EFTA SURVEILLANCE AUTHORITY DECISION

No 149/99/COL

of 30 June 1999

introducing guidelines on the application of State aid rules to measures relating to direct business taxation and amending for the 19th time the Procedural and Substantive Rules in the field of State aid

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement on the European Economic Area [1], and in particular to Articles 61 to 63,

Having regard to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice [2], in particular Article 1 of Protocol 3 thereof,

Whereas under Article 24 of the Surveillance and Court Agreement the EFTA Surveillance Authority shall give effect to the provisions concerning State aid;

Whereas under Article 5(2)(b) of the Surveillance and Court Agreement the EFTA Surveillance Authority shall issue notices and guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if the EFTA Surveillance Authority considers it necessary;

Recalling the Procedural and Substantive Rules in the field of State aid [3] adopted on 19 January 1994 by the EFTA Surveillance Authority [4];

Whereas the European Commission on 11 November 1998 adopted, a notice on the application of the State aid rules to measures relating to direct business taxation (OJ C 384, 10.12.1998);

Whereas a uniform application of the EEA State aid rules is to be ensured throughout the European Economic Area;

Whereas according to point II under the heading 'General' at the end of Annex XV to the EEA Agreement, the EFTA Surveillance Authority is to adopt, after consultation with the European Commission, acts corresponding to those adopted by the Commission, in order to maintain equal conditions of competition;

Having consulted the European Commission;

Whereas it is necessary to provide guidance to national authorities by indicating the principles and rules which will guide the EFTA Surveillance Authority when applying the EEA State aid rules to measures relating to direct business taxation;

Whereas the EFTA Surveillance Authority has consulted the EFTA States on the introduction of the new guidelines in multilateral meetings on State aid held on 26 October 1998 and 23 February 1999, as well as in writing,

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(1) 'The EEA Agreement'.
(2) 'The Surveillance and Court Agreement'.
(3) 'The State Aid Guidelines'.
(4) OJ L 240, 15.9.1994 and in EEA Supplement No 34 of the same date, last amendment (18th) adopted by Decision No 113/99/COL of 4 June 1999 (See page 11 of this Official Journal).

HAS ADOPTED THIS DECISION:

1. The State Aid Guidelines shall be amended by introducing a new chapter, Chapter 17B, on the application of State aid rules to measures relating to direct business taxation as contained in Annex I to this Decision.

2. The Decision, including Annex I, shall be published in the EEA Section of and the EEA Supplement to the *Official Journal of the European Communities*.

3. The EFTA States shall be informed by means of a copy of the Decision, including Annex I.

4. The European Commission shall be informed, in accordance with point (d) of Protocol 27 to the EEA Agreement, by means of a copy of the Decision, including Annex I.

5. The Decision shall be authentic in the English language.

Done at Brussels, 30 June 1999.

For the EFTA Surveillance Authority

Knut ALMESTAD

The President

ANNEX I

17B. APPLICATION OF STATE AID RULES TO MEASURES RELATING TO DIRECT BUSINESS TAXATION [1]

17B.1. *Introduction*

(1) The guidelines of this chapter form part of the general objective of clarifying and reinforcing the application of the State aid rules in order to reduce distortions of competition within the European Economic Area. The principle of incompatibility with the functioning of the EEA Agreement and the derogations from that principle apply to aid 'in any form whatsoever', which may include certain tax measures. However, the question whether or not a tax measure is to be qualified as aid under Article 61(1) of the EEA Agreement calls for clarification which these guidelines propose to provide. Such clarification is particularly important in view of the procedural requirements that stem from designation as aid and of the consequences where EFTA States fail to comply with such requirements.

(2) Following the completion of the single market and its extension to the EEA, including the liberalisation of capital movements, it has also become apparent that there is a need to examine the particular effects of aid granted in the form of tax measures and to spell out the consequences as regards assessment of the compatibility of such aid with the functioning of the EEA Agreement.

(3) The EFTA Court has noted [2], that, as a general rule, a tax system of an EFTA/EEA State is not covered by the EEA Agreement. This must be understood to mean that it is for each such State to design and apply a tax system according to its own choices of policy. The EFTA Court has further noted that in certain cases, however, such a tax system may have consequences that would bring it within the scope of application of Article 61(1) EEA. These guidelines are aimed at clarifying in which instances such consequences will arise.

