

COUNCIL DECISION (EU) 2020/1792
of 16 November 2020
on the AIEM tax applicable in the Canary Islands

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 349 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Pursuant to Article 349 of the Treaty on the Functioning of the European Union (TFEU), the Council, taking into account the structural social and economic constraints of the outermost regions, including their remoteness, insularity, small size, difficult topography and economic dependence on a few products, is to adopt specific measures aimed, in particular, at laying down the conditions of application of the Treaties to those regions, including common policies.
- (2) Specific measures should therefore be adopted in order to establish the conditions for applying the TFEU to those regions. Such measures are to take account of the special characteristics and constraints of those regions, without undermining the integrity and coherence of the Union legal order, including the internal market and common policies.
- (3) The Canary Islands' economic dependence on the services sector and in particular tourism, as measured in the region's GDP share linked to that sector, constitutes a significant constraint. That sector plays a significantly larger role in the economy of the Canary Islands than the industry sector.
- (4) The combination of isolation and insularity inherent in an archipelago hinders the free movement of persons, goods and services and it is the second biggest constraint facing the Canary Islands. The location of the islands increases their dependence on air transport and maritime transport. Transport to, from and on those remote and insular islands further increases production costs for local industries. Production costs are greater because those modes of transport are less efficient and more expensive than road or rail.
- (5) As a further consequence of this isolation, higher production costs result from the islands' dependence on importing raw materials and energy, the obligation to build up stocks and difficulties affecting the supply of production equipment.
- (6) The small size of the market and the low level of export activity, the geographical fragmentation of the archipelago, and the obligation to maintain diversified small production lines in order to meet the requirements of a small market restrict the opportunities for economies of scale.
- (7) It is, in many cases, more difficult or more expensive in the Canary islands to obtain specialised services and maintenance, and training for managers and technicians, or to subcontract or promote business expansion beyond the regional market. The narrow range of distribution methods also results in overstocking.

⁽¹⁾ Opinion of 6 October 2020 (not yet published in the Official Journal).

- (8) As regards the environment, the disposal of industrial waste and the treatment of toxic waste give rise to higher environmental costs. Those costs are higher because there are no recycling plants, other than for certain products, and waste has to be transported to be treated outside the Canary Islands.
- (9) The tax known as '*Arbitrio sobre Importaciones y Entregas de Mercancías en las Islas Canarias*' ('AIEM tax') is serving the objective of autonomous development of the Canary Islands' industrial production sectors and of diversifying the Canary Islands' economy.
- (10) Council Decision 2002/546/EC ⁽²⁾, adopted pursuant to Article 299 of the EC Treaty, initially authorised Spain to apply exemptions from or reductions in the AIEM tax until 31 December 2011 to certain products produced locally in the Canary Islands. The Annex to that Decision contained a list of products to which tax exemptions and reductions could be applied. The difference between the taxation of locally produced products and the taxation of other products could not exceed 5, 15 or 25 percentage points, depending on the product.
- (11) Council Decision No 895/2011/EU ⁽³⁾ amended Decision 2002/546/EC, extending its period of application until 31 December 2013.
- (12) Council Decision No 1413/2013/EU ⁽⁴⁾ further amended Decision 2002/546/EC, extending its period of application until 30 June 2014.
- (13) Council Decision No 377/2014/EU ⁽⁵⁾ authorised Spain to apply exemptions from or reductions in the AIEM tax until 31 December 2020 to certain products produced locally in the Canary Islands. The Annex to that Decision contains a list of products to which the tax exemptions or reductions can be applied.
- (14) A careful examination of the situation confirms that it is necessary to grant Spain's request of renewing the authorisation.
- (15) The maximum differential rate, which may be applied to the industrial products in question, should not exceed 15 %. In accordance with the principle of subsidiarity, the Spanish authorities should be able to decide upon the appropriate percentage for each product. The authorised tax differential should not exceed the proven additional costs. Nevertheless, that fiscal advantage should apply subject to a limit of EUR 150 million per annum, except in duly justifiable cases.
- (16) In accordance with the principle of subsidiarity and in order to ensure flexibility, the Spanish authorities should be allowed to amend the list of products and their authorised tax differential to reflect the actual level of additional costs incurred in the production of such products in the Canary Islands. In that context, it should be possible for the Spanish authorities to apply lower differential rates and to establish a minimum tax for specific products where necessary, provided that any amendment is in line with the objectives of Article 349 TFEU. Any amendment of the list of products should be based on the following eligibility criteria: that local production exists and its share of the local market accounts for at least 5 %; that significant importation of goods (including from mainland Spain and other Member States) exists which could jeopardise the continuation of local production, and its share of the local market accounts for at least 10 %; and that additional costs exist which increase the cost price of local production in comparison with products produced elsewhere, compromising the competitiveness of products produced locally.
- (17) The Spanish authorities should be allowed to derogate from the market share thresholds in duly justified circumstances, which include: labour-intensive production; production which is otherwise of strategic importance for local development; production subject to periodical fluctuations; production located in particularly disadvantaged areas; and production of medical products and personal protective equipment required to address health crises. It should be possible for the Spanish authorities to amend the list of products and their authorised tax differential, provided that any amendment is in line with the objectives of Article 349 TFEU.

