

Commission Refers Spain to the EU Court of Justice Over Discriminatory Inheritance and Gift Tax Rules

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The European Commission has concluded that Spanish inheritance and gift tax rules constitute an obstacle to the free movement of persons and capital in breach of the Treaty on the Functioning of the European Union, and therefore has decided to refer Spain to the EU Court of Justice for discriminatory tax rules that require nonresidents to pay higher taxes.

Inheritance and gift tax in Spain is regulated at both the state level and the level of autonomous communities. Rules instituted by the latter are applicable only to resident individuals and lead, in practice, to a substantially lower tax burden for resident taxpayers.

Nonresidents are subject to this tax with regard to any assets which are located in Spain or rights which may be exercised in Spain and are ruled only by state law. Contrary to autonomous communities' legislation, state law does not grant certain tax benefits, leading to higher taxation for nonresident individuals.

If the EU Court of Justice decides to declare that Spanish tax rules are discriminatory, Spain would be obliged to modify them and nonresidents would be entitled to a refund of the excessive tax paid.

For that reason, it would be worthwhile for nonresidents to apply, through the appropriate tax procedure, for a refund of the undue payments made within the past four years in order to interrupt prescription of the inheritance and gift tax debts.

Squire Sanders' taxation and benefits lawyers are at your disposal to assist in relation to this issue. Should you need any further information, please do not hesitate to contact us.



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