(4) In addition to the objective of ensuring that decisions by the EFTA Surveillance Authority are transparent and predictable, these guidelines also aim to ensure consistency and equality of treatment between EEA States. With reference to the procedural rules for new and existing aid, the Authority intends to apply these new guidelines on a case-by-case basis to examine the compatibility of new tax arrangements in the EFTA States with the State aid rules of the EEA Agreement as well as relying on them for the review of existing State aid.

17B.2. *Competences under the EEA Agreement*

(1) It is the competence of the EFTA Surveillance Authority to review aid granted by the EFTA/EEA States for compatibility of the State aid rules of that Agreement. The primary EEA State aid provisions are identical in substance to those of the EC Treaty [3]. It is established case-law of the European Court of Justice that the fiscal nature of a measure does not shield it from the application of Article 87 EC (ex Article 92). The notion of State aid deriving from the EEA Agreement must be interpreted in the same way throughout the EEA; also when the aid takes the form of tax measures.

(2) Moreover, distortions of competition deriving from new State aid of this kind fall under a system of prior authorisation by the competent surveillance authority as defined in Article 62 of the EEA Agreement, subject to review by the competent judicature. Pursuant to Article 1(3) of Protocol 3 to the Surveillance and Court Agreement, the EFTA States must notify new State aid measures to the EFTA Surveillance Authority. The EFTA States may not put their proposed aid measures into effect until the Authority has approved them. The Authority examines the compatibility of aid not in terms of the form, which it may take, but in terms of its effect. It may decide that the EFTA State concerned must amend or abolish aid, which the Authority finds to be incompatible with the functioning of the EEA Agreement. Where aid has already been implemented in breach of the procedural rules, and where the Authority finds such aid not to be compatible with the EEA Agreement, the EFTA State must in principle recover it from the recipient(s).

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(1) This chapter is based on the Commission notice on the application of the State aid rules to measures relating to direct business taxation (OJ C 384, 10.12.1998, p. 3) taking into account the particular scope and objectives of the EEA Agreement.

(2) EFTA Court, Case E-6/98, Judgment of 20 May 1999 (not yet published).

(3) Thus, Article 61 of the EEA Agreement and Article 1 of Protocol 3 to the Surveillance and Court Agreement are identical in substance to Articles 87 and 88 (ex Articles 92 and 93), respectively, of the EC Treaty. The only exception to this is that the exemption in Article 87(3)(d) (ex Article 92(3)(d)) of the EC Treaty, concerning aid to promote culture and heritage conservation, which was introduced by the Treaty on European Union (Maastricht Treaty), is not included in the EEA Agreement. However, this is of no relevance in the present context.

17B.3. ***Application of Article 61(1) of the EEA Agreement to tax measures***

(1) Article 61(1) of the EEA Agreement states that, 'any aid granted by EC Member States, EFTA States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Contracting Parties, be incompatible with the functioning of the Agreement'. In applying the EEA rules on State aid, it is irrelevant whether the measure is a tax measure, since Article 61 applies to aid measures 'in any form whatsoever'. To be termed aid, within the meaning of Article 61, a measure must meet the cumulative criteria described below.

(2) Firstly, the measure must confer on recipients an advantage, which relieves them of charges that are normally borne from their budgets. The advantage may be provided through a reduction in the firm's tax burden in various ways, including:

— a reduction in the tax base (such as special deductions, special or accelerated depreciation arrangements or the entering of reserves on the balance sheet),

— a total or partial reduction in the amount of tax (such as exemption or a tax credit),

— deferment, cancellation or even special rescheduling of tax debt.

(3) Secondly, the advantage must be granted by the State or through State resources. A loss of tax revenue is equivalent to consumption of State resources in the form of fiscal expenditure. This criterion also applies to aid granted by regional or local bodies in the EFTA States [4]. Furthermore, State support may be provided just as much through tax provisions of a legislative, regulatory or administrative nature as through the practices of the tax authorities.

(4) Thirdly, the measure must affect competition and trade between Contracting Parties. This criterion presupposes that the beneficiary of the measure exercises an economic activity, regardless of the beneficiary's legal status or means of financing. Under settled case-law, for the purposes of this provision, the criterion of trade being affected is met if the recipient firm carries on an economic activity involving trade between Contracting Parties. The mere fact that the aid strengthens the firm's position compared with that of other firms, which are competitors in intra-EEA trade, is enough to allow the conclusion to be drawn that intra-EEA trade is affected. Neither the fact that aid is relatively small in amount [5], nor the fact that the recipient is moderate in size or its share of the EEA market very small [6], nor indeed the fact that the recipient does not carry out exports [7] or exports virtually all its production outside the EEA [8] does anything to alter this conclusion.