⁽²⁾ Council Decision 2002/546/EC of 20 June 2002 on the AIEM tax applicable in the Canary Islands (OJ L 179, 9.7.2002, p. 22).

⁽³⁾ Council Decision No 895/2011/EU of 19 December 2011 amending Decision 2002/546/EC as regards its period of application (OJ L 345, 29.12.2011, p. 17).

⁽⁴⁾ Council Decision No 1413/2013/EU of 17 December 2013 amending Decision 2002/546/EC as regards its period of application (OJ L 353, 28.12.2013, p. 13).

⁽⁵⁾ Council Decision No 377/2014/EU of 12 June 2014 on the AIEM tax applicable in the Canary Islands (OJ L 182, 21.6.2014, p. 4).

- (18) The objective of promoting the socioeconomic development of the Canary Islands is reflected at national level in the purpose of the AIEM tax and the allocation of the revenue it generates. The incorporation of the revenue from the AIEM tax in the resources of the Canary Islands' economic and tax system and the use of that revenue for an economic and social development strategy involving the promotion of local activities are legal obligations.
- (19) The exemptions from or reductions in the AIEM tax should apply for seven years. In order to allow the Commission to assess whether the conditions justifying the authorisation continue to be fulfilled, the Spanish authorities should submit a monitoring report to the Commission by 30 September 2025.
- (20) This Decision is without prejudice to the possible application of Articles 107 and 108 TFEU,

HAS ADOPTED THIS DECISION:

Article 1

1. By way of derogation from Articles 28, 30 and 110 TFEU, the Spanish authorities shall be authorised until 31 December 2027 to lay down, in respect of the products falling within the categories listed in Annex I that are produced locally in the Canary Islands, total exemptions from or partial reductions in the tax known as '*Arbitrio sobre las Importaciones y Entregas de Mercancías en las islas Canarias*' (AIEM tax). Those exemptions or reductions shall form part of the strategy for economic and social development of the Canary Islands and contribute to the promotion of local activities.

2. Application of the total exemptions or of the partial reductions referred to in paragraph 1 shall not lead to differences in excess of 15 % for the products falling within the categories listed in Annex I.

The Spanish authorities shall ensure that the exemptions or reductions applied to the products do not exceed the percentage strictly necessary to maintain, promote and develop local activities. The authorised tax differential shall not exceed the proven additional costs.

