the laws of, a listed jurisdiction;*
- ✓ *Be, directly or indirectly, **controlled by** shareholders – up to the beneficial owner – at least one of which in listed jurisdictions;*
- ✓ ***Have in its** direct or indirect **control** subsidiaries or permanent establishments in listed jurisdictions;*
- ✓ *Be **under common ownership** with undertakings in EU listed jurisdictions.*

« Additional » Disqualifying Restrictions

- Possible **additional grounds** for refusing financial support:
- *The undertaking (or its owners) have been **convicted** by final judgment to any of the **crimes** laid down in the Public Procurement Directive;*
- *The undertaking (or its owners) have been found, by final judgment or administrative decision, **in breach of obligations relating to the payment of taxes or social security contributions***

Carve-outs

- MS **may disregard** the existence of links with a listed jurisdiction where:
 - ✓ *The undertaking pays **tax at an adequate level** in the MS granting the support over a period of time; or*
 - ✓ *The undertaking makes legally binding commitments to **remove its ties** to EU listed jurisdictions within a short timeframe and subject to sanctions.*
- MS **should disregard** the existence of such links where the undertaking has **substantial economic presence and performs substantial activity**.
- Carve-outs to be refused if: no EOIR and lack of Cooperation

Implementation & Enforcement

- Member States should lay down **reasonable requirements** for evidencing entitlement:
 - ✓ **Self-certifications** - to be complemented with enhanced **audits**/controls and **use of available tools** (CbCR, BO info, CRS)
 - ✓ Effective, proportionate and dissuasive **sanctions**, including the recovery of unduly granted support (as a minimum)
 - ✓ In case of carve-outs, **enhanced verification**

Follow-Up

- MS to inform the Commission about measures that they took – if any – to address the Recommendation
- Commission to publish Report on the application by 14 July 2023

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