(5) Lastly, the measure must be specific or selective in that it favours 'certain undertakings or the production of certain goods'. The selective advantage involved here may derive from an exception to the tax provisions of a legislative, regulatory or administrative nature or from a discretionary practice on the part of the tax authorities. However, the selective nature of a measure may be justified by 'the nature or general scheme of the system' [9]. If so, the measure is not considered to be aid within the meaning of Article 61(1) of the Agreement. These various aspects are looked at below.

17B.3.1. **Distinction between State aid and general measures**

(1) Tax measures, which are open to all economic agents operating within an EFTA State, are in principle general measures. They must be effectively open to all firms on an equal access basis, and they may not, *de facto*, be reduced in scope through, for example, the discretionary power of the State to grant them or through other factors that restrict their practical effect. However, this condition does not restrict the power of EFTA States to decide on the economic policy which they consider most appropriate and, in particular, to spread the tax burden as they see fit across the different factors of production. Provided that they apply without distinction to all firms and to the production of all goods, the following measures do not constitute State aid:

— tax measures of a purely technical nature (for example, setting the rate of taxation, depreciation rules and rules on loss carry-overs; provisions to prevent double taxation or tax avoidance),

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[4] Judgment of the Court of Justice of the European Communities in Case 248/84 *Germany* v *Commission* [1987] ECR 4013.
[5] With the exception, however, of aid meeting the tests of the *de minimis* rule. See Chapter 12 of the present State Aid Guidelines.
[6] Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994]ECR I-4103.
[7] Case 102/87 *France* v *Commission* [1998]ECR 4067.
[8] Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959.
[9] Case 173/73 *Italy* v *Commission* [1974] ECR 709.

— measures pursuing general economic policy objectives through a reduction of the tax burden related to certain production costs (research and development (R & D), the environment, training, employment).

(2) The fact that some firms or some sectors benefit more than others from some of these tax measures does not necessarily mean that they are caught by the competition rules governing State aid. Thus, measures designed to reduce the taxation of labour for all firms have a relatively greater effect on labour-intensive industries than on capital-intensive industries, without necessarily constituting State aid. Similarly, tax incentives for environmental, R & D or training investment favour only the firms which undertake such investment, but again do not necessarily constitute State aid.

(3) In a judgment delivered in 1974 ([10]), the Court of Justice of the European Communities held that any measure intended partially or wholly to exempt firms in a particular sector from the charges arising from the normal application of the general system 'without there being any justification for this exemption on the basis of the nature or general scheme of this system' constituted State aid. The judgment also states that 'Article 92 (now, after amendment, Article 87; text added) does not distinguish between the measures of State intervention concerned by reference to their causes or aims but defines them in relation to their effects'. The judgment also points out that the fact that the measure brings charges in the relevant sector more into line with those of its competitors in other Member States does not alter the fact that it is aid. Such divergences between tax systems cannot be corrected by unilateral measures that target the firms which are most affected by the disparities between tax systems ([11]).

(4) The main criterion in applying Article 61(1) EEA to a tax measure is therefore that the measure provides in favour of certain undertakings in the EFTA State an exception to the application of the tax system. The common system applicable should thus first be determined. It must then be examined whether the exception to the system or differentiations within that system are justified 'by the nature or general scheme' of the tax system, that is to say, whether they derive directly from the basic or guiding principles of the tax system in the State concerned. If this is not the case, then State aid is involved.

17B.3.2. **The selectivity or specificity criterion**

(1) The decision-making practice of the EC Commission and the EFTA Surveillance Authority so far shows that only measures whose scope extends to the entire territory of the State escape the specificity criterion laid down in Article 61(1) EEA. Measures, which are regional or local in scope, may favour certain undertakings, subject to the principles outlined in paragraph 17b(3)(1)(4) ([12]). The EEA Agreement itself qualifies as aid measures which are intended to promote the economic development of a region. Article 61(3)(a) and (c) explicitly provides, in the case of this type of aid, for possible derogations from the general principle of incompatibility laid down in Article 61(1).

