

Commission Decision (EU) 2015/314 of 15 October 2014 on the State aid SA.35550 (13/C) (ex 13/NN) (ex 12/CP) implemented by Spain Scheme for the tax amortisation of financial goodwill for foreign shareholding acquisitions (notified under document C(2014) 7280) (Only the Spanish text is authentic) (Text with EEA relevance)

- Article 1 The new administrative interpretation adopted by the Kingdom of Spain...
- Article 2 Individual aid granted under the scheme referred to in Article...
- Article 3 Individual aid granted under the scheme referred to in Article...
- Article 4 (1) The Kingdom of Spain shall put an end to...
- Article 5 (1) Recovery of the aid granted under the scheme referred...
- Article 6 (1) Within two months following notification of this Decision, the...
- Article 7 This Decision is addressed to the Kingdom of Spain.
Signature

Changes to legislation: There are currently no known outstanding effects for the Commission Decision (EU) 2015/314. (See end of Document for details)

- (1) [OJ C 258, 7.9.2013, p. 8.](#)
- (2) [OJ L 7, 11.1.2011, p. 48.](#)
- (3) [OJ L 135, 21.5.2011, p. 1.](#)
- (4) See Consulta vinculante V0608-12 of 21 March 2012.
- (5) SA 35550 (12/CP).
- (6) See footnote 1.
- (7) See Article 21(1)(a) TRLIS.
- (8) See Article 21(1)(b) TRLIS.
- (9) See Article 21(1)(c) TRLIS.
- (10) Article 21 TRLIS, entitled ‘Exemption to avoid international double taxation on dividends and income from foreign sources arising from the transfer of securities representing the equity of entities not resident in Spain’ is contained in Title IV TRLIS.
- (11) Law 4/2001 of 27 December 2001 on Administrative, Fiscal and Social Order measures.
- (12) Royal Legislative Decree 4/2004 of 5 March, on the Consolidated version of the Spanish Corporate Tax Law.
- (13) Law 16/2007 of 4 July 2007 on the reform and adaption of accounting rules for their international harmonization with EU accounting rules.
- (14) See letter of 4 June 2007 sent by Spain in reply to a request for information of 26 March 2007.
- (15) See letter from the Spanish authorities of 7 May 2014 in response to a request for information of 26 March 2014.
- (16) According to the information provided by some of interested third parties there are other administrative interpretations that relate to Article 12(5) TRLIS, namely consultas vinculantes V316-05 and V2245-06.
- (17) See footnote 15.
- (18) Resolution 00/2842/2009; Resolution 00/4872/2009 and joint resolutions, Resolution 00/5337/2009 and joint resolution; Resolution 00/3637/2010 and joint resolution.
- (19) Articles 23 and 24 of 1815/1991.
- (20) See TEAC Resolution of 3 November 2011; R.G. 2842-09.
- (21) See also the *Consulta vinculante* CV5615-12 of 25 October 2012, which follows the same line of reasoning.
- (22) TEAC Resolution of 26 June 2012; R.G.:00/3637/2010 and R.G.: 00/1439/2011.
- (23) See judgement of the Audiencia Nacional; appeal 125/2011; 6 February 2014.
- (24) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([OJ L 83, 27.3.1999, p. 1.](#)).
- (25) See footnote 1.
- (26) See joint cases C-110/98 and C-147/98 ‘Galbalfrisa and others’.
- (27) Consultas 1490-02, V0391-05, V1316-05 and V2245-06; TEAC Resolution of 17 September 2011 N° 4871-09.
- (28) See Judgement C-537/08P of 16 December 2010, *Kahla Thüringen Porzellan GmbH v Commission*.
- (29) See Judgement C-44/93 of 9 August 1994, *Namur — Les assurances du credit v Commission*.
- (30) Merger COMP M.4517 — Iberdrola/Scottish Power.
- (31) Written questions E-4431/05 and E-4772/05.

