



Parliamentary questions

12 November 2015


P-014692-15

Question for written answer
to the Commission

Rule 130

Enrique Calvet Chambon (ALDE)

► **Subject: Publication of the decision on Gibraltar and the Income Tax Act 2010**

 Answer(s)

In October 2013, following a formal complaint by the Kingdom of Spain, the Commission launched an investigation to ascertain whether the new corporate taxation system in Gibraltar favoured certain kinds of companies.

On 4 March 2015, the Commission adopted a decision on Gibraltar's tax agreements practice. A written question was tabled on 12 March (**E-004128/2015**) seeking to know the outcome of the investigation. However, more than eight months later the final decision still has not been made public and its findings are still unknown.

This eight-month delay is an affront to transparency and legal certainty. Furthermore, it distorts and damages free competition on the EU market. No honest and diligent administration can justify this delay by claiming that eight months is not enough time to remove confidential elements from the decision so as to allow its publication.

Can the Commission provide us with information on the conclusion of this procedure? What are the real reasons why the Commission is taking much longer than usual to publish its decision on this matter?

Does the Commission not feel it should publish this decision at once?

Original language of question: **ES**

Last updated: 20 November 2015

[Legal notice](#)



Parliamentary questions

12 March 2015


E-004128-15

**Question for written answer
to the Commission**

Rule 130

Luis de Grandes Pascual (PPE) , Francisco José Millán Mon (PPE)

► **Subject: Gibraltar Income Tax Act 2010**

 **Answer(s)**

In 2002 Gibraltar introduced a reform on company tax which Spain referred to the CJEU. In 2011 the Court ruled in favour of the arguments made by the Commission and Spain, decreeing that the project was a form of state aid that was incompatible with EC law. In an attempt to shirk the mandate of the judgment, Gibraltar adopted a new tax system called the Income Tax Act 2010, which has been in force since 2011 and is designed to achieve an equivalent effect to the previous reform, i.e. not taxing companies that derive their income overseas and whose beneficial owners are not residents of Gibraltar for tax purposes.

In October 2013, following Spain's referral of 1 June 2012, the Commission decided to launch a formal investigation into the Income Tax Act, which was broadened on 1 October 2014 in view of the Commission's suspicions that the 165 tax agreements established between the Gibraltar authorities and various companies in 2011, 2012 and the first few months of 2013 might include illegal public aid provided to companies that do not generate their income in Gibraltar.

What is the current state of the Commission's investigation into the Income Tax Act 2010?

Original language of question: **ES**

Last updated: 31 March 2015

Legal notice



Parliamentary questions

29 May 2015

E-004128/2015

Answer given by Ms Vestager on behalf of the Commission

The decision on Gibraltar's tax ruling practice has not yet been published since there are ongoing discussions with the UK, particularly on confidentiality issues. Once the decision has been published, third parties can make comments and, taking those and the comments of the UK into account, the Commission will prepare a final decision for publication.

Last updated: 2 June 2015

[Legal notice](#)



Parliamentary questions

16 December 2015

P-014692/2015

Answer given by Ms Vestager on behalf of the Commission

As recalled by the Honourable Member, the Commission, on 1 October 2013, launched a formal investigation procedure into two corporate tax exemptions for passive income under the Gibraltar corporate tax regime, as introduced on 1 January 2011 under the Income Tax Act 2010 (ITA). This decision was published on 28 November 2013 and third parties, including Spain, submitted their comments. Meanwhile, the two tax exemptions concerned have been repealed.

On 1 October 2014, the Commission decided, on its own initiative, to extend the in-depth investigation and broadened it to include the tax ruling practice in Gibraltar under the ITA⁽¹⁾. On 4 March 2015 the Commission adopted a corrigendum, which does not affect the substance of the 2014 extension decision.

The extension decision on Gibraltar's tax ruling practice has indeed not yet been published. The reason for this is that the UK has raised a number of procedural issues which are being examined carefully by the Commission. Once the decision has been published, third parties can make comments that will be taken into account along with those of the UK. Subsequently, the Commission will prepare a final decision for publication.

The Commission is now investigating to determine whether the concerns it raised in the extension decision are confirmed. In particular, the Commission should ascertain whether there is state aid involved and whether this is compatible with EU rules. Tax investigations are complex and thus the Commission will take the necessary time so as to establish the facts and adopt its decision.

(1) See Press Release: http://europa.eu/rapid/press-release_IP-14-1073_en.htm

Last updated: 6 January 2016

[Legal notice](#)



EUROPEAN COMMISSION

PRESS RELEASE

Brussels, 1 October 2014

State aid: Commission extends in-depth investigation into Gibraltar corporate tax regime to include tax rulings practice

The European Commission has extended the scope of an ongoing in-depth investigation opened in October 2013 to verify whether the new Gibraltar corporate tax regime selectively favours certain categories of companies, in breach of EU state aid rules (see [IP/13/955](#)). The Commission will now also examine the Gibraltar tax rulings practice. The extension of an in-depth investigation gives interested third parties an opportunity to submit comments on the measures under assessment. It does not prejudice the outcome of the investigation.