(2) The EEA Agreement clearly provides that a measure, which is sectorally specific, is caught by Article 61(1). Article 61(1) expressly includes the phrase 'the production of certain goods' among the criteria determining whether there is aid that is subject to the Authority's monitoring. According to well-established practice and case-law, a tax measure whose main effect is to promote one or more sectors of activity constitutes aid. The same applies to a measure that favours only national products, which are exported ([13]). Furthermore, the EC Commission and the EFTA Surveillance Authority have taken the view that a measure, which targets all of the sectors that are subject to international competition, constitutes aid ([14]). A derogation from the

([10]) Case 173/73 *Italy* v *Commission* [1974] ECR 709.

([11]) While Articles 94, 96 and 97 (ex Articles 100 to 102) of the EC Treaty empower the Community institutions to take certain action with respect to divergences between Member States' tax systems, the EEA Agreement does not have any corresponding provisions.

([12]) In the case of employers' social security contributions in Norway, the Authority concluded that regional differentiation of the rates of such contributions constituted State aid, as it favoured enterprises located in certain regions (Decision No 165/98/COL of 2 July 1998 (OJ L 32, 3.12.1998)). Norway contested this view and appealed the decision to the EFTA Court (Case E-6/98). By Judgment of 20 May 1999, the EFTA Court ruled in the Authority's favour.

([13]) Joined Cases 6 and 11/69 *Commission* v *France* [1969] ECR 561.

([14]) Commission Decision 97/239/EC of 4 December 1996 in the 'Maribel bis/ter' case (OJ L 95, 10.4.1997, p. 25) (currently *sub judice*, Case C-75/97). EFTA Surveillance Authority Decision No 16/96/COL of 7 February 1996 proposing appropriate measures to Iceland with regard to State aid in the form of sectorally differentiated social security tax.

base rate of corporation tax for an entire section of the economy therefore constitutes, except for certain cases ([15]), State aid, as the Commission ([16]) decided for a measure concerning the whole of the manufacturing sector ([17]).

(3) In several EEA States, different tax rules apply depending on the status of the undertakings. Some public undertakings, for example, are exempt from local taxes or from company taxes. Such rules, which accord preferential treatment to undertakings having the legal status of public undertaking and carrying out an economic activity, may constitute State aid within the meaning of Article 61 of the EEA Agreement.

(4) Some tax benefits are on occasion restricted to certain types of undertaking, to some of their functions (intra-group services, intermediation or coordination) or to the production of certain goods. In so far as they favour certain undertakings or the production of certain goods, they may constitute State aid as referred to in Article 61(1).

17B.3.3. **Discretionary administrative practices**

(1) The discretionary practices of some tax authorities may also give rise to measures that are caught by Article 61. The Court of Justice of the European Communities acknowledges that treating economic agents on a discretionary basis may mean that the individual application of a general measure takes on the features of a selective measure, in particular where exercise of the discretionary power goes beyond the simple management of tax revenue by reference to objective criteria ([18]).

(2) If in daily practice tax rules need to be interpreted, they cannot leave room for a discretionary treatment of undertakings. Every decision of the administration that departs from the general tax rules to the benefit of individual undertakings in principle leads to a presumption of State aid and must be analysed in detail. As far as administrative rulings merely contain an interpretation of general rules, they do not give rise to a presumption of aid. However, the opacity of the decisions taken by the authorities and the room for manœuvre, which they sometimes enjoy, support the presumption that such is at any rate their effect in some instances. This does not make EFTA States any less able to provide their taxpayers with legal certainty and predictability on the application of general tax rules.

17B.3.4. **Justification of a derogation by 'the nature or general scheme of the system'**

(1) The differential nature of some measures does not necessarily mean that they must be considered to be State aid. This is the case with measures whose economic rationale makes them necessary to the smooth functioning and effectiveness of the tax system ([19]). However, it is up to the EFTA State to provide such justification.

(2) The progressive nature of an income-tax scale or profit-tax scale is justified by the redistributive purpose of the tax. Differentiation of calculation of asset-depreciation and stock-valuation methods may be inherent in the tax systems to which they belong. Lastly, some conditions may be justified by objective differences between taxpayers. However, if the tax authority has discretionary freedom to set different depreciation periods or different valuation methods, firm by firm, sector by sector, there is a presumption of aid. Such a presumption also exists when the fiscal administration handles fiscal debts on a case-by-case basis with an objective different from the objective of optimising the recovery of tax debts from the enterprise concerned.

([15]) See paragraph 17B.3.4.(5).

([16]) Commission decision of 22 July 1998 in the 'Irish corporation tax' case (SG(98) D/7209) not yet published.

