Information Note

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The National Court opens the door to ending discrimination against non-EU resident landlords

The National Court (AN), in its recent ruling dated 28 July 2025, has recognised the right of a taxpayer resident in the United States for tax purposes to deduct the expenses necessary to obtain the declared rental income, contrary to the opinion of the National Tax Management Office and the Central Economic-Administrative Court, which argued that the possibility of deducting these expenses is only provided for in the law for taxpayers resident in another EU Member State or European Economic Area (EEA) country with which there is an effective exchange of tax information, but not for residents in other countries outside the EU or EEA. This note outlines the most important aspects of this ruling.

What was the situation until now?

Until now, taxpayers resident in non-EU countries who owned rented property in Spain were not able to deduct any expenses (not even depreciation) when calculating their taxable income for Non-Resident Income Tax purposes.

This had led to clearly unfair situations, with taxpayers having to pay tax at a rate of 24% on gross income, which is a far cry from the 19% on net income that the same individual would pay if they were resident in an EU or EEA country. This was to the extent that the commission paid to or deducted by a real estate agency (or by a temporary rental platform, etc.) was not technically a deductible amount.

Therefore, even though the actual amount received was significantly lower, the AEAT required that non-resident owner to pay a 'blind' tax of 24% on the total gross or nominal rent paid by the tenant, which was completely 'insensitive' or "blind" to the net income received and, therefore, contrary to the principle of 'economic capacity'.

On what grounds did the National Court uphold the appeal?

However, the main argument used by the National Court in making this ruling is that certain Community principles and freedoms, such as the free movement of capital in this case, which must protect not only EU or EEA residents, should also be extended to non-EU citizens (and, in particular, to residents of third countries).

Therefore, from now on, this (undue) discrimination will continue to exist under Spanish law, although it will no longer occur in its practical application. To this end, the NA has relied on a relevant precedent from the Supreme Court (STS 242/2018, of 19 February 2018) which precisely equated non-EU residents in matters of international inheritance (in Spanish inheritance and gift tax, despite the fact that the law remains unchanged and has not been formally corrected seven years later).

Why is this ruling important? Practical consequences

- It recognises the right of taxpayers who are not residents of the EU or the EEA to deduct expenses related to obtaining income from the rental of property located in Spain, treating them in the same way as taxpayers who are residents of the EU or the EEA.
- It clearly opens up the possibility of initiating proceedings to claim a refund of undue income in relation to periods not subject to limitation (in general, for rents received from July 2021 onwards).
- Finally, this case law adds a new argument (also based on the free movement of capital) against a proposed State Supplementary Tax on the Transfer of Real Estate to non-residents of the European Union, planned by the Government, which would tax the acquisition of real estate by individuals or entities not resident in the European Union at a rate of 100%.

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