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Subject: State aid No SA.34249 (2014/N) – Italy
IRAP tax rate reduction – Article 21 bis paragraph 9 of Bolzano Provincial Law n. 9/1998, as amended by Provincial Law n. 15/2011 and Provincial Law n. 18/2012

Sir,

The Commission wishes to inform Italy that, having examined the information supplied by your authorities on the measure referred to above, it has decided not to raise objections.

1. PROCEDURE

(1) By electronic submission of 20 January 2012, the Italian authorities informed the Commission about a series of planned measures, concerning the regional tax on productive activities (IRAP) in the Bolzano Province. The information was filed under SA 34249 (2012/PN).

(2) On 26 July 2012 a meeting took place between the Commission and the Italian authorities. On 10 August 2012, 4 January 2013, 24 April 2013, 29 November 2013 and 8 May 2014, the Italian authorities submitted further information and clarifications.

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(3) By electronic submission of 4 July 2014, the Italian authorities notified to the Commission, pursuant to Article 108(3) of the Treaty on the Functioning of the European Union (TFEU), the amended Article 21 bis, paragraph 9 of Provincial Law n. 9 of 11 August 1998. The information was filed under SA. 34249 (2014/N).

2. DESCRIPTION OF THE MEASURE

(4) The present decision is limited to the assessment of the IRAP measure introduced by the Bolzano Province and is without prejudice to the assessment under State aid rules of the IRAP tax system in general.

2.1. Objective of the measure

(5) The measure notified consists in a reduction of the regional tax rate on productive activities (IRAP) from 2.98% to 2.5% for 2012 and 2013 and from 2.88% to 2.4% for 2014, payable by enterprises active in the province of Bolzano. The measure is subject to the conditions described in paragraph (20) below. The measure intends to pursue general economic policy objectives through the reduction of the IRAP tax burden. More specifically, the measure aims at stimulating growth and employment.

2.2. Legal basis

(6) The legal basis of the notified measure is Article 21 bis paragraph 9 of Bolzano Provincial Law n. 9 of 11 August 1998, as amended by Article 2, paragraph 5 of Provincial Law n. 15 of 21 December 2011 and subsequently by Article 14, paragraph 3 of Provincial Law n. 18 of 11 October 2012.

(7) Article 2, paragraph 14 of Provincial Law n. 15 of 21 December 2011 provides that the measure will not be put into effect until the Commission has taken a final decision on it.

2.3. Duration of the scheme

(8) The notified measure will be put into effect for the period 2012 -– 2014.

2.4. Budget

(9) The overall revenue losses for the Bolzano Province due to the IRAP tax rate reduction are estimated by the Italian authorities to the amount of EUR 9 million per year (i.e. EUR 27 million for the period 2012-2014).

2.5. Beneficiaries

(10) The measure applies to enterprises of any size, active in the province of Bolzano and operating in any sector of the economy, provided that they meet the conditions as set out in paragraph (20) below.

2.6. Form of the measure

(11) The measure in question takes the form of a tax relief (tax rate reduction).

2.7. The tax on regional productive activities (IRAP)

(12) The regional tax on productive activities (IRAP) was introduced by Legislative Decree n 446 of 15 December 1997. The IRAP substituted a number of taxes, which were abolished since its introduction[1]. However, the main reason for introducing this regional tax was determined by the need of providing Italian regions with tax revenues necessary to fund a number of tasks, which had been delegated to the Regions (such as the financing of the public health expenses).

(13) The pre-condition for being subject to IRAP is the following: carrying out, on permanent basis, any production or trading activity by means of an autonomous organization[2]. The IRAP tax is levied on the category of enterprises listed in the law[3]. The tax base is determined taking into account the net value of production within a given region.

(14) In general terms, the net value of production is the result of the difference between total proceeds from the activity performed and production costs, not including labour and a number of other costs[4].

(15) However, special rules define the tax base for banks, insurance companies, self-employed persons, partnerships ("*società di persone*"), agricultural entrepreneurs, private non-commercial entities and public administrations.

(16) The ordinary IRAP rate was set at 3.9% for 2012 and 2013 and it is currently 3.5%. IRAP has to be paid to the region in which the net value is realised. Different IRAP rates apply to specific sectors (banks and financial institutions: 4.65% for 2012 and 2013 and 4.20% for 2014; insurance companies: 5.90% for 2012 and 2013 and 5.30% for 2014; limited liability companies holding a concession which are different from highway and tunnel concessionaries: 4.20% for 2012 and 2013 and 3.80% for 2014).

