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ESA calls for end to favourable captive tax in Liechtenstein

THE EUROPEAN Free Trade Association (EFTA) Surveillance Authority is calling for the abolition of favourable tax treatment of captive insurance in Liechtenstein, report Angus Rodger, Steptoe & Johnson LLP (London), and Michael Sánchez Rydelski, Steptoe & Johnson LLP (Brussels).

On March 24, the EFTA Surveillance Authority (ESA) in Brussels (the sister organisation of the European Commission (EC) that is responsible for Norway, Iceland and Liechtenstein) adopted a decision concerning the taxation of captive insurance activities in Liechtenstein. ESA concluded certain Liechtenstein tax rules for captive insurers constitute unlawful state aid (ie, subsidies) and these subsidies need to be repaid by the captives to the Liechtenstein government.

The Liechtenstein Tax Act exempts captive insurers from payment of corporate income and coupon taxes and provides they pay only half the rate of capital tax applicable to companies generally. ESA concluded captive insurers benefit from a specific tax relief that is not granted to other companies in a similar position.

ESA accepted, in light of uncertainty concerning taxation of intra-group activities and the EC's approach to such cases, that captives in Liechtenstein enjoyed legitimate expectations that the aid was lawful when the measures were introduced in January 1998.

However, ESA also concluded by the time of publication of the commission's decision to open a formal investigation into the Finnish captive insurance tax measures on November 6, 2001 (concerning captive insurers in Åland), it should have been clear the Liechtenstein tax relief may constitute unlawful state aid. ESA therefore ordered all aid paid from November 6, 2001, onwards must be recovered.

The Liechtenstein government and other interested parties can appeal the decision before the EFTA Court in Luxembourg. The full text of the decision will soon be available on ESA's website (*www.eftasurv.int*).

* Steptoe & Johnson lawyers assisted interested parties during ESA's investigation.

Vaduz, Liechtenstein: the state's Tax Act exempts captive insurers from certain tax payments, which the ESA has decided is unlawful state aid