

European Tax Newsalert

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European Commission announces overhaul of EU state aid control

On February 2, 2012, in a surprise announcement at the first high-level European Competition Forum in Brussels, European Union ("EU") Competition Commissioner Joaquín Almunia announced that the European Commission ("EC") will overhaul the current EU state aid control process. The move is part of the EU's comprehensive strategy to exit the financial, economic and sovereign debt crises by focusing on better use of public finances and reinvigorating the internal market.

Under the EU's state aid control, EU member states cannot favor certain companies over others through the tax system, unless the EC has approved it. The EC now mentions "selective tax advantages" as one of the top three priority areas for action in the state aid area. Another priority area includes "subsidized network industries and publicly supported incumbents in liberalized markets" due to their potential to distort competition in the internal market, damage growth prospects of unaided competitors and shift value from one EU country to another with no value added for the EU as a whole.

Key elements of the EC's strategy:

- Shift the focus of EC control away from the current complaint-driven approach to cases that really impact internal market competition. The EC will establish a quicker process for dealing with notifications and complaints of limited impact, which will allow the EC to focus on more impactful cases;



- Better EC tools for more EU-wide ex officio investigations of cases with clear distortive impact;
- Consolidate EC state aid guidance to ensure more consistency in EC guidance through a core set of common principles combining:
 - The EC's Fiscal Notice;
 - Market investor principles;
 - Sectoral guidelines on compatible aid;
 - A reinforcement of some of the guidance based on recent European Court of Justice ("ECJ") case law (no major changes expected).

Next steps:

- In the next few weeks Mr. Almunia will begin discussions with the EU's institutions and member states on the problems with the current state aid control process and the scope of the planned reform;
- An EC communication outlining a package of specific measures will be released before the summer;
- A consolidated Council Regulation should be adopted by the end of 2012;
- The new rules may come into effect before the end of 2013.

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