The new Gibraltar income tax act (ITA 2010) introduced, among other changes, a tax rulings practice which allows companies to ask for advance confirmation of whether certain income, generated by companies incorporated in Gibraltar or that carried out an activity which generates income, are subject to taxation in Gibraltar.

The Commission has assessed 165 tax rulings granted by the Gibraltar tax authorities to different companies in 2011, 2012 and up to August 2013.

Based on the information submitted by the UK authorities, it appears that the Gibraltar tax authorities grant formal tax rulings without performing an adequate evaluation of whether the companies' income has been accrued in or derived from outside Gibraltar and therefore is exempted from taxation in Gibraltar. Even if the Gibraltar tax authorities are given considerable margin of manoeuvre under the ITA 2010, a misapplication of its provisions cannot be excluded at this stage.

The Commission has concerns that potentially all assessed rulings may contain state aid, because none of them are based on sufficient information so as to ensure that the level of taxation of the activities concerned is in line with the tax paid by other companies, which generate income that is to be considered accrued in or derived from Gibraltar.

The Commission therefore has doubts as regards the compatibility with EU state aid rules of the way in which Gibraltar tax authorities have applied the ITA 2010 using tax rulings. The Commission has therefore extended its ongoing in-depth investigation with regard to the ITA 2010, which was initiated in October 2013 (see [IP/13/955](#)) to also cover the tax rulings practice. The Commission will now continue investigating to determine whether its concerns are confirmed.

Background

The new Gibraltar corporate tax scheme under the ITA 2010 was introduced in 2011. It is based on the territorial principle: all activities deriving from or accrued in Gibraltar should be taxed in Gibraltar. Section 42 of the ITA 2010 introduces a tax rulings practice which

allows companies to ask in advance for confirmation if companies that are incorporated in Gibraltar or carried out an activity which generates income are liable to pay taxes in Gibraltar.

The Commission examined the Gibraltar corporate tax system on various occasions in the past. In July 2001 the Commission opened an in-depth investigation under the state aid rules in respect of a specific tax regime exempting companies without any trade or business in Gibraltar and not owned by Gibraltar residents from corporate tax (see [IP/01/982](#)). Companies that fulfilled these conditions but had a physical presence in Gibraltar paid a tax rate of between 2-10% on profits. Gibraltar subsequently abolished this scheme which was considered to favour offshore companies.

In August 2002, the UK notified an envisaged corporate tax reform, applicable to all companies in Gibraltar and consisting of a payroll tax, a business property occupation tax and a registration fee. In March 2004, the Commission found that the proposed tax reform selectively favoured certain categories of companies in breach of EU state aid rules (see [IP/04/404](#)). In November 2011, the EU Court of Justice upheld the Commission's decision, concluding that the combined effect of the tax measures would create a selective advantage for "offshore companies", which have no employees and do not occupy business property in Gibraltar (case [C-106/09 P](#), see also [Court's press release](#)).

The non-confidential version of today's decision will be published in the EU Official Journal and made available under the case number [SA.34914](#) in the [State Aid Register](#) on the [DG Competition](#) website. New publications of state aid decisions on the internet and in the Official Journal are listed in the [State Aid Weekly e-News](#).

Contacts :

[Antoine Colombani](#) (+32 2 297 45 13, Twitter: [@ECspokesAntoine](#))

[Yizhou Ren](#) (+32 229 94889)

For the public: **Europe Direct** by phone **00 800 6 7 8 9 10 11** or by [e-mail](#)



Preguntas parlamentarias

12 de noviembre de 2015

P-014692-15

Pregunta con solicitud de respuesta escrita a la Comisión
Artículo 130 del Reglamento
Enrique Calvet Chambon (ALDE)

► Asunto: **Publicación de la decisión sobre Gibraltar y el Income Tax 2010**

 Respuesta(s)

En octubre de 2013, después de una queja formal realizada por el Reino de España, la Comisión Europea abrió una investigación para verificar si el nuevo régimen de impuestos de sociedades en Gibraltar favorece a determinados tipos de empresas.

El 4 de marzo de 2015, la Comisión adoptó una decisión sobre la práctica de acuerdos tributarios de Gibraltar. El 12 de marzo se realizó una pregunta escrita (**E-004128/2015**) para averiguar el resultado de la misma. Sin embargo, después de más de ocho meses no se ha hecho pública y se desconoce el sentido de la decisión final.

La tardanza de ocho meses es un atentado contra la transparencia y la seguridad jurídica, además de distorsionar y dañar la libre competencia en el mercado europeo. Una administración honesta y diligente no puede argumentar ni justificar que tras ocho meses no ha sido capaz de depurar los elementos confidenciales que contenga la decisión para permitir su publicación.

