When assessing whether a measure is selective:

Does it matter whether the intention of the measure is to promote certain business activities, or not?

Henrik Skar (PhD)

Typically examples of state aid
(in a tax lawyer's mind)

- **Cases where the intention of the measure is to promote (stimulate) certain business activities:**
  - The intention may be to increase or maintain activity in a certain
    - industry or branch, like *The Norwegian income tax exemption for shipping companies.* (Norwegian tax act. § 8-15),

      or
    - area/region, like *regionally differentiated social security contributions* (Norwegian National insurance Act, § 23-2 (12).

The selectivity requirement as described in EU law

- **Identification of the reference system**

- **Discrimination between comparable undertakings.**
  - *"in the light of the intrinsic objective of the system of reference".*

- **Justification by the nature and logic of the reference system, but not external policy objectives**
  - Malgorzata mentioned: "*The need to fight fraud or tax evasion, the need to take into account specific accounting requirements, administrative manageability, the principle of tax neutrality, the progressive nature of income tax and its redistributive purpose, the need to avoid double taxation or the objective of optimising the recovery of fiscal debts.*"

What about tax legislation that has no intention of promoting certain business activities?

- **For instance, legislation provided to meet social needs.**
  - *Tax exemption for sale of farms, when sold to taxpayer's own children* (Norwegian tax act § 9-3 (6), § 9-13.).
- **Simplified rules which are used to make the tax system practically manageable.**
  - *For instance, fixed depreciation-rates* (Norwegian tax act § 14-43).
    - *Since simplified rules* are not completely in line with the basic principles of the system, they will not always give perfect results.
    - For instance, when it comes to depreciation rules similar assets, with similar functions and lifetime, may occasionally fall into different groups (example machinery vs. installations). Also, because depreciation-rates are based on average figures, assets which lose value more slowly than the average within their group are favoured (and vice versa).

a. Office machinery etc. 30%
b. Acquired commercial value 20%
c. Trains, busses, lorries 20%
d. Cars, Machinery and fittings 20 %
e. Ships and rigs, etc. 14 %
f. Aircraft and Helicopters 12 %
g. Building and installations 4%
h. Commercial buildings 2 %
j. Technical installations 10 %

What about misapplication of national tax legislation?

- **Even** though **tax authorities** usually **do not enjoy any leeway** when they calculate the tax bill, **misapplications happens**, which may result in different treatment of taxpayers.

- **Intentional misapplications** - The tax authorities deliberately fail to apply tax rules in order to favour certain companies.

- **Unintentional misapplications**. Errors or inconsistency which are not intended.
  - Impossible to completely eliminate. However, if the quality of tax assessments or competence of the tax officers are low, more mistakes and inconsistency will occur.

- **Are only "intentional" misapplications considered to be state aid**?
  - Subtype: Intentional non-application of new tax rules to certain taxpayers, as a result of already existing agreements between the state and those taxpayers disallowing application of such rules (Apple-case).

UNIVERSITETET I BERGEN

Miljøfyrtårn®