Susana Estêvão, Miguel Teles, Marta Núñez and Jaime Castaño

CJEU case C-837/24 (Nova Iberomoldes)

Judgment of the Court of Justice of the European Union ("**CJEU**") of 4 June 2026 – NOVA IBEROMOLDES – SGPS, S.A. ("**Nova Iberomoldes**") v. Autoridade Tributária e Aduaneira ("**PTA**") regarding the compatibility of the Portuguese real estate transfer tax ("**RETT**") with Council Directive 2008/7/EC on indirect taxes on the raising of capital (the "**Capital Raising Directive**")

I. Analysis of the case law

1.1. Background and facts

Under Portuguese law, the acquisition of at least 75% of a shareholding (shares or quotas) in a Portuguese company whose assets are made up of more than 50% Portuguese real estate (a "**real estate-rich company**") is deemed a real estate transfer subject to RETT (see Article 2(2)(d) of the RETT Code).

Nova Iberomoldes is a Portuguese holding company incorporated through several in-kind contributions of shares (share-for-share exchange) held by its sole shareholder in various companies. One of the companies contributed to, and subsequently wholly owned by Nova Iberomoldes, was a real estate-rich company exclusively owning two real estate assets in Portugal.

The PTA took the view that this share-for-share exchange of a real estate-rich company was subject to RETT. The tax arbitration court ("**CAAD**") referred the case to the CJEU in order to confirm whether RETT, applied to in-kind contributions within an incorporation of a new company, is compatible with the Capital Raising Directive.

1.2. The CJEU ruling

The Capital Raising Directive harmonises **indirect taxes** on the raising of capital, prohibiting any indirect tax on **reorganisation operations** (see Articles 4 and 5(1)(e) of the Capital Raising Directive).

The CJEU concluded that the Portuguese RETT, when applied to the in-kind contribution of shares (a share-for-share exchange), should be deemed an "indirect tax" within the meaning of the Capital Raising Directive, and is therefore forbidden by the Directive.

The CJEU held that the prohibition laid down in the Capital Raising Directive must be interpreted broadly to preserve its effectiveness; it must therefore be interpreted on the basis of its objective characteristics, regardless of how the tax is labelled in Portuguese law:

- As under Article 2(2)(d) of the RETT Code, the tax is not levied on income or possession of assets, but on the acquisition of real estate and, in this case, real estate-rich companies.
- The fact that the tax base is the underlying tax value/book value of the real estate, rather than the value of the shareholdings contributed, does not change that conclusion.

Furthermore, the CJEU characterised the in-kind contribution of shares (share-for-share exchange) in a real estate-rich company to be a "reorganisation operation" within the meaning of the Capital Raising Directive, despite Portuguese law, on the following grounds:

- The newly incorporated company (Nova Iberomoldes) acquired shares representing the majority of the voting rights in other companies.
- The consideration for the in-kind contribution consisted of the share capital of the newly formed company.

- The fact that no other elements, resources or the entirety of the equity instruments were transferred is irrelevant.

Although the Directive foresees derogations to its prohibitions (see Article 6(1)(a) to (c) of the Capital Raising Directive), the CJEU analysed and rejected them one by one, as follows:

- Duties on the transfer of securities: this derogation applies only to share transfers that are "independent transactions", not to transfers that are incidental to a reorganisation operation. In this case, the share-for-share exchange was an integral part of the incorporation of Nova Iberomoldes.
- Transfer duties on immovable property: the application of this derogation required an actual transfer of the ownership rights over real estate, which was not the case (the CJEU rejected the argument that an "economic transfer" should qualify as a transfer for this derogation).
- Consideration other than shares: this derogation was deemed as inapplicable, since the consideration for the in-kind contribution was Nova Iberomoldes' shares.

In addition to the derogations, Member States may disapply EU law in cases of fraud or abuse; however, this justification was also rejected by the CJEU, arguing that Member States cannot rely on general presumptions to justify cases of fraud or abuse. The Portuguese domestic RETT rule (Article 2(2)(d) of the RETT Code) applies automatically to any qualifying share transfer, regardless of evidence of abuse, and therefore goes beyond what is necessary to combat tax evasion and avoidance, in breach of the principle of proportionality.

