



PRESS RELEASE No 79/25

Luxembourg, 26 June 2025

Judgment of the Court in Joined Cases C-776/23 P | Commission v Spain, C-777/23 P | Commission v Banco Santander and Others, C-778/23 P | Commission v Sociedad General de Aguas de Barcelona, C-779/23 P | Commission v Telefónica and Iberdrola and C-780/23 P | Commission v Ferrovial and Others (Indirect shareholdings)

The Court of Justice confirms annulment of the Commission decision declaring unlawful the Spanish tax scheme on the deduction for indirect acquisitions of shareholdings in foreign companies

In 2002, a new corporate tax scheme came into force in Spain. The scheme allowed companies that had acquired shareholdings in a foreign company to deduct from their tax base, by way of amortisation, the goodwill resulting from that acquisition. In response to questions from Members of the European Parliament, the European Commission stated, at the beginning of 2006, that the scheme did not fall within the scope of the EU State aid rules.

Nevertheless, in 2007, the Commission decided to examine the tax scheme in question more closely. By decision of 28 October 2009, on **acquisitions of shareholdings inside the European Union**, and by decision of 12 January 2011, on acquisitions of shareholdings in companies established **outside the European Union ('initial decisions')**, it declared that the measures in question constituted State aid which was incompatible with the internal market. It therefore ordered the Spanish authorities to recover that aid. However, the Commission allowed the scheme to continue to apply, subject to conditions, in certain situations (principle of the protection of legitimate expectations).¹

The actions brought by various companies against the initial decisions were unsuccessful.²

In July 2013, the Commission examined a new interpretation of the tax scheme at issue, formalised in a binding interpretation sent to that institution by the Spanish authorities. In the Commission's view, that interpretation extended the initial scheme to include the **financial goodwill resulting from indirect acquisitions of shareholdings** in foreign companies by means of direct acquisitions of shareholdings in foreign holding 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**. As a result, it required Spain to put an end to that scheme and to recover the aid granted under it.³

Spain and a number of companies concerned successfully applied to the General Court of the European Union for annulment of the Commission's decision of 15 October 2014.⁴

The Commission challenged before the Court of Justice the judgments by which the General Court annulled its decision.

The Court of Justice dismisses the Commission's appeals.

The Court 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 shareholding are therefore **protected by the legitimate expectations** recognised by the Commission in the initial decisions.

In addition, the principle of **legal certainty precludes** the Commission from classifying the tax deduction of the financial goodwill resulting from **indirect acquisitions of shareholdings** as a **new State aid scheme** which has been implemented unlawfully.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

Stay Connected!



¹ See the Commission's press releases relating to the adoption of those decisions [of 28 October 2009](#) and [of 12 January 2011](#).

² By judgments of 7 November 2014, *Autogrill España v Commission*, [T-219/10](#), and *Banco Santander and Santusa v Commission*, [T-399/11](#) (see [press release No 145/14](#)), the General Court annulled the Commission's initial decisions, because it found that not all the cumulative conditions for a finding that there was State aid, in particular the condition that the measure had to be selective, were satisfied. The Commission lodged appeals before the Court of Justice against those two judgments of the General Court. By judgment of 21 December 2016, *Commission v World Duty Free Group and Others*, [C-20/15 P](#) and [C-21/15 P](#) (see [press release No 139/16](#)), the Court of Justice set aside the judgments of the General Court and referred the cases back to it. By judgments of 15 November 2018, *Deutsche Telekom v Commission*, [T-207/10](#), *Banco Santander v Commission*, [T-227/10](#), *Sigma Alimentos Exterior v Commission*, [T-239/11](#), *Axa Mediterranean v Commission*, [T-405/11](#), *Prosegur Compañía de Seguridad v Commission*, [T-406/11](#), *World Duty Free Group v Commission*, [T-219/10 RENV](#), and *Banco Santander and Santusa v Commission*, [T-399/11 RENV](#) (see [press release No 175/18](#)), the General Court upheld the Commission's initial decisions. The companies concerned and Spain lodged appeals before the Court of Justice. By judgments of 6 October 2021, *Sigma Alimentos Exterior v Commission*, [C-50/19 P](#), *World Duty Free Group and Spain v Commission*, [C-51/19 P](#) and [C-64/19 P](#), *Banco Santander v Commission*, [C-52/19 P](#), *Banco Santander and Others v Commission*, [C-53/19 P](#) and [C-65/19 P](#), *Axa Mediterranean v Commission*, [C-54/19 P](#), and *Prosegur Compañía de Seguridad v Commission*, [C-55/19 P](#) (see [press release No 170/21](#)), the Court of Justice dismissed the appeals, with the effect that the cases relating to the Commission's initial decisions were closed.

³ See the [Commission press release](#) relating to the adoption of that decision.

⁴ Judgments of 27 September 2023 in Cases *Spain v Commission*, [T-826/14](#); *Banco Santander and Santusa v Commission*, [T-12/15](#); *Abertis Infraestructuras and Abertis Telecom Satélites v Commission*, [T-158/15](#); *Ferrovial and Others v Commission*, [T-252/15](#); *Sociedad General de Aguas de Barcelona v Commission*, [T-253/15](#); *Telefónica v Commission*, [T-256/15](#); *Arcelormittal Spain Holding v Commission*, [T-257/15](#); *Axa Mediterranean v Commission*, [T-258/15](#) and *Iberdrola v Commission*, [T-260/15](#) (see [press release No 148/23](#)).