([17]) Other cases where the EFTA Surveillance Authority has so far applied State aid rules with respect to tax treatment include: tax exemption for glass packaging from a basic tax on non-reusable beverage packaging (Aid 95-002 (OJ C 212, 17.8.1995 and OJ L 124, 23.5.1996)) tax-related measures in favour of the maritime transport sector. Norway (Aid 97-001 (OJ C 337, 5.11.1998)) and public involvement in agreements concerning the construction and operation of an aluminium smelter at *Grundartangi*, Iceland (Aid 97-008 (OJ C 337, 5.11.1998)).

([18]) Case C-241/94 *France* v *Commission* (Kimberly Clark Sopalin) [1996] ECR I-4551.

([19]) This is usually reflected in the fact that such measures are not applied solely to specific sectors, are based on objective and horizontal criteria or conditions, and are not limited in time, see Commission Decision 96/369/EC of 13 March 1996 concerning fiscal aid given to German airlines in the form of a depreciation facility (OJ L 146, 20.6.1996, p. 42).

(3) Obviously, profit tax cannot be levied if no profit is earned. It may thus be justified by the nature of the tax system that non-profit-making undertakings, for example foundations or associations, are specifically exempt from the taxes on profits if they cannot actually earn any profits. Furthermore, it may also be justified by the nature of the tax system that legal entities such as cooperatives, which distribute all their profits to their members, are not taxed at the level of the cooperative when tax is levied at the level of their members.

(4) A distinction must be made between, on the one hand, the external objectives assigned to a particular tax scheme (in particular, social or regional objectives) and, on the other, the objectives, which are inherent in the tax system itself. In general, the whole purpose of the tax system is to collect revenue to finance State expenditure. Each firm is supposed to pay tax once only. It is therefore inherent in the logic of the tax system that taxes paid in the State in which the firm is resident for tax purposes should be taken into account. Certain exceptions to the tax rules are, however, difficult to justify by the logic of a tax system. This is, for example, normally the case if companies with registered offices abroad are treated more favourably than the ones with registered offices in the State concerned, or if tax benefits are granted to head offices or to firms providing certain services (for example, financial services) within a group [20].

(5) Specific provisions that do not contain discretionary elements, allowing for example tax to be determined on a fixed basis, may be justified by the nature and general scheme of the system where, for example, they take account of specific accounting requirements or of the importance of land in assets which are specific to certain sectors; such provisions do not therefore constitute State aid. Lastly, the logic underlying certain specific provisions on the taxation of small and medium-sized enterprises is comparable to that underlying the progressiveness of a tax scale.

17B.4. ***Compatibility with the functioning of the EEA Agreement of State aid in the form of tax measures***

(1) If a tax measure constitutes aid that is caught by Article 61(1), it can nevertheless, like aid granted in other forms, qualify for one of the derogations from the principle of incompatibility with the functioning of the Agreement provided for in Article 61(2) and (3). Furthermore, where the recipient, whether a private or public undertaking, has been entrusted by the State with the operation of services of general economic interest, the aid may also qualify for application of the provisions of Article 59 of the Agreement [21].

(2) The Authority could not, however, authorise aid, which proved to be in breach of the rules laid down in the Agreement, particularly those relating to the ban on discrimination and discriminatory taxation as well as to the right of establishment [22]. Such aspects may, in parallel, be the object of a separate procedure on the basis of Article 31 of the Surveillance and Court Agreement. As is clear from case-law, those aspects of aid which are indissolubly linked to the object of the aid and which contravene specific provisions of the Agreement other than the State aid provisions must however be examined in the light of the procedure under Article 1 of Protocol 3 to the Surveillance and Court Agreement, as part of an overall examination of the compatibility or the incompatibility of the aid.

(3) Where a fiscal aid is granted in order to provide an incentive for firms to embark on certain specific projects (investment in particular) and where its intensity is limited with respect to the costs of carrying out the project, it is no different from a subsidy and may be accorded the same treatment. Nevertheless, such arrangements must lay down sufficiently transparent rules to enable the benefit conferred to be quantified.

(4) In most cases, however, tax relief provisions are general in nature: they are not linked to the carrying-out of specific projects and reduce a firm's current expenditure without it being possible to assess the precise volume involved when the Authority carries out its *ex ante* examination. Such measures constitute 'operating aid'. Operating aid is in principle prohibited. The Authority authorises it at present only in exceptional cases and subject to certain conditions, for example in shipbuilding, certain types of environmental protection aid [23] and in regions covered by the Article 61(3)(a) aid derogation provided that they are duly

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[20] On the other hand, service charges or duties levied by public authorities on companies at different rates corresponding to the service or other benefits they receive do not involve State aid.