(17) Legislative Decree n. 446/1997 empowers the regions and the autonomous provinces of Trento and Bolzano to adjust the ordinary IRAP tax rate set by the State. Moreover, Law n. 191 of 23 December 2009 establishes that the Trentino-Alto Adige Region (of which the Bolzano Autonomous Province is part) can introduce tax exemptions and tax deductions and also modify tax rates within the maximum limits established by national laws. The Italian authorities referred also to judgment n. 323/11 of the Italian Constitutional Court. According to Italy, in that occasion the Constitutional Court explicitly recognised that the Autonomous Provinces of Trento and Bolzano can introduce any modifications to taxes, insofar as they do not impose a tax burden, which is higher than the tax burden that would result by applying the maximum rate laid down in the national law.

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1 Mainly, the so-called ILOR, ICIAP and the contribution to the national health service.

2 See Article 2 of Legislative Decree n. 446/97.

3 See Article 3 of Legislative Decree n. 446/97.

4 More precisely, for limited liability companies, the following costs are excluded: capital assets devaluation, write-downs of receivables included in current assets, provisions for risks and charges.

(18) In this context, the Bolzano Autonomous Province established the ordinary IRAP tax rate in the Bolzano Province at 2.98% for 2012 and 2013 and at 2.88% for 2014. This reduction is not part of the current notification.

2.8. The IRAP measure for increased production and employment introduced by the Bolzano Autonomous Province

(19) By Provincial Law n. 15 of 21 December 2011 and Provincial Law n. 18 of 11 October 2012, the Bolzano Autonomous Province amended Article 21 bis of the Provincial Law n. 9 of 11 August 1998. Article 21 bis, paragraph 9 establishes the reduction of the IRAP tax rate payable in the Bolzano Province by 1.4 percentage points for 2012 and 2013 and by 1.1 percentage points in 2014[5], when the conditions laid down in this provision are met.

(20) Article 21 bis, paragraph 9, of Bolzano Provincial Law n. 9 of 11 August 1998 as subsequently amended, establishes the IRAP tax rate at 2.5 % for 2012 and 2013 and at 2.4% for 2014, for any entity fulfilling the following two conditions:

a) an increase, in the fiscal year concerned, by at least 5% of the nationwide net value of production of the company, calculated adding amortizations relevant for IRAP purposes and excluding public contributions/subsidies relevant for IRAP purposes. For calculating the percentage increase, the average of the nationwide net value of production of the preceding three years should be taken into account; and

b) an increase, in the fiscal year concerned, of the employees with unlimited-term contracts by at least 10% compared to the average number of employees of the preceding three years.

3. ASSESSMENT OF THE MEASURE

3.1. Preliminary remarks

(21) The Commission has examined the notified measure pursuant to Article 107 TFEU.

(22) By notifying the measure before putting it into effect, the Italian authorities have complied with their obligation under Article 108(3) TFEU.

3.2. Existence of aid

(23) In order for a national measure to be considered State aid under Article 107(1) TFEU, the following conditions must be met: (i) the financing of the measure by the State or through State resources; (ii) the granting of a selective advantage to undertakings, and; (iii) the effect of the measure on trade between Member States and the distortion of competition resulting from it.

[5] Following modifications introduced by national and local laws in the course of 2014, the IRAP tax rate payable in the Bolzano Autonomous Province is reduced – compared to the national IRAP tax rate - by 1.1 percentage points for 2014 (Article 21bis, paragraph 6-ter of Provincial Law n. 9/1998).

(24) As regards selectivity, Article 107(1) TFEU prohibits measures which favour certain undertakings or the production of certain goods by granting them an economic advantage. Therefore, in order to determine whether a tax measure is selective it is necessary to determine if, within the context of a given tax regime, that measure constitutes an advantage for certain undertakings in comparison with others which are in a comparable legal and factual situation[6].

(25) In principle, a tax measure which is open to all economic operators within a Member State is considered a general measure. However, in order to be considered a general measure, the tax measure must be effectively open to all firms on equal access basis. This means that tax exemptions applicable to all undertakings, capable of satisfying the relevant criteria, are not normally regarded as entailing State aid.

(26) Since the notified measure is geographically limited to the Province of Bolzano, it will be necessary to consider also whether it is regionally selective. In fact, since State aid may be granted by any public authority, whether central regional or local, it follows that aid may be granted through tax measures adopted by regional or provincial authorities, which mitigate the tax burden imposed on undertakings within their jurisdiction. As a matter of principle, if a regional authority allows for a derogation from the Members State's general taxation, the tax advantage could constitute State aid. However, where a regional authority has sufficient autonomous powers to legislate on taxation within its territory, the exercise of such powers are not considered as falling within the scope of application of Article 107(1) TFEU.

