

## **EU General Court Annuls The EC's Decision On The Spanish Tax Scheme On Indirect Acquisitions Of Foreign Shareholdings (Spanish Goodwill)**

On 27 September 2023, the General Court of the European Union (GCEU) delivered its judgments upholding several appeals brought by the Kingdom of Spain and several companies against the European Commission's (EC) decision declaring the Spanish tax scheme on the deduction for indirect acquisitions of shareholdings in foreign companies to be unlawful State aid. As a result, the GCEU annulled the EC's decision.

### **Facts**

In 2002 the Spanish authorities introduced a corporate income tax scheme allowing companies that acquired shareholdings in a foreign company to deduct the resulting goodwill over a certain number of years. In 2006, in response to different parliamentary questions, the EC stated that such scheme did not breach the EU State aid rules.

Despite that, following a complaint by a private company, the EC initiated a formal investigation procedure that eventually led to the adoption of two separate decisions, concerning, respectively, acquisitions of shareholdings made within the EU and outside the EU (the two initial decisions), and declaring that the measures in question constituted State aid incompatible with the internal market. However, the EC allowed that, in certain cases, the scheme could continue to apply, due to the principle of the protection of legitimate expectations. After a long appeal procedure, both decisions were ultimately upheld by the Court of Justice of the EU (Cases C-50 to C-53/19P, C-64/19P and C-65/19P). For further details these judgments, you may refer to our previous newsalert by clicking [here](#).

In 2012 the Spanish authorities introduced a new interpretation of the tax scheme through a binding opinion delivered by the General Directorate for Taxation and a resolution by the Central Tax Tribunal according to which the goodwill amortization regime would be applicable in both direct and indirect acquisition cases. The EC reviewed this interpretation and concluded that it extended the initial scheme by allowing the amortization of the goodwill resulting from indirect shareholdings acquisitions. This was in contrast to the initial interpretation upheld by the national tax administration. By a decision of 15 October 2014 (the third decision), the EC concluded that that new interpretation was, in fact, a new aid which was incompatible with the internal market. As a result, Spain was required to terminate the aid scheme and recover all granted aid, without any exceptions based on the principle of protection of legitimate expectations.

### **GCEU judgment**

The GCEU judgment pertains to the third decision which was annulled by the GCEU on two separate grounds.

- First, the GCEU considers that the EC was no longer entitled to adopt the third decision, since the two initial decisions already covered both direct and indirect shareholdings acquisitions. Therefore, by mandating the recovery of all aid granted for indirect acquisitions in its third decision the EC essentially revoked two lawful decisions that recognized the protection of legitimate expectations under certain conditions.
- Secondly, the GCEU rules that, even if it was to assume that the EC was entitled to adopt the third decision, it erred in law by refusing to acknowledge in favour of the beneficiaries of the aid scheme a level of protection of legitimate expectations similar to that acknowledged in the two initial decisions. According to the GCEU, the parliamentary responses from 2006 that gave rise to a legitimate expectation as to the lawfulness of the aid scheme, did not differentiate between the two types of acquisitions (direct and indirect). As a result, the (initial) interpretation that the national authorities applied to the tax scheme did not affect the legitimate expectations that were formed based on statements made by the EC at the EU level in 2006.

## Takeaway

It remains to be seen whether the EC appeals this judgment to the Court of Justice of the EU. In the meantime, however, the GCEU provides some very insightful observations on both the ability of the EC to revoke earlier decisions and the principle of legitimate expectations.

## Let's talk

For a deeper discussion, please contact:

Miguel Muñoz Pérez

PwC Spain

+34 915 684 349

[miguel.munoz.perez@pwc.com](mailto:miguel.munoz.perez@pwc.com)

Or contact any other member of PwC's [EU Direct Tax Group](#)

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