[21] Judgment of the Court of First Instance in Case T-106/95 *FFSA and others* v *Commission*[1997] ECR II-229. Order of the Court of Justice in Case C-174/97 P [1998] I-1303.

[22] Case 74/76 *Iannelli*V *Meroni* [1977] ECR 557. See also Cases 73/79 'Sovraprezzo' [1980] ECRS. 1533, T-4993 'SIDE' [1995] ECR II-2501 and Joined Cases C 142 and 143/80 'Salengo' [1981] ECR 1413. See also EFTA Surveillance Authority Decisions No 40/95/COL (OJ C 212 and EEA Supplement to OJ 30, 17.8.1995) and 106/95/COL (OJ L 124 and EEA Supplement No 23, 23.5.1996). Tax exemption for glass packaging from a basic tax on non-reusable beverage packaging, Norway.

[23] See Chapter 15 of the present Guidelines.

justified and their level is proportional to the handicaps they are intended to offset [24]. It must in principle (with the exception of the two categories of aid mentioned below) be degressive and limited in time. At present, operating aid can also be authorised in the form of transport aid in certain Nordic regions that are sparsely populated and are seriously handicapped in terms of accessibility. Operating aid may not be authorised where it represents aid for exports between Contracting Parties. As for State aid in favour of the maritime transport sector the specific rules for that sector apply [25].

(5) If it is to be considered by the Authority to be compatible with the functioning of the EEA Agreement, State aid intended to promote the economic development of particular areas must be in proportion to, and targeted at, the aims sought. Where a derogation is granted on the basis of regional criteria, the Authority must ensure in particular that the relevant measures:

— contribute to regional development and relate to activities having a local impact. The establishment of offshore activities does not, to the extent that their externalities on the local economy are low, normally provide satisfactory support for the local economy,

— relate to real regional handicaps. It is open to question whether there are any real regional handicaps for activities for which the additional costs have little incidence, such as for example the transport costs for financing activities, which lend themselves to tax avoidance,

— are examined in an EEA context [26]. The Authority must in this respect take account of any negative effects, which such measures may have on trade between Contracting Parties.

17B.5. ***Procedures***

(1) Article 1(3) of Protocol 3 to the Surveillance and Court Agreement requires EFTA States to notify the Authority of all their 'plans to grant or alter aid' and provides that any proposed measures may not be put into effect without the Authority's prior approval. This procedure applies to all aid, including tax aid.

(2) If the Authority finds that State aid, which has been put into effect in beach of this rule, does not qualify for any of the exemptions provided for in the Agreement and is therefore incompatible with the functioning of the Agreement, it requires the EFTA State to recover it, except where that would be contrary to a general principle of EEA law, in particular legitimate expectations to which the Authority's behaviour can give rise. In the case of State aid in the form of tax measures, the amount to be recovered is calculated on the basis of a comparison between the tax actually paid and the amount, which should have been paid if the generally applicable rule had been applied. Interest is added to this basic amount. The interest rate to be applied is equivalent to the reference rate of interest determined on the basis of the provisions in Section 33.2 of the present Guidelines.

(3) Article 1(1) of Protocol 3 to the Surveillance and Court Agreement states that the Authority 'shall, in cooperation with the EFTA States, keep under constant review all systems of aid existing in those States'. Such review extends to State aid in the form of tax measures. So as to allow such review to be carried out, the EFTA States are required to submit to the Authority every year reports on their existing State aid systems. In the case of tax relief or full or partial tax exemption, the reports must provide an estimate of budgetary revenue lost. Following its review, the Authority may, if it considers that the scheme is not or is no longer compatible with the functioning of the Agreement, propose that the EFTA State concerned amend or abolish it.

17B.6. ***Implementation***

(1) The Authority will, on the basis of the guidelines in this chapter and as from the time of their publication, examine the plans for tax aid notified to it and tax aid illegally implemented in the EFTA States. It will also keep existing systems under review. These guidelines are published for guidance purposes and are not exhaustive. The Authority will take account of all the specific circumstances in each individual case.

(2) The Authority will review the application of the guidelines in this chapter two years after their publication.

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[24] See Chapter 25 of the present Guidelines.
[25] See Chapter 24A. of the present Guidelines.
[26] See Case 730/79, *Philip Morris* V *Commission* [1980] ECR 2671.