

JUDGMENT ON THE SPANISH TAX LEASE SYSTEM

CASE T-719/13 PYMAR / COMMISSION



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DECEMBER

2015

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1. Background

On 17 December 2015, The General Court of the European Union ("GCEU") passed judgment in Case T-719/13, initiated by Pequeños y Medianos Astilleros ("PYMAR") and Lico Leasing against the Commission, regarding the annulment of the C(2013) 4426 final Decision of the Commission, of 17 July 2013 ("**Decision**"), related to the tax regime applicable to certain finance lease agreements also known as Spanish tax lease system (aid scheme SA. 21233, ex NN/2011, ex CP 137/2006). In this proceeding the applicant has been represented by Hogan Lovells. The GCEU has joined the appeal filed by PYMAR to that of the Spanish Government.

The judgment of the GCEU annuls the Decision in which the Commission concluded that the Spanish tax lease System constituted State aid incompatible with the internal market and in which ordered the recovery of the aids granted through the Spanish tax lease system as of 30 April 2007.

This Decision was the result of a proceeding initiated on 29 June 2011 and which according to the opening decision, concerned 273 transactions for a total value of Euros 8,727,997,332.

2. Judgment of the GCEU of 17 December 2015 in Case T-719/13, PYMAR/Commission

By virtue of its judgment, the GCEU has annulled the Decision of the Commission considering that the Spanish tax lease System does not constitute State aid. In particular, in the judgment, the GCEU reaches the following main conclusions:

- a. The judgment identifies the investors and not the EIGs as the sole beneficiaries of the economic

advantages derived from the former tax lease system.

- b. The GCEU considers that this system cannot be considered as a selective measure on the basis of the following arguments:

- i. The GCEU considers that all Spanish taxpayers developing an economic activity and investing in this type of transactions could benefit from this system. Therefore a tax measure which indistinctly benefits all undertakings located within a territory cannot be deemed as State aid in accordance with the selectivity criterion.

- ii. Likewise, the GCEU establishes that the system is not selective just because it is linked to a particular type of investment. In this regard, the GCEU confirms that it is not State aid when an advantage is accessible to all undertakings that carry out a particular investment, which in turn is available to all type of undertakings.

- iii. The system cannot be considered as selective on the basis that it was subject to an authorisation procedure, since such procedure was exclusively referred to the

features of the asset to be to early depreciated.

- c. The GCEU estates that the motivation of the Decision regarding the distortion of competition and the effect on trade between Members States was deficient.

The GCEU reflects and accepts the arguments raised by PYMAR and orders the payment of the costs of the proceeding by the Commission.

As a consequence of the annulment of the Decision, the order of recovery of the aids granted through the Spanish tax lease System is also annulled.

3. Effects of the Judgment of the GCEU

The judgment of the GCEU is enforceable as of its delivery so that the annulment of the Decision is effective as of today.

As a consequence of the annulment of the Decision the former Spanish tax lease system is no longer considered as illegal State aid and, therefore, the structures implemented on the basis of this system shall be considered compliant with the EU legislation.

As a result of the annulment of the Decision, the order of recovery of the aids allegedly granted through the Spanish tax lease system is also annulled, so that the already initiated recovery procedures should end without claiming any reimbursement to investors.

With this judgment, the GCEU consolidates the case law contained in 2014's judgments through which the GCEU annulled the decisions of the Commission against Spain referring to the Spanish tax regime of deduction in the acquisition of shares in foreign companies, i.e. the amortization of goodwill.

Further to the mentioned case law and the judgment of today, it is the criterion of the GCUE that measures are not selective when they are not aimed at any particular category of undertakings or the production of goods, but to a category of economic transactions.

Today's judgment reinforces other tax systems based on the Spanish law, through which companies obtain tax benefits, as it is the case of the current tax lease System, since it is

accessible to any kind of undertaking regardless of its size or sector of activity.

4. Position of participants after today's Judgment of the GCEU

Today's judgment of the GCEU benefits all participants of tax lease structures, and in particular, investors and builders:

a. Position of investors after today's Judgment of the GCEU

For investors of the former Spanish tax lease System, today's judgment releases them from the order of recovery of the aids allegedly obtained; therefore the recovery proceedings should be concluded without reimbursement.

Moreover, this judgment could encourage investment in new tax lease structures. The new tax lease, in addition to the *ad hoc* favorable Decision of the Commission of 20 November 2012, now has the support of today judgment, which validates the procurement of profitability by the combination of tax measures, provided that the investment is accessible to all type of undertakings.

b. Position of builders after today's Judgment of the GCEU

Regarding builders, this judgment should serve as a boost to the activity of the sector, since it validates the financing framework used during ten years and could help to strengthen confidence on the current tax lease system on the part of ship owners and investors who participated in the former structures now validated by the judgment.

5. Appeal against the Judgment

Today's judgment of the GCEU, may be appealed before the Court of Justice of the European Union within two months, extendable on account of distance by a single period of ten days.

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