EUROPEAN COMMISSION

Brussels, 27.02.2002
C (2002)608fin

Subject: **State aid No 543/2001 – Ireland**

Capital Allowances for Hospitals

Sir,

1. Procedure:

(1) By letter dated 1 August 2001, registered 7 August 2001, the Irish authorities notified a new measure of tax allowances. The Commission requested further information by letter dated 5 October 2001, which the Irish authorities submitted by letter dated 6 November 2001, registered 15 November 2001. This was supplemented by a further contribution registered 4 January 2002. A complaint (CP159/2001) was received in October 2001 of which certain elements were relevant to this case.

2. Description of the measure:

2.1: Aim of the aid:

(2) The aim of the measure is to increase the investment in the construction, extension and refurbishment of much needed hospital buildings.

2.2: Description:

(3) In response to reports which severely criticised the deficiencies in Ireland's health services in recent years, the government proposes to introduce a system of capital allowances for investors in hospitals which meet specified service criteria and which undertake to reserve a minimum number of beds for National Health patients. The aim

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of this measure is to encourage investment in the construction, refurbishment and extension of quality hospitals and thus increase the number of beds available to National Health patients.

(4) Only capital expenditure on the construction of the hospital building will qualify for capital allowances. This excludes the plant and machinery and the cost of the site.

(5) The capital allowance regime would provide for a 7 year write-off period (15% per year for 6 years, 10% in final year) to be deducted from the tax basis of the investor. Companies and other property developers will be excluded from the scheme. The investor will lease the hospital facility to a qualifying hospital (typically) for a 10 year period after which the hospital building is sold back to the organisation which runs to hospital. The allowances will be subject to a clawback if the institution ceases to be a qualifying hospital within 10 years.

(6) To qualify for the capital tax allowance, the investor must satisfy the local Health Board (in consultation with the Minister for Health and Children and with the consent of the minister for Finance) that the facility built or refurbished fulfils certain qualifying conditions[1]. Whilst the hospital will (typically) provide services to those patients with private health insurance, at least 20% of the bed capacity must be available for public patients and the hospital must provide a discount of at least 10% to the state in respect of the fees to be charged for the treatment of public patients.

2.3 Budget :

(7) The cost of the scheme derives from non-collected taxes from private individuals. Based on information concerning currently proposed projects, the tax cost to the state would be a total of EUR 47 over 7 years.

2.4 Duration:

(8) There is no end date inserted into the legislation as yet but the measure will be reviewed at regular intervals by the Department of Health and Children and the Department of Finance.

2.5 Legal Basis:

(9) The legal basis of the measure is Section 64 of the Finance Act, 2001. This has not yet been put into application.

2.6 Recipients of the aid:

(10) The recipients of the aid will at the first level be the private investors financing the construction or refurbishment work. These will be private individuals only. The facility will not be available to companies. Consequently investors will be very high net worth

[1] Criteria are: private hospital status, capacity to afford medical or surgical services all year round, provide a minimum of 70 in and out patient beds, contain operating theatres and on-site diagnostic and therapeutic services, have facilities to provide at least 5 specialist services.

individuals. It is highly likely that some or all of the benefit obtained through the tax advantage will however be passed on to the hospitals in the leasing arrangements, by competition between the private investors. This is also the aim of the Irish authorities as the ultimate aim is to obtain cheaper hospital beds as an obligation for hospitals benefiting from the measure who will discount their billing to the Health Board.

2.7 Comments from third parties:

(11) In October 2001, Mr K.Carey, Ms C.Connolly and Mr D.Hambelton (acting in their own capacities) filed a compliant against the proposed amendment to the Irish Finance Bill which would encourage investment in the building or refurbishment of private hospitals. The complaint focused on the use of public resources for building a facility which would not only benefit public health care but would also benefit private health care. The argument put forward was that the tax allowance would be valid for the totality of the investment and not only for the proportion which would be dedicated to public health care. It was considered that this was the use of public funds for a mission which was not of general economic interest.

(12) Other aspects of the complaint, concerning environmental issues were not relevant to the issue of state aid.

3. Assessment of the measure:

(13) The terms of Article 87(1) of the Treaty stipulate that aid, in any form granted by the state is incompatible with the common market if it may create a distortion in competition which affects cross-border trade between the products and services of Member States. Therefore, this measure is assessed in this context.

*** Measure imputable to the state**

(14) The aid is decided by the Ministry for Finance and the local Health Boards which are state bodies.

