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Subject: HT.5934 Public Consultation Targeted review of the General Block Exemption Regulation

Dear Sir, Madame,

Thank you for offering the opportunity to respond to your proposal for a change in the General Block Exemption Regulation (651/2014). I would like to draw your attention to three aspects of the proposal.

Article 21a – Risk finance aid in the form of tax incentives for private investors

Paragraph 2

This new article has been introduced to facilitate (mainly) personal income tax incentives offered to private investors who provide risk capital to small and medium sized enterprises. Paragraph 2 of this article points out that the approval of such incentives shall not exceed a maximum amount at the level of the undertaking as stipulated in the new Article 21(8).

This could mean that a natural person who makes an investment in 2021 and files his tax return in 2022 could face a situation where, with hindsight, the incentive as such has failed to meet the conditions once all investments made by others are added up. Under the state aid regime, this will in the end need to be translated to an amount to be recovered from the undertaking concerned if it would be found to be incompatible after an investigation, as (non-professional) natural persons themselves are out of scope of state aid rules and state aid recovery. This may be obvious to those familiar with these rules, but it could quite easily scare of future investors even though they themselves would not be at risk personally.

One should try to avoid a situation where the Member State would end up reversing the tax relief for the natural person post facto in response claiming that it has been unlawfully granted. With the exception of such persons also involved in or related to the management of the company who could possibly have foreseen this, independent natural persons should be protected as to make sure a tax incentive scheme succeeds. While this should primarily be a concern of the Member States themselves, this could be facilitated by clarifying that exceeding the maximum aid amount will not affect the offered tax relief itself.

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Also the current Article 12(2) GBER would need to be extended to 21(a) tax relief, as it provides for ex-post reviews of tax incentives that are provided automatically to beneficiaries based on their tax declaration. The latter relates to declarations by undertakings themselves and not to those of natural persons investing as in the case at hand. This provision will be relevant in the context of testing the maximum aid amount, although not all Member States seem to be fully familiar with it at this time.

Paragraph 5

The proposal states that the maximum tax relief may not exceed maximum tax liability. This would directly interfere with how personal income tax systems operate in Member States, which varies substantially from State to State. A private investor who would claim tax relief for risk investment may, later in the same year, face unexpected (deductible) health costs, lose his/her job, etc., which may at the end of the year result in a situation where the tax relief exceeds maximum tax liability.

This rule would put a restriction on how tax systems may be designed and would also be unnecessary from a state aid perspective as it is not the private investor but the undertaking that is in its scope. (This does not apply to the limitation of the tax relief itself as a percentage of eligible investment, which does fit the purpose of the GBER in terms of securing a proportional incentive).

Article 44a – Aid in the form of reductions in environmental taxes or parafiscal levies

Paragraphs 2/3

Member States are given quite some leeway to offer relief of environmental taxes and levies to those sectors most affected by them that cannot pass on the additional costs without a significant sales reduction. If this is the case, the grant equivalent of aid can go up to 80% of the nominal rate of the levy. This combination as such provides a considerable room for manoeuvre.

If undertakings (and Member States) are expected to make an analysis to actually show that there will be a significant reduction in sales – which would be a condition for any relief at all – then they should also be able to roughly indicate at what level such reduction would no longer be 'significant'.

Allowing up to an 80% reduction – without checking at what percentage sales reductions would actually be absent or insignificant – may affect environmental policy in the long term. One might consider to add a condition of proportionality to the total reduction overall. The current text of paragraph 2 and 3 taken together does not seem to allow for reading such a test into it implicitly.

Should you have any questions regarding this submission, feel free to contact me.

Yours sincerely,

Prof. Dr Raymond Luja [*]

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