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By PwC Deutschland | 26. Juni 2025

Update: General Court annuls Commission’s decision on Spanish tax scheme

The General Court invalidates the Commission’s decision declaring the Spanish tax scheme on the deduction for indirect acquisitions of shareholdings in foreign companies unlawful.

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Following a complaint from a private operator, the Commission examined more closely the tax scheme in question. By decision of 28 October 2009, concerning acquisitions of shareholdings made within the European Union, and decision of 12 January 2011, concerning acquisitions of shareholdings in companies established outside the EU ('the initial decisions'), it declared that the measures in question constituted State aid. This decision was unsuccessfully contested before the General Court.

In July 2013, the Commission examined **a new interpretation** of the tax scheme which was formalized in a binding opinion sent by the Spanish authorities. According to the Commission's opinion, that interpretation extended the initial scheme to the financial goodwill resulting from the indirect acquisitions of shareholdings in non-resident undertakings through the direct acquisition of shareholdings in non-resident companies. By decision of 15 October 2014, the Commission concluded that that new tax measure was new aid which was incompatible with the internal market. Consequently, it required Spain to put an end to that aid scheme and to recover the aid granted under that scheme. Spain and several companies concerned requested the General Court to annul the Commission's decision.

With its current judgment of 27 September 2023, the General Court upholds those actions and annuls the Commission's decision of 15 October 2014.

According to the Court, the Commission could not revoke or withdraw its initial decisions. First, it had not been demonstrated that those decisions were based on inaccurate information. Secondly, this is a question of lawful decisions which conferred on Spain, subject to conditions and on account of the existence of a legitimate expectation, a subjective right to implement the aid scheme in question, even though it has been declared incompatible. Incidentally, they conferred on the undertakings benefiting from that scheme a subjective right not to have to repay certain unlawful aid. By withdrawing those rights, by its decision of 15 October 2014, as regards the indirect acquisition of shareholdings, the Commission infringed the principles of legal certainty and the protection of legitimate expectations.

More details of the judgments to be found **in the PwC EUDTG Newsalert - 29 September 2023.**

Update (26 June 2025)

In its decision today, the European Court of Justice (ECJ) confirmed the annulment of the Commission's decision declaring unlawful the Spanish tax scheme on the deduction for indirect acquisitions of shareholdings in foreign companies.

The ECJ notes that it is expressly stated in the initial decisions that the exceptions to the cessation and recovery obligations relate to both direct and indirect acquisitions of shareholdings. Since it had been finally established that those initial decisions were lawful, the General Court was required to infer from them, as it did, that those exceptions related to both types of shareholding acquisition. Both those types of shareholdings are therefore

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protected by the legitimate expectations recognized by the Commission in the initial decisions.

More details to be found **here**.

Source:

Judgments of the General Court in Cases T-826/14 *Spain v Commission;* **T-12/15** *Banco Santander and Santusa v Commission;* **T-158/15** *Abertis Infraestructuras and Abertis Telecom Satélites v Commission;* **T-252/15** *Ferrovial and Others v Commission*; **T-253/15** *Sociedad General de Aguas de Barcelona v Commission;* **T-256/15** *Telefónica v Commission;* **T-257/15** *Arcelormittal Spain Holding v Commission*; **T-258/15** *Axa Mediterranean v Commission*; **T-260/15** *Iberdrola v Commission*.

Schlagwörter

illicit state aid, share acquisition