*** Measure using state resources**

(15) The measure has the effect of allowing authorised investors to reduce their tax base by deducting an amortisation from it. By accepting a reduction in tax receipts, the state is foregoing resources. The state involvement can be qualified as an active one in that this measure is described in the Finance Bill as being a contribution to the improvement of the quality and quantity of public health care facilities.

*** Measure conferring an advantage**

(16) The proposed measure confers an advantage on those investors which finance qualified facilities by reducing their tax base. However, State Aid rules are to be judged according to their effects. In this respect the Commission has consistently considered

that where there are advantages which create indirect beneficiaries[2], the measure must be assessed accordingly.

(17) Under this analysis it would appear that the measure is likely to give an advantage to the hospitals[3] built or refurbished, firstly by encouraging the investment in these facilities rather than in other investment projects and secondly by enabling the investor to lease the facility at a lower price to the hospital as the tax reduction would result in a lower total cost to the investor. Although there is no mechanism in the scheme which makes this effect automatic or obligatory, competitive market forces will ultimately result in the advantage being transferred to the hospitals (e.g. in the form of a more advantageous leasing contract) otherwise they would not agree to give a 10% discount on the billing of services rendered to public health patients.

*** Effect on trade between Member states**

(18) The direct beneficiaries of this measure can only be private individuals with their economic interest based in Ireland. Therefore at this level this measure taken in isolation cannot be considered as effecting trade between Member States.

(19) The hospitals which receive an advantage from this measure operate on a market where the provision of facilities is liberalised and consequently there could be a potential effect on cross-border trade. However, in this specific case there are a number of factors which should be taken into account and which moderate this view.

(20) It must be noted that the measure does not discriminate against providers from other member states which would be required to comply with the same criteria as domestic providers. Furthermore, the measure is not one which benefits hospitals to such an extent that it would in itself be a reason for an operator to decide to create facilities in Ireland rather than in another member state and it will in practice support the creation of relatively small hospitals. Finally, the aim of the measure is to make available additional beds for public health care services at a local level following on from reports criticising the insufficient availability of public health beds[4]. Consequently, although this effect on trade does exist in potential, it can be considered as in effect non-existent in the case at hand since the effect of this measure is to serve the local market, there exists a clear undercapacity in the local hospital market, and it can be

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[2] In a Decision of 3 June 1998 concerning Sicilian Regional Law on measures to promote employment (OJ No L32), the Commission considered that the Italian system of grants to tour operators who hired aircraft for carrying tourists to Italy constituted state aid to the tour operators as it increased the overall volume of business, even though the full benefit of the grant was passed on to consumers.
In a Decision of 21 January 1998 concerning tax concessions to investors in the new German Lander and West Berlin, the Commission considered that although the tax measure benefited private individuals and there was no direct impact on the cost of capital of the companies concerned, there was an advantage created for these companies.

[3] Following the reasoning of the Hoffner judgement (Case C-41-/90), hospitals can be considered as undertakings. This is even more so the case where hospitals are offering public and private health care.

[4] The total turnover of the hospitals providing these services is currently only IEP 717 million per year. The impact of additional facilities on the scale envisaged will clearly not impact either the overall GDP of Ireland nor the EU health market as a whole.

considered not to create complexes which will attract customers from other member states.

*** Selective advantage for certain undertakings**

(21) At the level of the private investor, the measure is not selective as it is open to all investors in the same market i.e. those private individuals wishing to make investments in building projects. At the level of the indirect beneficiaries, the measure is selective in that it favours a certain category of undertakings (hospitals).

(22) **The features of this specific case indicate that there is no effect on cross-border trade. Consequently, even though there is an advantage to hospitals, the measure can be considered as not constituting state aid under Article 87(1**).

4. Conclusion

(23) By notifying the proposed measure, the Irish authorities have complied with their obligations pursuant to Article 88(3) of the Treaty.

(24) For the above reasons, the Commission has come to the conclusion that the scheme can be considered not to constitute State aid in the meaning of Article 87(1) and therefore is compatible with the Common Market.

5. Decision.

(25) The Commission has accordingly decided that the measure does not constitute aid.

(26) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/. Your request should be sent by registered letter or fax to:

European Commission
Directorate-General for Competition
Directorate State Aid – H3
Rue de la Loi/Wetstraat, 200
B-1049 Brussels

Fax No: ++32.2.296.95.80

Yours faithfully,

For the Commission

Mario Monti

Member of the Commission