

Gibraltar wins EU Court Case

This bulletin summarises the history of Gibraltar's tax reform proposals, its action against the European Commission before the EU Court of First Instance and the decision declared on 18 December 2008 of that Court on the action.

Foreword

When the Gibraltar Government decided to reform its corporate income tax system, it did not expect to be involved in a legal battle with the EU that would last almost four years.

Finally, on 18 December 2008 the European Court of First Instance has declared that Gibraltar is able to legislate on matters of taxation and has autonomy in economic, financial and fiscal matters.

The Court of First Instance has refuted the Commission's case in its entirety.

History

On 11 July 2002, the European Commission informed the United Kingdom that it would initiate investigation procedures into Gibraltar exempt and qualifying companies as according to the Commission these tax concessions constituted state aid, contrary to the rules of the common market.

The Court of First Instance overturned the Commission's decision with regard to exempt companies however it did accept the Commission's view with regard to qualifying companies.

It was therefore agreed that the qualifying company regime would be terminated in the short term, but existing exempt companies would be phased out by December 2010.

The Gibraltar Government then sought to reform its corporate income tax system which would be applicable to all companies incorporated in Gibraltar.

On 30 March 2004, the Commission decided that the proposed tax reforms constituted state aid incompatible with the common market and rejected the proposals.

The Commission considered the reform proposals to be (1) 'regionally selective' in that they conferred tax advantages on companies in Gibraltar compared with companies in the United Kingdom (therefore implying that Gibraltar is a mere region of the United Kingdom and not an independent territory for tax purposes and (2) 'materially selective' in that specific features conferred tax advantages on some companies as opposed to others in Gibraltar.

Legal action

The Governments of Gibraltar and the United Kingdom brought an action against the European Commission on 9 June 2004 contesting the Commission's decision of 30 March 2004.

The Governments argued that their tax jurisdictions are entirely separate so that Gibraltar's tax laws cannot be treated as derogations from the tax laws applicable in the United Kingdom.

Furthermore, the Government of Gibraltar argued that the reform proposals cannot be treated as derogations from the common tax regime resulting in favouring certain undertakings in Gibraltar.

Decision

On 18 December 2008 the Court of First Instance has annulled 'in its entirety' the Commission's decision.

The Court concluded that the tax reform proposals cannot be deemed to be considered **regionally selective**.

The Court also concluded that the classification by the Commission of the Gibraltar proposed tax measures as **materially selective** was incorrect because the Commission had not established the existence of selective advantage for these measures.

The Commission may appeal only on points of law within two months after notification. The Court furthermore awarded all costs against the Commission.

Current position

It is anticipated that the Government of Gibraltar will move to reduce the rate of corporation tax from the current 27% to around 10% no later than 2011 and possibly earlier

Since 2004, the Government of Gibraltar has pro-actively introduced a series of measures to ensure that Gibraltar remains an attractive

location for the establishment of holding companies including the exemption from tax on interest income, on dividends from listed securities and from relevant participations, and on dividends paid to non-resident shareholders and other Gibraltar companies.

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