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EU State Aid Decision is Demonstrably Wrong as HM Govt of Gibraltar Will Show

- EU Commission Decision relies on basic and fundamental errors
- Existing Tax Rulings are clearly reliable: HMGOG has full confidence in Income Tax Office professionals
- Outgoing Spanish Commissioner Almunia has acted, not unsurprisingly, in the National Interests of Spain and not objectively

Her Majesty's Government of Gibraltar is advised and considers that the decision of the outgoing Spanish EU Competition Commissioner Almunia to extend the ambit of the State Aid investigation into the Income Tax Act 2010 is wrong.

The decision appears to be based on what are clearly basic errors of fact which have either carelessly or otherwise been overlooked.

For instance, in its press statement (IP/14/1073) of today's date the Commission states that the practice of advanced tax rulings was introduced in Gibraltar by the Income Tax Act 2010. That is clearly wrong and the European Commission was clearly aware of the practice of tax rulings being in place before the 2010 Act. The practice of advanced tax rulings is a well-established feature of Gibraltar's tax system dating to the years under the Income Tax Act 1952, which was adopted over 58 years before the current Act that is the subject of the Commission's statement today!

Such a basic error in the rationale for extending the investigation suggests that today's Commission decision is one that has been taken in haste and not one objectively reached after due regard to the evidence already provided by the Gibraltar authorities to the Commission.

Moreover, it should be clear that, despite the headline grabbing language employed in its announcement, today's decision by the Commission is merely expressing doubts and asking for further information. No formal findings have yet been made.

The Gibraltar decision follows other recent decisions taken by the same Competition directorate also in relation to tax rulings in the Netherlands, Luxembourg and Ireland.

On the substance, Her Majesty's Government of Gibraltar will therefore be very vigorously contesting the mistaken and unfair impression that the Commission appears to have that, ever since the Income Tax Act 2010 entered into force (1 January 2011), the Income Tax Office grants formal tax rulings without performing an adequate evaluation of whether the companies' income has been accrued in or derived from outside Gibraltar and therefore is exempted from taxation in Gibraltar. This is an untrue and unacceptable statement which is defamatory of the excellent and diligent professionals within the Income Tax Office. Her Majesty's Government of Gibraltar stands firmly by the professionals within the Income Tax Office and the probity with which they conduct their sterling work on behalf of the Gibraltar Exchequer.

Her Majesty's Government of Gibraltar is also confident that it will be able to allay any genuine concerns the Commission may have that potentially all assessed rulings may have involve State Aid. Indeed, Her Majesty's Government of Gibraltar is advised and considers that all existing rulings are entirely reliable and within the established parameters of State Aid rules. Any truly objective analysis will clearly demonstrate that. Her Majesty's Government of Gibraltar will therefore continue to co-operate with the Commission going forward in order to demonstrate entirely that the Income Tax Act 2010 does not in fact breach any EU State Aid rules.

The Chief Minister and Minister for Finance, Hon Fabian Picardo QC MP, said: "Gibraltar complies with all EU rules in all areas of EU competence. We are a jurisdiction that sets out to work within the rules and all we seek is a level playing field. We have full confidence in all aspects of the operation of the 2010 Act as amended. We have full confidence in the rulings of the Income Tax Office and the diligence of the professionals that make it up. We are starting, however, to have very little confidence in the work of EU institutions where Spanish nationals can influence the outcome of matters affecting Gibraltar as there appears to be a clear correlation between negative decisions affecting Gibraltar and the presence of such nationals in decision making positions. The case of the Spanish declaration of the waters around Gibraltar as an area of their environmental control which involved a Spanish judge at the EU Court hearing the case, the case of the OLAF investigation involving a Spanish lead investigator and a Spanish OLAF spokesperson and now the case of an outgoing Spanish EU Competition Commissioner suggests that Gibraltar is denied fair treatment when Spanish individuals with ingrained prejudices against Gibraltar lead the decision-making process and fail to allow objectivity and detailed factual analysis to prevail. We will nonetheless continue to work closely with the relevant Competition Directorate after Mr Almunia's departure in order to demonstrate the compliance of the Income Tax Act 2010 and the rulings made before and after it with all EU State Aid and other rules. We are fully confident we will prevail once a fair and unbiased analysis of the issues is made by impartial decision-makers."