3.3. Selectivity

3.3.1. Material selectivity

(27) The notified measure laid down in Article 21 bis, paragraph 9 (granting an IRAP reduction to undertakings showing an increase of the nationwide net value of production and of the number of employees with unlimited term contracts) applies equally to all undertakings in all sectors. Indeed, the conditions laid down in paragraph 9 are to be considered as horizontal criteria, which do not allow defining specific categories of beneficiaries.

(28) In fact, any enterprise active in any sector can increase its yearly production and recruit new workers with unlimited term contracts. This measure can be considered as pursuing general economic policy objectives through the reduction of the related tax burden[7].

(29) In the light of the above, the Commission considers that the measure at issue does not favour undertakings in specific industries or sectors of the economy and therefore it is not materially selective.

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[6] Case C-182/03 and C-217/03, Belgium and Forum 187 ASBL v. Commission [2006] ECR I-5479, para 119; case C-88/03, Portugal v. Commission [2006] ECR I-7115, para 54; Cases C-428/06 and C-434/06, Uniòn General de Trabajadores de la Rioja v Juntas Generales del Territorio Històrico de Vizcaya [2008] I-6747, para 46; case C- 487/06P, British Aggregates b. Commission [2008] ECR I-10515, para 56; cases from C-79/08 to C-80/08, Paint Graphos [2011] ECR I-7611, para 49.

[7] See Commission Decisions of 19.7.2006 (N 102/2006) and 7.4.2008 (N 95/2008).

3.3.2. Regional selectivity

(30) As indicated above, the national law empowers the regions and the autonomous provinces of Trento and Bolzano to adjust the ordinary IRAP tax rate (Article 24 of Legislative Decree n. 446/97). Moreover, the national law[8] has established that the Trentino-Alto Adige Region (of which the Bolzano Autonomous Province is part) can introduce tax exemptions and tax deductions as well as to modify tax rates within the maximum limits established by national laws.

(31) The Italian authorities referred also to judgment n. 323/11 of the Italian Constitutional Court. According to Italy, in that occasion the Constitutional Court explicitly recognized that the Autonomous Provinces of Trento and Bolzano can introduce any modifications to taxes, insofar as they do not impose a tax burden, which is higher than the tax burden that would result by applying the maximum rate laid down in the national law.

(32) Thus, the national law empowers the Autonomous Province of Bolzano to have the same level of autonomous powers (attributed to the central government) to decide the tax rate applicable in its territory of competence, within – however - the limits conferred by the national law. In this context, the Bolzano Autonomous Province established the ordinary IRAP tax rate in the Bolzano Province at 2.98% for 2012 and 2013 and at 2.88% for 2014. However, as indicated above, this reduction is not part of the current notification.

(33) The notified measure was adopted by a local authority (the Bolzano Autonomous Province) which – from a constitutional point of view – has a political and administrative status separate from that of the central government. The measure was adopted without the central government being able to directly intervene as regards its content. As regards the financial consequences of the measure, it appears that in the present case the tax advantage granted was not offset by aid or subsidies from other regions or central government[9].

(34) The imposition of the criteria for benefiting from the lower IRAP tax rate does not alter the general character of the IRAP tax. In fact, despite the fact that a lower tax rate is payable to the Bolzano Autonomous Province, when the criteria laid down in the Provincial Law are fulfilled, the nationwide dimension of the undertaking is considered. In fact, the calculation of the increased net value of production and of the increase number of employees with unlimited contracts is not limited to the provincial dimension of the undertaking but it takes into account its nationwide dimension.

(35) In the light of the above, the Commission concludes that the measure laid down in Article 21 bis, paragraph 9 is not geographically selective.

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8 Law n. 191 of 23 December 2009

9 As regards the conditions for considering an entity as having sufficiently autonomous powers, see case C-88/03, Portugal v. Commission [2006] ECR I-7115, para 67.

4. CONCLUSIONS

(36) In order for a measure to be qualified as State aid all conditions laid down in Article 107(1) TFEU must be fulfilled. Given that the measure ex Article 21 bis paragraph 9 is not selective, the Commission will not examine the fulfilment of the other conditions.

(37) The Commission has accordingly decided that the measure laid down in Article 21 bis, paragraph 9 of Bolzano Provincial Law n. 9/1998, as amended by Provincial Law n. 15/2011 and by Provincial Law n. 18/2012, does not constitute aid.

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Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
State Aid Registry
B-1049 Brussels
Fax (32-2) 296 12 42

Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President