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Tax

SPANISH NON-RESIDENT INCOME TAX ACT (NRITA) VIOLATION OF EU REGULATIONS REGARDING VALUATION OF REAL ESTATE INCOME OF NON-EU TAX RESIDENTS

Summary

Spanish Non-Resident Income Tax regulations make non-EU tax residents who obtain income from real estate located in Spain worse off than EU or the European Economic Area residents.

This discrimination violates the principles established in EU regulations and such violation was already warned by the European Commission in an opinion dated October 16, 2008, by which Spain was urged to rectify its legislation. To this day, such legislation remains in force and opens a way for its challenge.

Further to Article 24 of the Non-Resident Income Tax Act (NRITA), to determine their taxable base, non-residents in the EU or in the European Economic Area (EEA) cannot deduct the expenses from the lease of real estate located in Spain owned by them, moreover their tax rate is higher than that of tax residents in the EU or EEA (24% versus 19%) and, opposite to Spanish tax residents, they are not allowed to apply the 60% reduction provided by the Spanish Personal Income Tax Act (ITA) to leases of real estate that are the main residence of their tenant.

Therefore, NRITA makes non-EU and non-EEA real estate owners worse off than other taxpayers (Spanish, EU and EEA tax residents) by applying higher taxation on the income arising from their properties located in Spain (leases).

This issue was already warned to Spain by the European Commission in an opinion issued on 10/16/2008 referring to the principles of free movement of goods, capital, people and services that stem from European regulations to prevent discrimination against non-EU and non-EEA residents.

These very same principles have been applied by the Court of Justice of the European Union (CJEU) to condemn Spain on the discrimination that the Spanish internal regulations involved for non-EU residents regarding the Inheritance and Gift Tax. Such regulations did not allow non-EU residents to apply for the tax benefits established by the regional authorities on Inheritance and Gift Tax.

Therefore, it could be argued that the Spanish NRITA could be in violation of EU-regulations by discriminating against non-EU tax residents who obtain income from the leasing of their properties located in Spain.

It will therefore be convenient to analyze the individual situation of each taxpayer to assess the advisability of challenging the tax returns filed by non-EU tax residents (form 210), regarding this kind of income and to prevent, where appropriate, the negative effects of a potential ruling by the CJEU with a temporary deployment limitation.

NOTE: The content of this document may be affected or modified by future decisions that the competent authorities and bodies adopt on the matter.

HAVE ANY QUESTIONS?

From the Tax Law Area, we work to answer the doubts that the current situation may arise. Should you have any questions, please do not hesitate to contact us.

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