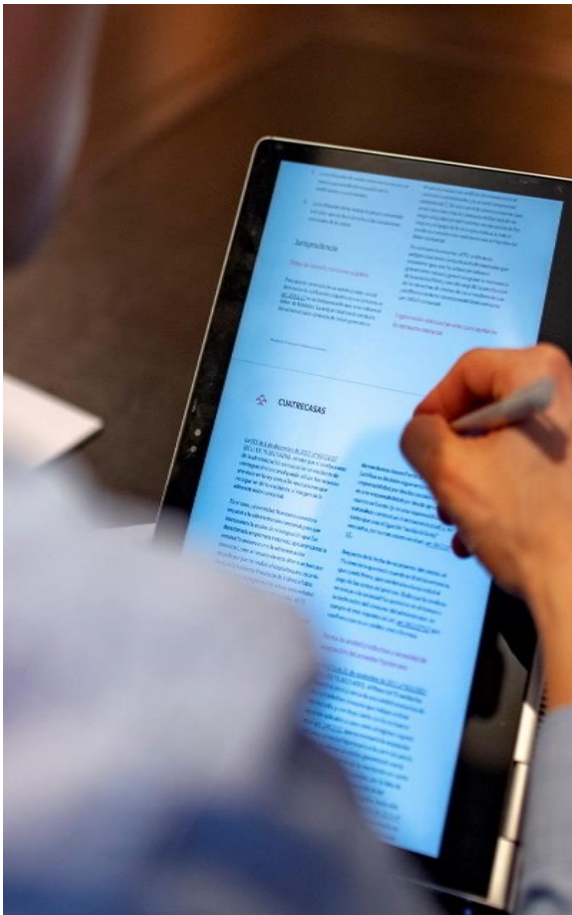

General Court of the European Union rules that the former Spanish tax lease system constituted state aid

Legal flash

October 5, 2020



Key aspects

- The General Court of the European Union (“GCEU”) has confirmed the European Commission’s position that the former tax lease system constituted unlawful state aid.
- Special attention should be paid to the impact on the Spanish tax authorities’ previous orders to recover the aid.
- The current tax lease system is not affected.



On September 23, 2020, the GCEU issued a judgment rejecting the appeals brought by the Kingdom of Spain, and by Lico Leasing and Pymar (shipbuilders association) against the decision the European Commission adopted in 2013, which considered that the Spanish tax lease system (known as “SEAF”) constituted unlawful state aid.

The GCEU’s decision is based on the selective nature of the SEAF owing to the discretion exercised in the administrative authorizations granted to apply the tax regimes included in the system, thus discriminating against other operators in comparable situations. The court’s judgment can still be appealed in cassation before the Court of Justice of the European Union, so this might not be the final conclusion on whether the former tax lease system constituted unlawful state aid.

This EU *lis pendens* will have a bearing on the result of the tax authorities’ inspectors’ steps to recover the aid they have claimed from several taxpayers in the meantime (some procedures were not interrupted because of the proceedings before the GCEU). In any case, companies that have received these orders must pay attention to the decision resulting from any potential appeal in cassation before the Court of Justice of the European Union, as it may have an impact on the tax settlements agreed at the time.

In contrast, the pending proceedings challenging the legality of the former tax lease system will not affect the shipbuilding contracts that are currently being signed under the financial lease system. This is because Spain changed its laws in 2012 and asked the European Commission to review the system. At the time, the Commission confirmed that the current system does not constitute unlawful state aid. The Netherlands unsuccessfully challenged this decision, as the Court of Justice of the European Union confirmed the legality of the Spanish regulations.

For additional information, please contact Cuatrecasas.

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