



Euro Tax Flash

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Euro Tax Flash from KPMG's EU Tax Centre



CJEU decision on Commission's lack of formal investigation of amended Spanish tax lease system

State Aid – Corporate Income Tax – Decision finding no State aid – Formal investigation procedure not initiated

On April 14, 2016 the Court of Justice of the European Union (CJEU) issued its decision on the complaint filed by the Netherlands Maritime Technology Association (NMTA) concerning the Commission's lack of investigation into the amended Spanish tax lease system (STLS). The CJEU upheld the decision by the General Court of the Court of Justice of the European Union (EGC), which had ruled that the action brought by the NMTA was unfounded.

Background

The STLS is a financing arrangement that entails Spanish tax relief for investors that provide financing for tangible assets. On June 29, 2011 the Commission initiated legal proceedings against the previous early and accelerated tax depreciation system and concluded that it constituted State Aid incompatible with the internal market. The decision was annulled by the EGC on December 17, 2015 and is currently pending appeal to the CJEU (see [ETF 270](#) on the EGC decision).

Concurrently with the Commission's proceedings against the previous system, Spain gave notification on May 29, 2012 of an amended version of the STLS. The amended system

brought, inter alia, an end to the previous approval process under the STLS as well as material changes to the rules. In the decision of November 20, 2012 (“the contested decision”), the Commission concluded that the notified measure did not constitute State Aid within the meaning of Article 107(1) TFEU.

By application lodged March 8, 2013, the NMTA contested this decision, claiming an infringement of Article 108(3) TFEU and Article 4(2) and (3) of Council Regulation (EC) No. 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty]. The NMTA argued that the examination of the measure raised serious difficulties, which made it essential that the formal investigation procedure be initiated.

The CJEU decision

The NMTA argued that (i) the EGC failed in taking all the arguments of the appellant into account, (ii) the EGC had made a manifest error of assessment by substituting the Commission’s reasoning with its own, and (iii) that the reasons given by the EGC were inadequate and contradictory. The NMTA called for the EGC judgement to be set aside and that the contested decision be annulled.

The CJEU dismissed the appeal, finding that the NMTA’s arguments were unfounded and, in part, inadmissible. The EGC had properly and correctly assessed the contested decision, and the CJEU did not find the reasons given inadequate or contradictory.

EU Tax Centre comment

The decision, even though just based on procedural grounds, is positive for Spanish taxpayers that have received aid under the amended STLS. Following the EGC’s decision on December 17, 2015, neither the previous nor the amended STLS has been found to constitute illegal State aid. The former is however still pending appeal to the CJEU. It remains to be seen whether amending the system was necessary to comply with EU State Aid regulations.

Should you have any queries about or problems with accessing the documentation, or if you would like to share any information that you think would be of relevance, please do not hesitate to contact [KPMG’s EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.



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