

State Aid: General Court Annuls Commission Decision on Spanish Tax Scheme on Deduction for Indirect Acquisitions of Shareholdings in *Spain v. Commission* (Case T-826/14)

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On 27 September 2023, the General Court of the European Union gave its judgement in *Spain v. Commission* (Case T-826/14) on the Spanish tax scheme with respect to the deduction for indirect acquisitions of shareholdings in foreign companies (for prior coverage and details, see [State aid: European Commission opens in-depth investigation into amended Spanish tax scheme for acquisition of shares in foreign companies \(17 July 2013\)](#)). The General Court annulled the Commission's decision of [15 October 2014](#) declaring the Spanish tax scheme on the deduction for indirect acquisitions of shareholdings in foreign companies unlawful ([SA. 35550](#)) and ordered the Commission to pay the costs.

As background:

- in 2002, Spain introduced a new corporate tax scheme which allowed companies that had acquired shareholdings in a foreign company to deduct from the tax base the goodwill resulting from the acquisition of the shareholding (in the form of amortization);
- in 2006, the Commission stated that the Spanish tax scheme did not fall within the scope of EU State aid rules;
- the Commission (with its decisions of 28 October 2009 and 12 January 2011 which concerned acquisitions of shareholding made within and outside the European Union, respectively), declared that:
 - the measures in question constituted State aid incompatible with the internal market;
 - ordered Spain to recover that aid; but
 - allowed the continuation of the scheme (subject to conditions) by application of the principle of the protection of legitimate expectations;
- in July 2013, the Commission examined a new interpretation of the Spanish tax scheme. By its decision of 15 October 2014, it concluded that, under the new interpretation, the initial scheme was extended to capture the financial goodwill resulting from the indirect acquisitions of shareholdings in non-resident undertakings through the direct acquisition of shareholdings in non-resident companies. On that basis, the Commission declared that the new measure constituted aid incompatible to the internal market, thereby ordering Spain to end it and recover the aid granted under the scheme; and
- following the latest decision of the Commission, the applicant and other interested parties requested the General Court to annul said decision as – among others – it infringed the principle of legal certainty and of the protection of legitimate expectations.

In the current decision, the General Court annulled the Commission's latest decision considering that, among other things, the decisions of 28 October 2009 and 12 January 2011 already covered the cases of acquiring (direct and indirect) shareholdings within and outside of the European Union. On that basis, the Commission had no entitlement to adopt the decision of 15 October 2014 which essentially amounted to a withdrawal of lawful decisions and as a result, infringed the principles of legal certainty and the protection of legitimate expectations.

An appeal, limited to points of law only, may be brought before the ECJ against the decision of the General Court within 2 months and 10 days of notification of the decision.

Note: On 27 September 2023, the General Court of the European Union gave its judgement in several other cases regarding the Spanish tax scheme in question. All actions to annul the European Commission Decision of 15 October 2014 on the Spanish tax scheme have been accepted by the General Court.

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