3. The fiscal advantage shall apply subject to a limit of EUR 150 million per annum, except in duly justifiable cases.

Article 2

1. The Spanish authorities shall select the products referred to in Article 1(1) taking into account the following criteria:

- (a) local production exists and its share of the local market accounts for at least 5 %;
- (b) significant importation of goods (including from mainland Spain and other Member States) exists which could jeopardise the continuation of local production, and its share of the local market accounts for at least 10 %;
- (c) additional costs exist which increase the costs of local production in comparison with products produced elsewhere, compromising the competitiveness of products produced locally.

2. The Spanish authorities may derogate from the market share thresholds referred to in points (a) and (b) of paragraph 1 in duly justified circumstances, which include:

- (a) labour-intensive production;
- (b) production which is otherwise of strategic importance for local development;
- (c) production subject to periodical fluctuations;
- (d) production located in particularly disadvantaged areas;
- (e) production of medical products and personal protective equipment required to address health crises.

Article 3

By 1 January 2021, the Spanish authorities shall communicate to the Commission the initial list of products to which exemptions or reductions are applied to. Those products shall fall within the product categories set out in Annex I. Amendments to this list of products may be made by the Spanish authorities, provided that the Commission is notified of all the relevant information.

Article 4

By 30 September 2025 at the latest, the Spanish authorities shall submit a monitoring report to the Commission to enable it to assess whether the conditions justifying the authorisation set out in Article 1 continue to be fulfilled. The monitoring report shall contain the information set out in Annex II.

Article 5

This Decision shall apply from 1 January 2021.

Article 6

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 16 November 2020.

For the Council
The President
M. ROTH

ANNEX I

LIST OF PRODUCTS REFERRED TO IN ARTICLE 1(1) ACCORDING TO THE PRODUCT CATEGORIES OF THE HARMONISED SYSTEM HEADINGS

Agriculture, livestock farming, forestry and fisheries

0203 0204 0207 0407 0603 0701 0703 0706 0708 0810

Mining and quarrying

2516 6801 6802 6810

Building materials

2523 3816 3824 6809 7006 7007 7008 7009 7010

Chemicals

2804 2807 2811 2828 2853 3102 3105 3208 3209 3212 3213 3214 3304

3401 3402 3406 3814 3917 3920 3923 3925 4012

Metal-working industries

7308 7309 7604 7608 7610 8415 8424 8907 9403 9404 9406

Food and beverage industry

0210 0305 0403 0406 0901 1101 1102 1601 1602 1702 1704 1806 1901

1902 1904 1905 2002 2005 2006 2007 2008 2009 2103 2105 2106 2201

2202 2203 2204 2208 2309

Tobacco

2402

Textiles, leather and footwear

6109 6112

Paper

4808 4811 4818 4819 4821 4823

Graphic arts

4909 4910 4911

ANNEX II

INFORMATION TO BE INCLUDED IN THE MONITORING REPORT REFERRED TO IN ARTICLE 4

1. Estimated additional costs. The Spanish authorities shall send a summary report containing sufficient data to evaluate whether the additional costs, which increase the cost price of local production in comparison with products produced elsewhere, exist. The information provided in the summary report shall include at least the following information, where such information is available: costs of inputs; costs of over-stocks; equipment costs; additional labour costs; and financial costs. That data must be provided by, at least, a reference to the product categories of the Harmonised System Headings, according to the four digits of the Combined Nomenclature.

That report shall contain the summary results of detailed *ad hoc* studies on additional costs that Spain shall continue conducting periodically.

2. Other subsidies. The Spanish authorities shall send a list of all other aid and support measures addressing the additional operating costs of economic operators linked to the outermost region status of the Canary Islands.
3. Impact on public budget. The Spanish authorities shall complete Table 1 providing the estimated total amount (in EUR) of tax collected or not collected under the AIEM regime.

