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BRIEFING

UPDATE: THE SPANISH TAX LEASE  
APRIL 2016

- ON 14 APRIL THE EUROPEAN COURT OF JUSTICE PRONOUNCED ITS JUDGEMENT IN RESPECT OF THE SO-CALLED NEW SPANISH TAX LEASE.



Following a two-year-long legal battle the Sixth Chamber of the European Court of Justice pronounced its judgement in respect of the so-called new Spanish tax lease on 14 April 2016. The appeal filed by the Netherlands Maritime Technology Association was dismissed and judgement was in favour of the EU Commission, supported by the Kingdom of Spain.

Click [here](#) to read the judgment in full.

By means of a claim lodged before the EU General Court on 8 March 2013, the Netherlands Maritime Technology Association (the “NMTA”) brought an action for the annulment of the Commission’s Decision of 20 November 2012, concerning the Spain’s implementation of a tax scheme permitting the early depreciation of certain assets acquired through financial leasing (the “Decision”). This tax scheme, of general application, has often been the base for Spanish tax lease transactions for the financing of vessels. The NMTA alleged an infringement of Article 108(3) of the Treaty on the Functioning of the European Union (TFEU) and Articles 4(2) and 4(3) of the Council Regulation (EC) No. 659/1999 of 22 March 1999 (which lays down the rules for the application of Article 108 of the TFEU, the “Regulation”).

In essence, according to the NMTA, the Commission should have initiated the more formal procedure under Article 4(4) of the Regulation in assessing whether Spanish legislation supporting the national tax scheme constituted State aid. It argued that the circumstances and length of the proceedings coupled with an inefficient and incomplete examination of the measures gave rise to “serious difficulties”, so the

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Commission should have followed a more in-depth analysis than that which was carried out. The EU General Court dismissed the NMTA action with a judgement issued on 9 December 2014, which was then appealed on 26 February 2015, on three grounds:

- the General Court had failed to properly take into account all the arguments relied on by the appellant; and
- it had made a manifest error of assessment of the Decision and, finally
- it had insufficiently and contradictorily funded its judgement.

Finally, the EU Court of Justice rendered its judgement on 14 April 2016, stating that *"the appeal must be dismissed"*. As this Judgement is not subject to appeal the Spanish tax lease now benefits from full EU backing.

## FOR MORE INFORMATION

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Should you like to discuss any of the matters raised in this Briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



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Publication code number: 58143687v1 © Watson Farley & Williams 2016

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