

## Tax Alert

### Taxation on Spanish Non tax residents owning a property in Spain

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According to Spanish tax regulations in force, Non tax residents in Spain (but tax residents in an EU or EEE country) deriving income as a consequence of the ownership of properties in Spain are taxed on their net income (income less expenses) at a tax rate of 19%. This normally happens when a Non resident individual rents his property or as a consequence of the income imputation that Non residents in Spain should pay annually as a consequence of their condition as owners of a Spanish property.

The above mentioned treatment is completely different in case of Non residents who are not either residents in an EU or EEE country. In this case, Spanish tax regulations determine that they should pay taxes on gross income derived from Spanish properties at a tax rate of 24%.

As can be seen, differences between the taxation of EU and EEE residents and taxation of residents outside EU and EEE are remarkable.

Furthermore, taxation of both, EU/EEE and third countries tax residents, is also different than Spain tax residents taxation related to Spanish Tax residents, as these are allowed to apply a 60% reduction on the net rental income they derive.

These scenarios set a complex taxation framework that has brought Spanish tax regulations to be under the spotlight of EU Courts as it can be said that current regulations severely infringe EU regulations which have primacy over national regulations and demand a direct application in EU countries.

#### **Spain under the spotlight of EU Courts**

Current discrimination context is not a new situation, is just a follow up of different Spanish tax regulations that systematically have brought in discriminative measures which, 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.

Since these judgements issued by the Spanish Supreme Court were issued, Spanish Tax Authorities have also adopted this expansive approach through their rulings as they understand that any regulation which obliges a Non EU tax resident to pay more taxes than Spanish and EU tax residents clearly infringes EU Law and specifically article 63 of the Treaty on the Functioning of the European Union.

Notwithstanding the above, regulations including many of the discriminatory measures commented above have not been modified yet and are in force.

**Conclusion: there are grounds to claim against this discriminatory treatment**

Following the different supporting judgements and rulings issued by EU and Spanish Courts and tax authorities through the last years, in Andersen we believe that there are grounds to claim that any discriminatory tax treatment currently applying to Non tax residents in Spain 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 through the last four years by Non tax residents as a consequence of the discriminatory measures included in Spanish regulations related to income derived from Spanish properties.

From Andersen Spain we will be glad to assist Spanish Non tax residents owning a property in Spain to plan next steps in this regard.

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