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European inklings (EUi) III

CONCIERTO ECONÓMICO Y DERECHO DE LA UNIÓN EUROPEA

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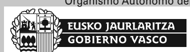

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Presentación del tercer número de los «European inklings» (EUi 3)

Juan Ignacio Ugartemendia Eceizabarrena

Nos complace presentar el tercer número de nuestra colección de obras de carácter monográfico *European Inklings*, colección que versa sobre determinados temas relativos a la Unión Europea de especial actualidad, y que, en esta ocasión, tiene su origen en las ponencias presentadas durante las Jornadas sobre «Concierto Económico, fiscalidad y Derecho Europeo. Kontzertu Ekonomikoa, fiskalitatea eta Europar Zuzenbidea», Jornadas celebradas en San Sebastián, los días 15 y 16 de octubre de 2013, en el Centro Carlos Santamaría (CCS) del Campus de Gipuzkoa de la UPV/EHU, bajo la dirección del profesor Isaac Merino Jara y de mí mismo. De esta forma seguimos manteniendo la vocación inicial de esta colección de monografías, que pretendemos sean el reflejo o el resultado de una serie de conferencias, jornadas o seminarios donde ponentes del más alto nivel exponen sus conclusiones en materias de interés, fomentando la participación con otros compañeros, estudiosos, y público en general, que de este modo pueden tener la ocasión de acercarse a sus aportaciones también a través de esta publicación que se ofrece tanto en formato digital como en papel (http://www.ivap.euskadi.net/r61-2362/es).

Tenemos que reiterar aquí nuevamente nuestro agradecimiento al Instituto Vasco de Administración Pública por su apoyo tanto a los *European Inklings* como a esta nueva publicación y a las mencionadas Jornadas que le anteceden, las cuales se han desarrollado, asimismo, en el marco de las actividades conjuntas de los Grupos de Investigación del Gobierno Vasco GIC IT-604-13 («Tributación de las actividades económicas en el País Vasco: la incidencia del Derecho Comunitario») y GIC IT675-13 («Derechos Fundamentales y Unión Europea»), y de los Proyectos de Investigación Subvencionados por el Ministerio de Economía y Competitividad: DER 2012-39342-C03-01 («La coordinación de los distintos niveles de imposición como herramienta para evitar la sobreimposición y elusión fiscal»), y DER 2011-25795 («La eficacia de los Derechos Fundamentales de la Unión Europea: cuestiones avanzadas»), así como de la UFI 11/05 («Integración política y económica en la UE»). Finalmente, debemos dejar constancia, igualmente, de nuestra gratitud hacia Juana Mari Astigarraga Zulaika y Ana María San Miguel Osaba por la eficaz ayuda prestada en todo lo relativo a la preparación y celebración de las Jornadas, y a esta última, además, por su contribución a esta publicación con su labor de corrección y cuidado de los textos que en la misma se recogen.

Donostia, 11 de febrero de 2014

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Declaration of illegal state aid: the Basque Country's "tax holidays". Tax equality that discriminates against the shareholder[1]

María Eugenia Simón Yarza

Abstract: In 1993, the Basque Country passed a special scheme for Corporate Income Tax that concedes significant advantages for the companies included. It is commonly known as the Basque Country's "tax holidays".

In 2001, the European Commission declared that Tax holidays constitute an illegal state aid. Furthermore, they imposed upon the Spanish state an obligation to recover the amount corresponding to the aid ceded through this fiscal regime. The European Union Court of Justice corroborated the validity of the declaration made by the European Commission.

According to EU law, the right of the state to reclaim benefits accorded by the Tax holidays has not expired. In accordance with the state law, this right would have expired. The difference between the criteria of the internal norms and EU norms has been resolved by applying the primacy of the EU law.

The restitution of the benefits obtained through the Tax holidays could provoke a situation of double taxation of dividends.

The 2nd Additional Provision of Law 43/1995, update to the 1st Additional Provision of the Consolidated Version of Corporate Income Tax Law (*Texto Refundido de la Ley del Impuesto sobre Sociedades*, TRLIS) prohibits the passive subjects of Corporate Income Tax from correcting the double taxation if the dividends are derived from revenue proceeding from the fiscal holidays. When it is passed, the norm is deemed just because these revenues do not support Corporate Income Tax in the seat of participating entity, and therefore, its distribution does not provoke double taxation.

