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Tax cap to non-residents

THE SPANISH SUPREME COURT UPHOLDS APPLICATION OF THE WEALTH TAX CAP TO NON-RESIDENTS

The Spanish Supreme Court has confirmed that the Wealth Tax cap, traditionally reserved for Spanish tax residents, must also apply to non-residents.

Under Spanish law, in order to avoid the confiscatory effects of the Wealth Tax, a combined limit is set in relation to the Personal Income Tax. Specifically, the total amount payable for Wealth Tax and Personal Income Tax may not exceed 60% of the Personal Income Tax taxable bases. If this threshold is exceeded, the Wealth Tax liability must be reduced accordingly, provided that the reduction does not exceed 80%.

This limitation, however, has until now applied only to taxpayers subject to personal liability, that is, individuals who have their tax residence in Spain.

In its judgment of 29 October 2025, the Spanish Supreme Court, , ruled that habitual residence, whether in Spain or abroad, does not justify the unequal treatment that prevents non-residents to apply the cap on the total tax liability provided for in Article 31 of the Wealth Tax Act. The Court found that this differential treatment is discriminatory and lacks objective justification.

The ruling concerned the case of an individual with tax residence in Belgium who was subject to Spanish Wealth Tax under real liability, as the owner of assets located in Spain. The taxpayer argued that denying the combined tax limit constituted discriminatory treatment and infringed the principle of free movement of capital established under the EU Treaties.

In its reasoning, the Court recalled that, pursuant to Article 63 TFEU, paragraph 1, all restrictions on the movement of capital between Member States and between Member States and third countries are prohibited. In this regard, the case law of the Court of Justice of the European Union has consistently held that a restriction exists whenever national tax legislation makes cross-border investment less attractive compared to a purely domestic situation.

Although the free movement of capital allows for limited exceptions, such exceptions must be interpreted strictly and may only be invoked where the situations being compared are genuinely non-comparable or where the restriction is justified by overriding reasons of public interest. According to the Supreme Court, none of these exceptions were met in the present case.

The judgment emphasizes that the Wealth Tax is levied on the ownership of assets and rights. Consequently, it is irrelevant whether taxation arises on a real or personal basis. What matters is that we are dealing with a comparable situation, where both the domestic resident and the EU resident are taxed on the same assets and are in the same position of income and wealth accumulation. Whether the ownership extends to the entire estate or only part of it does not affect the definition of the taxpayer, given that the taxable event is the ownership of assets, whether of the entire estate or a portion thereof. The distinction based solely on tax residence therefore results in unjustified unequal treatment.

The Court also referred to Council Directive 2011/16/EU on administrative cooperation in the tax matters, which may be invoked by a Member State to obtain the information necessary for the correct assessment of taxes covered by that Directive. Additionally, the Court cited the Spain-Belgium Double Tax Treaty, together with its Protocol, of 2 December 2009, which includes both non-discrimination and information exchange provisions.

In conclusion, the Spanish Supreme Court held that the Wealth Tax cap must also be available to non-residents. This criterion has been confirmed in another recent judgment by the same Supreme Court on 3 November 2025.

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