Table 1

Year (*)	2019	2020	2021	2022	2023	2024	Notes (**)
Foregone tax revenue ⁽¹⁾							
Tax receipts – imports ⁽²⁾							
Tax receipts – local production ⁽³⁾							

Notes to Table 1:

⁽¹⁾ 'Foregone tax revenue': the total amount (in EUR) of tax not collected because of the tax differentials applied to local production (exemptions/reductions). At product level, it is calculated by multiplying the value of production sold on the local market (i.e. deducting exports) by the tax differential applied. The indicator is then calculated by summing up product-level estimates.

⁽²⁾ 'Tax receipts – imports': the total amount (in EUR) of the tax levied on the imports of taxable products.

⁽³⁾ 'Tax receipts – local production': the total amount (in EUR) of the tax levied on the taxable local products.

(*) The information might not be available for all the years listed.

(**) Provide comments and clarifications as deemed relevant.

4. Impact on overall economic performance. The Spanish authorities shall complete Table 2 providing any data demonstrating the impact of the reduced taxes on the socioeconomic development of the region. The indicators required in Table 2 shall refer to the performance of the supported sectors compared to the general performance of the regional economy. If some of the indicators are not available, alternative reporting data shall be included on the overall socioeconomic performance of the region.

Table 2

Year (*)	2019	2020	2021	2022	2023	2024	Notes (**)
Regional gross value added							
— In the supported sectors ⁽¹⁾							

Overall regional employment							
— In the supported sectors ⁽¹⁾							
Number of active enterprises							
— In the supported sectors ⁽¹⁾							
Price level index – mainland							
Price level index – region							

Notes to Table 2:

(¹) 'supported sectors': intended as the economic sectors (NACE definition or the like) where the production is prevalently (by production volume) benefitting from tax exemptions/reduction.

(*) The information might not be available for all the years listed.

(**) Provide comments and clarifications as deemed relevant.

5. Specifications of the regime. The Spanish authorities shall complete Tables 3 and 4 for each product (CN4, CN6, CN8 or TARIC10 as applicable) and by year (from 2019 to 2024). The list includes only the products benefitting from differentiated tax rates.

Table 3

Identification of products and rates applied

Supported products – CN code (4, 6, 8 or 10 digits)	Year	CN4 approved category ⁽¹⁾	Code specifications ⁽²⁾	External tax rate ⁽³⁾	Internal tax rate ⁽⁴⁾	Tax differential applied ⁽⁵⁾	Notes ^(**)
	2019						
	2020						
	2021						
	2022						
	2023						
	2024						

Notes to Table 3:

(¹) 'CN4 approved category': the CN4 category approved in this Decision.

(²) 'Code specification': in the event a different treatment is extended to different 10-digit codes or based on other *ad hoc* specifications of the CN/TARIC definitions.

(³) 'External tax rate': the tax rate applied to imports.

(⁴) 'Internal tax rate': the tax rate applied to local production.

(⁵) 'Tax differential applied': the difference between external and internal rate.

(**) Provide comments and clarifications as deemed relevant.

Table 4

Market share of supported products

Supported products – CN code (4, 6, 8 or 10 digits) (*)	Year	Volume (1)				Value (in EUR) (2)			Notes (***)
		local production	unit	imports	Market share (**)	local production	imports	Market share (**)	
	2019								
	2020								
	2021								
	2022								
	2023								
	2024								

Notes to Table 4:

- (*) The first column should be identical to the previous table to allow data matching.
 (1) 'Volume': in the column 'unit' specify the unit of measurement (tons, hl, pieces, etc.).
 (2) 'Value': for import, it coincides with the taxable amount.
 (**) 'Market share': the market share shall be calculated deducting the exports of local products.
 (***) Provide comments and clarifications as deemed relevant.

6. Irregularities. The Spanish authorities shall provide information on any investigations on administrative irregularities, in particular, on evasion from taxes or smuggling, in the context of the application of the authorisation. They shall provide detailed information, including, at least, information on the nature of the case, value and time period.

7. Complaints. The Spanish authorities shall provide information on whether the local, regional, or national authorities have received any complaints concerning the application of the authorisation, either by beneficiaries or by non-beneficiaries.