The obligation of the entities to restitute the benefits corresponding to the Tax holidays voids the prohibition of the 2nd Additional Provision of Law 43/1995 (update to 1st Additional Provision TRLIS).

According to the Spanish legal system, the right of the shareholder to demand the return of indebted revenue corresponding to the double taxation of dividends could have expired. The most convenient option to correct the double taxation of dividends for shareholders who could not demand the return of the indebted revenues is to demand compensation for damages suffered as consequence of the legislative activity of the state.

Keywords: Dividends, double taxation, Basque Country's "tax holidays", illegal state aid.

[1] This communication has been completed within the framework of the research project DER1019-39342-C03-01 of the "Ministerio de Economía y Competitividad" (Department of Economy and Competitiveness).

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§ The agonising situation of Spanish shipyards, faced with the risk of 80,000 job losses, has undermined the drive of an impoverished and tired sector, which is required to pay out revenue that during years of economic prosperity was not demanded.

The difficult situation that faces the shipyards is a result of the 2011 ruling of the European Union that branded the benefits derived from the system known as Spanish tax leasing, to which the country's shipping companies had been a part from the year 2002, as illegal state aid[2]. The declaration could bring with it the obligation that the vessels' leaseholders, or their shareholders under fiscal transparency regulations, repay up to 3,000 million euros given them in tax benefits now considered illegal state aid. Such a situation would prompt the closure of the affected businesses.[3]

It is clear that the effects of the declaration of illegal state aid are not limited to the burden placed on the buyers of vessels, who will be required to repay the value of the benefits they had been granted. The restitution may have indirect effects, in that shipyards will not find investors disposed to finance the acquisition of new vessels if the fiscal engineering operation disappears, with which it is now possible to avoid taxation of capital gains made by the previous sale of the vessel.

§ Not all the effects that result from the declaration of illegal state aid are so obvious. It is occasionally difficult to identify them.

The objective of this paper is to reflect on one such outcome that could be overlooked, which I intend to discuss with reference to an already definitive resolution: the judgment of the European Union Court of Justice (EUCJ) of 2011, which ratified the declaration of the European Commission that named the Basque Country's "tax holidays" illegal state aid and obliged Spain to reclaim the sums that went uncollected through application of the special tax scheme.[4] I refer here to the double taxation of dividends and profit shares that results from the reclamation of the amount that was not previously collected under the Basque Country's tax holiday system.

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[2] This system combines the benefits of accelerated depreciation under financial leasing with the imputation of losses under tax transparency for the participants in a group of common economic interest that subsequently sold the loaned vessel without paying capital gains tax because it had previously become part of the special scheme for shipping companies dependent on tonnage.

[3] A critical reflection on the impact that the declarations of the Commission that consider certain measures adopted by Member States illegal have on the principle of legitimate expectations may be found in MERINO JARA, I., "Ayudas de Estado y confianza legítima", *Quincena fiscal*, n.º 19, 2009, Cizur Menor, Aranzadi, 2009.

[4] "Otros beneficios fiscales de las normas forales vascas han sido también declarados por la Comisión contrarios al mercado común, entre otros motivos por tratarse de ayudas en las que el carácter discrecional de la administración fiscal por no ser el incentivo de concesión automática, afirmándose su carácter de ayudas ilegales por no haber sido notificadas a la Comisión, y otro tanto cabe afirmar respecto de las vacaciones fiscales". *Cfr.* VILLAR EZCURRA, M., "Competencia fiscal lesiva y ayudas de Estado", *Internacionalización de las inversiones*, Bosch, Madrid, 2009, p. 843.

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§ The presentation of the problem of double taxation of dividends that arises as a result of the declaration of "tax holidays" as illegal state aid requires firstly an explanation of the juridical *iter* that was opened up by said declaration. I will begin, then, by presenting the fundamental facts of the situation.

§ In order to revive the business sector at a time when the economy was going through a difficult period, in 1993 the provincial governments of the Historical Territories of the Basque Country approved a special regulation within the national corporate tax system (IS) that allowed companies that chose to be part of it to be taxed at low rates, or not at all.[5] This system is commonly referred to as the Basque Country's "tax holidays".

