


# Art.3(5) - different fiscal years

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<b>Article</b>	<i>Article 3(5) - fiscal years</i>
	<i>single undertaking; different fiscal years</i>
	<i>SK</i>

According to Article 3, paragraph 5 of Commission Regulation (EU) No 1407/2013 (hereinafter “de minimis regulation”) the period of three fiscal years shall be determined by reference to the fiscal years used by the undertaking in the Member State concerned. Our question is which undertaking is relevant in cases when aid applicant forms a single undertaking with another company and these companies use different fiscal years.

Example:

Undertaking A and Undertaking B form the single undertaking, where:

- Fiscal year of Undertaking A starts on 1. January,
- Fiscal year of Undertaking B starts on 1. July .

Undertaking A applied for the aid in amount of 100 000 EUR, aid is going to be granted on February 2018.

Undertaking A received another aid in year 2016 in amount of 50 000 EUR and another one in October 2015 in amount of 25 000 EUR.

Undertaking B received aid in November 2015 in amount of 100 000 EUR.

All of these aids were granted/are considered under de minimis regulation.


How should we assess the cumulation of aid received by this single undertaking? We would like you to provide us with your understanding of this situation and either identify the correct approach from scenarios presented below or suggest some other solution to given issue.

### **Scenario 1**

Three fiscal years are determined by fiscal years of aid applicant (Undertaking A)

In this situation, we need to cumulate newly assessed aid for Undertaking A and the aid received by this undertaking in year 2016, thus the total amount of aid granted to single undertaking should be  $100\,000 + 50\,000 = 150\,000$  EUR, which is under the ceiling laid down in Article 3(2) de minimis regulation.

However, if the aid applicant was Undertaking B, the same situation would be assessed differently. In that case, we would need to cumulate newly assessed aid, the aid received by undertaking A in years 2015 and 2016 and the aid received by Undertaking B in year 2015. The total amount of aid granted to the single undertaking would be  $25\,000 + 50\,000 + 100\,000 + 100\,000 = 275\,000$  EUR, therefore, new aid could only be granted in amount of 25 000 EUR.

	<p><b>Scenario 2</b></p> <p>The cumulation of aid is assessed on union of fiscal years of each legal entity being part of a single undertaking. In this case, the respective fiscal years of each legal entity is added together, which creates one long accounting period and any aid granted to any legal entity within this period is cumulated. In our example, the newly assessed aid could be granted in amount of 25 000 EUR (instead of requested 100 000 EUR) as all aid granted to undertakings A and B is summed up.</p> <p><b>Scenario 3</b></p> <p>The cumulation of aid is assessed for each undertaking based on its own fiscal year and then aggregated to one sum. This approach is similar to scenario 2, but is more precise in identification of relevant period. In our case, we would need to cumulate newly assessed aid to Undertaking A, the aid granted to Undertaking A in year 2016 and the aid granted to Undertaking B in November 2015. As a result, new aid could be granted in amount of 50 000 EUR.</p> <p>Each of the scenarios has its own flaws, scenario 1 returns different results depending on which legal entity applies for aid and it is not viable option in cases, where project partnership is employed (Single undertaking is not an aid applicant, but receives support as the partner of the aid applicant. It could be situation when Undertaking C is the aid applicant and undertakings A and B from out example are the partners partially responsible for implementation of the project), scenarios 2 and 3 extend the assessed period to more than 3 fiscal years and administrative burdens of these scenarios rise with number of legal entities being part of a single undertaking.</p>
	<p>2018.02.07</p>
	<p> Reply</p> <p>If the fiscal years are different for several legal entities that form one "single undertaking", the fiscal years of the upstream legal entity that control other legal entities within the single undertaking should be used.</p> <p><i>Disclaimer: This reply does not represent a formal and definite position of the European Commission but is only an informal guidance provided by the services of DG Competition to facilitate the application of the GBER. It is therefore not binding and cannot create legal certainty or legitimate expectations.</i></p>

<b>COMP Reply date</b>	2018.04.10
	<ul style="list-style-type: none"><li>• <a href="#">COMPsupport ESTATE-AID-WIKI</a></li></ul>

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