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- (32) See paragraphs 83 and following of the First Decision and paragraphs 96 and following of the Second Decision.
- (33) Decision C45/07 of 28 October 2009 gave rise to abundant litigation. In particular, the judgement of the General Court of 8 March 2012, *Iberdrola v Commission*, T 211/10; the orders of the General Court of 21 March 2012, *BBVA v Commission*, T-225/10; *Telefónica v Commission*, T-228/10; *Ebro/Puleva v Commission*, T-234/10 and *Modelo Continente v Commission* T-174/11; and order of 29 March 2012, *AEB v Commission* T-236/10. The judgement of the European Court of Justice of 19 December 2013 *Telefónica v Commission* C 274/12P. It is still pending before the General Court the cases T 207/10 *Deutsche Telekom v Commission*, T 219/10 *Autogrill v Commission* and T-227/10 *Banco Santander v Commission*. Decision C-45/07 of 12 January 2011 gave also rise to abundant litigation. In particular, the orders of the General Court of 5 June 2012, *Iberdrola v Commission*, T-431/1, order of 13 December of 2012, *Cementos Molins v Commission*, T-424/11; order of 10 June 2013, *Barloworld v Commission*, T-459/11; the order of 9 September 2013 for cases *BBVA v Commission*, T-429/11; *Telefónica v Commission*, T-430/11; *Altadis v Commission* T-400/11; and *Telefónica v Commission* T430/11. It is still pending before the General Court the cases *Sigma v Commission*, T-239/11; *Banco Santander v Commission*, T-399/11; *Axa v Commission* T-405/11; and *Prosegur v Commission*, T-406/11. The following appeals are pending before the Court of Justice: *BBVA v Commission*, C-587/13P; and *Telefónica v Commission* C-588/13P.
- (34) It is also clear that the question of legitimate expectations covered by the First and Second Decisions is limited to the scope of the measures which are qualified as illegal incompatible aid by these two decisions. Indeed, the purpose of the recognition of legitimate expectations by a decision is not and cannot be an extension of the scope of the illegal incompatible aid, which has been examined, but only a limitation of its recovery.
- (35) See Judgement C-537/08P of 16 December 2010, *Kahla Thüringen Porzellan GmbH v Commission*, p. 44 and following; See also Judgement C-138/09 *Todaro Nunziatina* [2010] paragraph 31.
- (36) See Judgement C-537/08P of 16 December 2010, *Kahla Thüringen Porzellan GmbH v Commission*, p. 45.
- (37) See letter of 4 June 2007, in response of a request for information of the Commission of 26 March 2007.
- (38) See Judgement of the Audiencia Nacional of 13 October 2011; Appeal number 432/2008.
- (39) See Judgement of the Spanish Supreme Court of 24 June 2013; RJ/2013/5335.
- (40) It should also be stressed that, with the new interpretation, the DGT and the TEAC acknowledged a departure from their initial interpretation of Article 12(5) TRLIS, as regards the new possibility of applying it to indirect acquisitions of shareholdings (see section 2.3.2 above).
- (41) See TEAC resolution of 3 November 2011; R.G.: 2842-09.
- (42) See TEAC resolution of 26 June 2012 R.G: 3637/2010 and 1439/2011.
- (43) According to the TEAC Articles 23 and 24 Royal Decree 1815/1991.
- (44) The Commission refers to a simulation of a consolidation exercise, given that one of the requirements of Article 21 TRLIS is the acquisition of at least 5 % shareholding. This percentage does not imply consolidation with the acquiring company.
- (45) See TEAC resolution R.G. 2842-09 of 3 November 2011.
- (46) See TEAC resolution of 17 February 2011; R.G. 4871-09, 4872-09, 4873-09 and 4874-09.
- (47) See judgement of the Spanish Supreme Court of 24 June 2013; RJ/2013/5335.
- (48) See letter of 4 June 2007 sent by the Spain in reply to a request for information of 26 March 2007.
- (49) See Judgement C-537/08P of 16 December 2010, *Kahla Thüringen Porzellan GmbH v Commission*, p. 44; See also Judgement C-138/09 *Todaro Nunziatina* [2010] paragraph 31.
- (50) See Judgement C-537/08P of 16 December 2010, *Kahla Thüringen Porzellan GmbH v Commission*, p. 44.
- (51) See Judgement C-44/93 of 9 August 1994, *Namur — Les assurances du credit v Commission*.
- (52) COMP M.4517, paragraph 42.

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- (53) The Spanish authorities communicated to the Commission that Article 12(5) TRLIS was applied only to direct acquisitions by letter of 4 June 2007.
- (54) Moreover, it is worth noting that the replies to the written parliamentary questions did not make any explicit differentiation between direct and indirect acquisitions.
- (55) See letter of 4 June 2007 sent by the Spain in reply to a request for information of 26 March 2007.
- (56) See judgement of the Audiencia Nacional; appeal 125/2011; 6 February 2014.
- (57) See letter of 4 June 2007 sent by the Spain in reply to a request for information of 26 March 2007.
- (58) Joined Cases 66/79, 127/79 and 128/79, *Salumi and others*, [1980] ECR-1237, p. 14; Case C-14/01 *Niemann* [2003] ECR I-2279, p. 49.
- (59) Letter of 4 December 2012.
- (60) Real Decreto 1065/2007, de 27 de julio, por el que se aprueba el Reglamento General de las actuaciones y los procedimientos de gestión e inspección tributaria y de desarrollo de las normas comunes de los procedimientos de aplicación de los tributos.
- (61) See case C-537/08 P, *Kahla Thüringen Porzellan GmbH*, paragraphs 40 and following.
- (62) Judgement of the Court of Justice of 22.6.2006; case C-182/03 and C-217/03, *Forum 187 ASBL* [2006] ECR I-5479, par. 147.
- (63) See Judgement C-537/08P of 16 December 2010, *Kahla Thüringen Porzellan GmbH v Commission*, p. 44.
- (64) Judgement of the Court of Justice of 22.6.2006; case C-182/03 and C-217/03, *Forum 187 ASBL* [2006] ECR I-5479, par. 159.

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