Given that the income of the companies that paid tax under the tax holiday scheme was subject to an insignificant or null tax, the legislator prohibited the application of the deduction for double taxation of dividends and profit shares distributed by companies that paid tax using this scheme.[6] The restriction was appropriate because if the companies under the tax holiday scheme did not pay tax, the profit distributed to its shareholders could not bear any such double tax burden and it seemed unjust to correct the double taxation.

In 2001, the European Commission declared the tax holiday system illegal state aid and required that the Spanish state reclaim the amount equivalent to the benefits previously granted by these specific regulations. Spain referred the matter to the judgment of the EUCJ. In the ruling of December 14, 2006, the EUCJ dismissed in the first instance the action

[5] *Cfr*. The Provincial Laws (Normas Forales) 5/1993, of 24 June, Vizcaya (BO. Vizcaya de 7.7.1993); 11/1993, of 26 June, Guipúzcoa (BO. Guipúzcoa de 8.7.1993); y 18/1993, of 5 July, Álava (BO. Territorio Histórico de Álava de 16.7.1993). The application of reduced rates was granted for a time period of 10 years.

"Pese a reconocer que las reglas sobre ayudas de Estado se aplicaron tempranamente a los incentivos fiscales, es constatable su más estrecha vigilancia desde la instauración del mercado interior, el 1 de enero de 1993, pues el endurecimiento entonces de las condiciones de competencia en un espacio sin fronteras interiores no hizo sino resurgir nuevas formas de intervencionismo público para proteger producciones, sectores o industrias nacionales." *Cfr*. VILLAR EZCURRA, M., *op. cit*., pp. 810-811.

[6] The deduction for double taxation of dividends and profit shares, which in the Corporate Tax Law 43/1995, of 27 December (LIS 95) was regulated by art. 28 of the LIS 95, may now be found in art. 30 of the Real Decreto Legislativo 4/2004, of March 5 (Revised Corporate Tax Law, TRLIS). *Cfr*. BOE 28.12.1995 and BOE 11.3.2004.

The restriction on applying the deduction to dividends and profit shares distributed by companies that had enjoyed the tax holiday scheme was first outlined in the 2nd Additional Provision (DA) of LIS 95 and may currently be found in the 1st DA of the TRLIS.

"No tendrán derecho a la deducción prevista en el artículo 30 de esta Ley: b) Los dividendos distribuidos con cargo a beneficios correspondientes a (…) rendimientos procedentes de sociedades acogidas a la bonificación establecida en el artículo 19 de la Ley Foral 12/1993, de 15 de noviembre, y en la disposición adicional quinta de la Ley 19/1994, de 6 de julio, o de sociedades a las que sea aplicable la exención prevista en las Normas Forales 5/1993, de 24 de junio, de Vizcaya, 11/1993, de 26 de junio, de Guipúzcoa, y 18/1993, de 5 de julio, de Álava.". *Cfr*. DA 1.ª.b) of the Real Decreto Legislativo 4/2004, of 5 March, through which the consolidated version of the Corporate Tax Law was approved. Emphasis added.

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brought by the State. The decision was challenged on appeal and the EUCJ upheld the first instance and, with it, the ruling of the Commission.[7]

There rests, therefore, on the Spanish state, the duty of claiming from the companies that benefited from the Basque Country's tax holiday system the sums not paid as a result of the application of this scheme, that the Commission has since declared illegal state aid.

§ Do the sums the companies affected by the statement of the Commission will be forced to return have tax status, or not? This matter was raised in two judgments of the Supreme Court of the Basque Country 27.12.2010 and 11.4.2011. The Supreme Court (TSJ) did not discuss the nature of the sums to be reclaimed from taxpayers in either of these resolutions, though the litigants did so, and one of the judges in his dissent.

The Provincial Council of Álava, the defendant in the process, considers that the Commission's ruling is a novation of the nature of the benefits. That is, the declaration of the illegality of such state aid has a constitutive force that transforms the tax sums that went unpaid under the tax holiday scheme into "non-tax revenue". From the wording of the claims made by the Council one can see that "illegal aid" and "tax revenue" are incompatible concepts; the unlawful aid can not be tax revenue.

The position of the plaintiff and the magistrate in the processes differs from that of the Council. These parties consider that the amounts demanded by the state government are the same tax sums that were not charged in the financial year under review through application of the special scheme.[8] They base their position on the fact that the illegality of the measures does not alter the tax status of the aid, and additionally on a notation that appears in an item of the payment document issued by the state government: "revenue Corporate Income Tax due".

