

Tax Alert

Upcoming changes for UK owners in Spain

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New regulations entering into force next January 1st, 2021 as a consequence of Brexit, will affect thousands of UK tax residents who are owners of a property in Spain.

One of the most relevant issues arising the day after Brexit will be related to the burdensome treatment that UK residents owning a property in Spain will have compared with Spanish and EU tax residents owning Spanish properties.

Current situation

Currently, Non tax residents in Spain deriving rental income in Spain as a consequence of the rental of a property or the mere ownership (imputed income) are taxed at a flat tax rate of 19% or 24% depending on whether they are EU tax residents or not.

This status of EU tax resident also affects the determination of the tax to be paid, as EU tax residents are allowed to deduct from their gross rental income certain expenses (local taxes, depreciaton, etc) which can lead to an important reduction on the final tax burden to be paid by these Non-residents.

Currently, UK tax residents can benefit from this 19% flat tax rate for income derived from Spanish properties (with the possibility for rental income of deducting from gross rental income those expenses allowed by Spanish Law).

Situation after January 1st, 2021

Once the Brexit is fully adopted after December 31st, 2020, UK citizens will not be deemed as EU tax residents anymore and this will impact their Spanish taxation as they will not be taxed at the 19% rate anymore (tax rate will increase up to 24%). Additionally, it will not be possible for them to deduct most of the expenses allowed for EU tax residents (for income derived from rentals).

This new situation will obviously increase the tax burden of thousands of UK tax residents owning properties in Spain and make less attractive holding a property in Spanish territory.

Spain under the spotlight of EU Courts

This upcoming post-Brexit discrimination affecting UK tax residents will be a follow up of different Spanish tax regulations that according to EU Courts, infringe article 63 of the Treaty on the Functioning of the European Union, related to the prohibition of all restrictions on the movement of capital between Member States and between EU Member States and third countries.



Different judgments of the Court of Justice of the European Union (CJEU) in the past have obliged Spain to modify certain regulations (mainly related to Inheritance and Gift tax), in order to adapt them to EU Treaty principles.

Further to the above, the later interpretation performed by the Spanish Supreme Court in different judgments issued in 2018 admonished Spanish legislator and tax authorities for excluding Non EU tax residents from the benefits that were finally granted to EU tax residents for Inheritance and Gift Tax as a consequence of the CJEU judgement.

Conclusion: There are grounds to fight this upcoming discrimination

Following the different supporting judgements and rulings issued by EU and Spanish Courts and tax authorities through the last years, it would be reasonable to defend that any discriminatory tax treatment that could arise with regards to UK tax residents deriving rental income in Spain as a consequence of Brexit, could be immediately reported by taxpayers as contrary to EU Law.

According to the above, we consider that it could be possible to claim back from Spanish tax authorities the excess of tax paid by UK tax residents as a consequence of the income derived from their Spanish properties once the Brexit comes into force, together with the late payment interests accrued since the date of payment.

Following this approach, we also consider that there would be grounds for UK owners to claim the right currently applicable exclusively by Spanish Tax residents, to apply for a 60% reduction on the benefit derived from the rental of properties which are used as habitual abode. Actually, European Commission has announced the commencement of an infringement procedure against Spain.

From Andersen Spain we will be glad to assist UK tax residents owning a property in Spain with these imminent changes.

For further information, please contact:

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