¿Puede informarnos de la conclusión de este procedimiento? ¿Cuáles son los motivos reales por los que la Comisión tarda más de lo habitual en hacer pública la decisión sobre este asunto?

¿No considera la Comisión que se debe publicar dicha decisión inmediatamente?

Última actualización: 20 de noviembre de 2015

Aviso jurídico



Preguntas parlamentarias

12 de marzo de 2015


E-004128-15

**Pregunta con solicitud de respuesta escrita
a la Comisión**

Artículo 130 del Reglamento

Luis de Grandes Pascual (PPE) , Francisco José Millán Mon (PPE)

► Asunto: «Income Tax 2010» de Gibraltar

 Respuesta(s)

En 2002, Gibraltar implantó una reforma del impuesto de sociedades que fue denunciada por España ante el Tribunal de Justicia de la UE. En 2011, el Tribunal falló a favor de los argumentos defendidos por la Comisión y por España, al considerar que dicho proyecto constituía un régimen de ayudas de Estado incompatible con la normativa comunitaria. Para tratar de eludir el mandato de dicha sentencia, Gibraltar adoptó un nuevo régimen fiscal denominado «*Income Tax 2010*» (en vigor desde 2011), que alcanza un efecto equivalente al anterior: la no tributación de las sociedades que obtengan sus ingresos en el exterior y cuyos beneficiarios efectivos no son residentes fiscales en Gibraltar.

En octubre de 2013, la Comisión, como consecuencia de una denuncia de España de 1 de junio de 2012, decidió abrir un procedimiento formal de investigación del *Income Tax Act*, investigación ampliada el 1 de octubre de 2014 al sospechar la Comisión que los 165 acuerdos tributarios entre las autoridades gibraltareñas y distintas empresas en 2011, 2012 y los ocho primeros meses de 2013 podían incluir ayudas públicas ilegales a empresas que no generan sus ingresos en Gibraltar.

¿En qué estado se encuentra la investigación por parte de la Comisión del «*Income Tax Act 2010*»?

Última actualización: 30 de marzo de 2015

Aviso jurídico



Preguntas parlamentarias

29 de mayo de 2015

E-004128/2015

Respuesta de la Sra. Vestager en nombre de la Comisión

La decisión sobre la práctica de acuerdos tributarios de Gibraltar no se ha publicado aún, ya que hay conversaciones en curso con el Reino Unido, en particular sobre cuestiones de confidencialidad. Una vez publicada la decisión, podrán formularse observaciones por parte de terceros y, teniendo en cuenta estas y las que formule el Reino Unido, la Comisión preparará una decisión final para su publicación.

Última actualización: 2 de junio de 2015

[Aviso jurídico](#)



Preguntas parlamentarias

16 de diciembre de 2015

P-014692/2015

Respuesta de la Sra. Vestager en nombre de la Comisión

Tal como señala Su Señoría, la Comisión incoó el 1 de octubre de 2013 un procedimiento de investigación formal sobre dos exenciones del impuesto de sociedades para las rentas pasivas en el marco del régimen del impuesto de sociedades de Gibraltar, introducidas el 1 de enero de 2011 en virtud de la Ley del impuesto sobre los beneficios de 2010 («ITA»). Esta decisión se publicó el 28 de noviembre de 2013 y los terceros interesados, entre ellos España, presentaron sus observaciones. Entre tanto se derogaron las dos exenciones fiscales en cuestión.

El 1 de octubre de 2014, la Comisión decidió, por iniciativa propia, ampliar la investigación exhaustiva de forma que incluyera la práctica de acuerdos tributarios de Gibraltar con arreglo a la ITA⁽¹⁾. El 4 de marzo de 2015, la Comisión adoptó una corrección de errores, que no afectaba al fondo de la decisión de ampliación de 2014.

La decisión de ampliación sobre las prácticas de acuerdos tributarios de Gibraltar aún no se ha publicado. La razón de ello es que el Reino Unido ha planteado una serie de cuestiones de procedimiento que la Comisión está examinando cuidadosamente. Una vez publicada la decisión, los terceros podrán presentar observaciones, que se tendrán en cuenta junto con las del Reino Unido. A continuación, la Comisión formulará una decisión definitiva para su publicación.

Actualmente, la Comisión está estudiando la forma de determinar si se confirman las reservas planteadas en la decisión de ampliación. En particular, la Comisión debe determinar si existe ayuda estatal y si esta es compatible con las normas de la UE. Las inspecciones en materia tributaria son complejas y, por lo tanto, la Comisión se tomará el tiempo necesario para determinar los hechos y adoptar su decisión.

(1) Véase el comunicado de prensa: http://europa.eu/rapid/press-release_IP-14-1073_en.htm

Última actualización: 6 de enero de 2016

[Aviso jurídico](#)