In my view, the magistrate was right, who in dissenting to both of the Basque Country's Supreme Court judgments, affirmed that the illegality of the aid does not change the tax nature of the sums that at the time were not paid. On the other hand, this declaration on the nature of the sums that the State should demand is reinforced by art. 87.1 EC Treaty and by the *Commission's Communication on the application of State aid regulations to measures relating to direct business taxation*.[9] According to art. 87.1 EC Treaty, illegal state aid may

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[7] *Cfr*. EUCJ ruling, 9.6.2011, Joined Cases Territorio Histórico de Vizcaya-Diputación Foral de Vizcaya, Territorio Histórico de Álava-Diputación Foral de Álava y Territorio Histórico de Guipúzcoa-Diputación Foral de Guipúzcoa *vs* Commission (C-465/09 P to C-470/09 P), and EUCJ ruling 28.7.2011, Joined Cases Territorio Histórico de Vizcaya-Diputación Foral de Vizcaya, Territorio Histórico de Álava-Diputación Foral de Álava y Territorio Histórico de Guipúzcoa-Diputación Foral de Guipúzcoa *vs*. Commission (C-474/09 P to C-476/09 P).

[8] "En el caso de las MFS (medidas fiscales selectivas), la "devolución de la ayuda ilegítima" consiste en el devengo de las obligaciones tributarias no exigibles en su momento o exigibles en menor cuantía por efecto del beneficio o ventaja fiscal correspondiente en cada caso." *Cfr*. SOLER ROCH, M.T., "Las medidas fiscales selectivas en la Jurisprudencia del TJCE sobre ayudas de Estado", *Quincena Fiscal*, n.º 14, Cizur Menor, Aranzadi, 2006.

[9] *Cfr*. DOCE n. C 384, 10.12.1998, n. 16.

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be declared “in any form whatsoever”.[10] The Commission’s Communication considers that the unlawful aid established by tax regulations is an unwarranted exception to the operation of the tax system to the advantage of certain companies in the Member State.

§ It seems logical for the state to recover the tax that was not collected by means of the application of the tax regulations that did not apply under the tax holiday scheme. However, the time elapsed since the companies enjoyed “tax holidays” makes it difficult for the state to settle the tax retroactively.

2004 was the last year in which companies enjoyed the state aid since declared illegal. From then to 2011, the year in which the EUCJ issued its judgment confirming the Commission’s statement, more than four years passed, which is the time limit on the right of the state government to settle and demand the payment of taxes due.

In accordance with its internal regulations, the Spanish state does not have the right to demand that the beneficiaries of “tax holidays” pay back the sums corresponding to the tax year in which they took advantage of this aid.

On the other hand, European legislation gives the Commission a window of 10 years to oblige the State to recover the aid declared illegal.[11] According to these regulations, the declaration and the requirement to recover the aid was made on time: 10 years had not passed from the date of the approval of the Provincial Laws (1993) and the year in which the Commission issued its declaration and established the obligation to recover the aid (2001). As for the 10 years since objection to the declaration and the EUCJ judgment of 2011: it should be considered that this period will not count toward the prescription.[12] The solution to the problem of the divergence of time limits allowed by the rule of internal law and that of Community law is the principle of *the primacy of Community law*, as shown by the well known ruling of the European Communities Court of Justice Costa/ENEL, July 15, 1964. According to this principle, the Community rule, which sets a term of 10 years to declare the

[10] “The alteration of the level-playing field between competing undertakings in the common market is the key main element in the state-aid notion and it is inextricably linked with the idea of providing a selective advantage. It derives from the wording of Article 87 EC according to which it is prohibited “any aid ….which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States”. The elements of distortion of competition and effect on trade are somehow inherent in the alteration of the competitive level-playing-field. There is no de-minimis limitation to the significance of the alteration of the level playing field to prove the presence of state aid.” *Cfr*. ROSSI-MACCANICO, P., “Community Practice in Reviewing Fiscal Aids and Other Competition Distortions Relating to Direct Business Taxation”, *Fiscalità Internazionale*, n.º 4, 2009.

[11] *Cfr*. Council Regulation (EC) No 659/1999 of 22.12.1999 laying down detailed rules for the application of Article 93 of the EC Treaty.