In summary, the CJEU concluded that Capital Raising Directive precludes national legislation applying indirect taxation to corporate reorganisations, such as RETT in the context of the incorporation of a company through in-kind contribution of shares in Portuguese real estate-rich companies.

II. Portuguese perspective

The judgment directly addresses Portuguese law and confirms that Portuguese RETT (Article 2(2)(d) of the RETT Code) cannot be applied to transactions that qualify as reorganisation operations under the Capital Raising Directive.

This may have several practical implications, not only for incorporations and share capital increases carried out through in-kind contributions with Portuguese real estate-rich companies, but also for situations in which, following a share capital increase in a Portuguese real estate-rich company, a certain shareholder acquires ownership of 75% or more of the share capital of this real estate-rich company.

It is also arguable that the prohibition under the Capital Raising Directive also applies to other types of transactions, such as mergers or demergers. However, it should be noted that these transactions are generally exempt from RETT under the specific corporate reorganisation exemption (set out in Article 60 of the Tax Benefits Statute) and, as a result, the practical impact of the judgment in those cases is likely to be limited.

III. Spanish perspective

The judgment is relevant to Spain primarily through Article 338 of the Securities Markets and Investment Services Act (Ley 6/2023, "**LMVSI**"), which subjects to Transfer Tax ("**TPO**") the acquisition of shares in Spanish real estate-rich companies where the acquirer obtains control — a mechanism structurally similar to the Portuguese RETT provision at issue in Nova Iberomoldes. The judgment may also be relevant to capital duty (*Operaciones Societarias* —"**OS**"—) where an in-kind contribution of shares does not qualify as a reorganisation operation under the Corporate Income Tax Act and therefore falls outside the existing OS exemption.

A possible counterargument as regards Article 338 LMVSI is that it is better designed than the Portuguese provision, as it formally requires an evasion intent (*ánimo de elusión*), admits proof to the contrary and is limited to real estate not used in a business activity. However, in the three objective scenarios of Article 338(2)(a) to (c) LMVSI, that intent is presumed unless disproved by the taxpayer — a burdenshifting structure that the CJEU has consistently rejected in Eqiom and Enka (C-6/16), Deister Holding and Juhler Holding (C-504/16 and C-613/16) and, expressly, in Nova Iberomoldes itself. The Spanish Supreme Court applied the same doctrine in Judgment no. 771/2023 (Global Noray) [ECLI:ES:TS:2023:2652], holding that the tax authorities cannot rely on a presumption triggered by objective criteria alone. While no Spanish court has yet ruled on the compatibility of Article 338 LMVSI with the Capital Raising Directive, the above provides a basis to challenge its application to qualifying reorganisation operations.

Beyond Article 338 LMVSI, the judgment may also be relevant to a second front under Spanish law: the Transfer Tax treatment of “special” in-kind contributions (*aportaciones no dinerarias especiales*), which involve the contribution of mortgaged real estate together with the associated debt. Although the Spanish legislator has assimilated these operations to reorganisation operations under the Transfer Tax Act — thus qualifying them for a non-taxation and exemption regime equivalent to that applicable to reorganisation operations — the Spanish Supreme Court has consistently held, in a series of judgments since 2013, that the assumption of debt exceeding the net equity value of the contributed asset constitutes an independent taxable event subject to TPO, regardless of whether the contribution is made within the Special Tax Neutrality Regime. As for the Supreme Court’s case law on special in-kind contributions, the Nova Iberomoldes judgment may open the door to a further reconsideration of that jurisprudence.

Contactos

Susana Estêvão Gonçalves

Partner

sestevao@perezllorca.com

T. +351 211 255 483

Marta Núñez

Partner

mnunez@perezllorca.com

T. +34 91 423 66 09

Offices

Europe ↗

Barcelona
Brussels
Lisbon
London
Madrid

America ↗

Bogotá
New York
Lime
Medellín
Mexico City
Monterrey

Asia ↗

Abu Dhabi
Singapore

Pérez-Llorca App
All legal content

DISPONIBLE EN Google Play
DISPONIBLE EN App Store

perezllorca.com ↗