

The Spanish Supreme Court opens the door to inheritance tax refund claims by non-EU residents

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The Spanish Supreme Court interprets the Judgment of the Court of Justice of the European Union of 3 September 2014 (Case C-127/12) and concludes that non-EU residents can also benefit from the rebates that Spain's Autonomous Communities have provided for the Inheritance and Gift Tax.

1. Judgment of the Court of Justice of the European Union of 3 September 2014 (Case C-127/12) and measures adopted by the Spanish legislature.

The Judgment of the Court of Justice of the European Union (CJEU) of 3 September 2014 in Case C-127/12 concluded that the unequal treatment of resident and non-resident taxpayers of Spanish Inheritance and Gift Tax was incompatible with the free movement of capital. Such inequality, insofar as residents could benefit from the rebates provided for inheritance and gift tax by the different Autonomous Communities ('connecting factors') whereas non-residents could only apply the State's legislation, meant very different tax outcomes. For example, in the Autonomous Community of the Balearic Islands, the applicable tax rates used to be 7% for gifts and 1% for 'mortis causa' acquisitions is 1%, while the state law tax rate could reach 34%.

Following this judgment, the Spanish legislature amended the law and allowed, in addition to residents in Spain, residents of a Member State of the European Union or the European Economic Area to benefit from rebates for this tax provided by the different Autonomous Communities.

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Although the above judgment did not draw any differences between non-residents, the legislative amendment in Spain did not reach non-EU or non-EEA residents, which provoked a reaction from some of those affected.

2. Ruling of the Spanish Supreme Court of 19 February 2018

It was precisely a resident of Canada who appealed to the Spanish Supreme Court for compensation, via State liability, on the grounds that legislation contrary to EU law was being applied.

Here the appellant contended that the aforementioned 2014 CJEU judgment applied to his case, as did another, the Judgment of the CJEU of 17 October 2013 (Case C-181/12). In the latter judgment, the CJEU concluded, following proceedings brought in respect of a German rule, that discrimination between residents and non-residents for inheritance tax purposes restricts the free movement of capital which, as Article 63 TFEU states, affects not only the movement of capital between Member States but also between Member States and third countries.

The Spanish Supreme Court, on the basis of these contentions, found for the appellant, holding:

- That the effects of the Judgment of the CJEU of 3 September of 2014 are applicable also to non-EU residents, in application of the right to the free movement of capital.
- In the case under consideration, that all the conditions are met for the Spanish State to consider that the breach of EU law is “sufficiently characterised”, that is to say, that it is manifest and serious. Therefore, the State’s liability and the right to a refund of any excess payments made by the resident of Canada are recognized.

3. Final comment

The Supreme Court’s ruling signals a new change in the rules of the Inheritance and Gift Tax to end discrimination against non-EU residents.

Apart from the foregoing, other consequences may arise from this ruling, especially for individuals who have already been previously taxed in Spain, of which we should highlight the following:

- (a) Non-EU residents who, pursuant to the ruling, have paid in excess, can claim a tax refund of such excess provided that the tax assessment has not become final (i.e., it is still covered by the 4-year statute of limitations period).
- (b) Where such right to request a refund has lapsed, the possibility of non-EU residents being able to seek compensation under State liability would have to be examined.