[12] “La posibilidad de que se interrumpa el cómputo de la prescripción por cualquier acción emprendida por la Comisión o por un Estado miembro a petición de la Comisión y que esté relacionada con la ayuda ilegal hace que la configuración de la prescripción en materia de ayudas presente unos contornos tan extensos que dotan a la potestad de la Comisión de una fuerza extensiva ilimitada, como confirman los pronunciamientos del Tribunal comunitario.” VILLAR EZCURRA, M., *op. cit*., p. 832.

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state aid illegal and to fulfill the consequent obligation to recover it, should be applied. The implementation of the national rule of prescription should be suspended.

According to all the above, then, the State is entitled by the legislation to recover taxes that went uncollected under the tax holiday scheme.

§ Outlined thus far are the main facts concerned with the Commission's statement. I shall now present the problem posed by the overtax of dividends that this statement triggers.

The 2nd Additional Provision (DA) of Corporate Tax Law of 1995 [13] or LIS 95 (now 1st DA of the Revised Corporate Tax Law [14] or TRLIS) prohibits deduction for double taxation of dividends and profit shares gained from the transferral of shares in funds belonging to companies based in Spain, when these funds came from benefits that enjoyed exemption under the Provincial Laws: 5/1993, June 24, Vizcaya; 11/1993, June 26, Guipúzcoa; and 18/1993, 5 July, Álava (the Basque Country's tax holiday scheme).

This law is justified to the extent that the special tax holidays scheme deploys its efficacy and the income the shareholder receives bears the national corporate tax only through this scheme.

The decision of the EUCJ that confirms the statement of the Commission and the obligation imposed on Spain to reclaim taxes for the years in which the companies implemented the tax holiday scheme, makes the existence of the prohibition unnecessary. If "tax holidays" no longer exist, the ban loses the basis for its existence.

On the other hand, the revocation of "tax holidays" and consequent reclamation of unpaid taxes, introduces unjustified discrimination into the legal system. The shareholder or beneficiary companies that did not enjoy the deduction for double taxation under the 2nd DA of LIS 95 (now 1st DA of the TRLIS) are now disadvantaged compared to the shareholders of the majority of companies. For, while the latter see the over taxation of dividends or shares in profits of resident companies corrected, shareholders of the companies that benefited from "tax holidays" are forced to put up with double taxation, without having committed any unlawful conduct that might justify the damage they suffer. To the tax paid by the investee partner is added the tax that must be paid to the State government for income that it received through the Basque Country's special scheme.

§ The demand for the national corporate income tax fees (IS) on companies that opted to partake in the tax holiday scheme should prevent the application of the prohibition that the 2nd DA of LIS 95 established.

The Spanish tax system does have a mechanism to correct this sort of situation, in which taxes are deposited which should have been neither demanded nor paid: the return of such unduly paid money. However, the problem that the format of the prescription poses also arises here.

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[13] Law 43/1995, of 27 December (BOE 28.12.1995).

[14] Approved by Real Decreto Legislativo 4/2004, of March 5 (BOE 11.3.2004).

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Spanish law determines that the taxpayer's right to recover sums unduly paid to the State government should expire after four years.[15] After this period, one cannot demand the restitution of what was unduly paid. Accordingly, companies that did not enjoy the deduction on account of the 2nd DA of LIS 95 (now DA 1st TRLIS) and have lost the right to recover the sums unduly paid as a result of the prescription are forced to bear an unfair double taxation.

Unlike what happens with the prescription of the right of the State to recover the taxes not paid under the tax holiday system, Community law does not extend the time limit for legal action to the right to demand the unduly paid revenue. The internal regulation, therefore, deploys its full effectiveness and the right to reclaim unduly paid revenue expires after four years.

§ Of the many possible solutions to correct the double taxation suffered by the shareholder as a result of the 2nd DA of LIS 95 (now 1st DA of the TRLIS), there are three that I find of particular interest.

First, the state could consider that the amount of corporate income tax paid by shareholders who paid tax on dividends according to the 2nd DA LIS 95 (now 1st DA TRLIS), constitutes payment on account of corporate tax of the investee company. In this case, the investee company would deduct these payments from the amount that it is required to repay and, consequently, it would be sufficient to pay the difference between the total of the share of the restitution of the aid declared illegal and the amount of corporate tax that the partners had paid through dividends or profit shares distributed by the company.

The double taxation could also be mitigated on the part of the shareholders of the companies that implemented the "tax holidays". In this sense, one could give each shareholder a tax credit for the total value of the amounts of corporate tax that it unduly satisfied by application of the 2nd DA of the LIS 95 (now 1st DA of the TRLIS). The basis of the argument for this solution would be the theory of *actio nata* as the date of commencement of the time-limit on the right to return unduly paid sums, given that the undue sums acquired their character by overridden means, with the Community decision taken as firm and conclusive.

From a theoretical point of view these two solutions are satisfactory, but their implementation would be complex and raises multiple questions. To give one example, it is difficult to establish a method by which the investee company could calculate the excess corporate tax satisfied by the shareholders, and the same is true of determining the start date of the time-limit for the shareholder to reclaim the credit.

The third option to correct the double taxation — in my opinion, the most appropriate — involves recourse to the financial responsibility of the State government. The shareholder

[15] "Prescribirán a los cuatro años los siguientes derechos: c) El derecho a solicitar las devoluciones derivadas de la normativa de cada tributo, las devoluciones de ingresos indebidos y el reembolso del coste de las garantías. d) El derecho a obtener las devoluciones derivadas de la normativa de cada tributo, las devoluciones de ingresos indebidos y el reembolso del coste de las garantías." (*Cfr.* Article 66 Ley General Tributaria, BOE 18.12.2003).

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who is harmed by the 2nd DA of the LIS 95 could demand that the State government pay compensation for damages suffered as a result of the state's legislative activity.[16]

When the legislature approved the 2nd DA of LIS 95 (now 1st DA of TRLIS), its content brought the constitutional principle of equality into effect, which implies that different situations receive different treatment with regard to tax, and responds to the duty to promote a fair tax system. In this sense, the 2nd DA of the LIS 95 (now 1st DA of TRLIS) determined that dividends paid by companies exempt as a result of the tax holiday scheme suffered a tax equivalent to that of dividends appropriate to companies subject to the general regulations of the national corporate tax system.

The Commission's statement causes a sea-change in the valuation of the 2nd DA LIS 95 (now 1st DA TRLIS). The regulation becomes a means to prejudicial to the principle of equality and of the duty to promote a fair tax system enshrined in art. 31 of the Spanish Constitution. As the income subject to the tax holiday scheme was taxed under the general rules of the corporate tax system, the tax burden on dividends and profit shares from such income is equivalent to that placed on the dividends or profit shares distributed by companies subject to the general corporate tax scheme. There is no reason dividends and profit shares in companies that chose the tax holiday system should have to bear a greater tax burden than other dividends and profit shares.

The ruling on the unconstitutional character of the regulation for its violation of the principle of equality and the duty to promote a fair tax system enshrined in art. 31 Spanish Constitution corresponds to the Constitutional Court.

If the 2nd DA LIS 95 (now 1st DA TRLIS) was unconstitutional, it would have produced a tort of the fundamental right of shareholders to private property, enshrined in art. 33 of the Spanish Constitution and art. 1 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).[17]

In order to recover the sums unduly paid, after exhausting administrative remedies, the shareholders affected by the 2nd DA LIS 95 (now 1st DA) would have to go to court. The petition before the jurisdiction of the administrative court should be based on the unconstitutionality of the 2nd DA LIS 95 (now 1st DA TRLIS) for having produced arbitrary discrimination that affects the fundamental right to property. If the Constitutional Court considers that the regulation is unconstitutional, the administrative court should declare the obligation of the State government to compensate the claimants for harms and damages. If the 2nd DA LIS 95 (now 1st DA TRLIS) were not declared unconstitutional, the shareholders would retain the right to have recourse to the ECHR. Since, in previous and similar cases to that on which I have commented, the ECHR has respected claims for violation of the right to property and required the compensation of the affected individuals, the claim before the ECHR could be successful.

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[16] *Cfr.* SIMÓN ACOSTA, Eugenio, "Los fundamentos de la responsabilidad patrimonial del Estado legislador en materia tributaria", *Dal Diritto Finanziario al Diritto Tributario. Studi in onore di Andrea Amatucci*, vol. V, Editorial Temis, Bogotà-Napoli, 2011.

[17] *Cfr.* the judgment of the European Court of Human Rights S.A. Dangeville *vs* France, 16.4.2002.

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