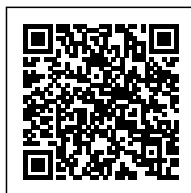


# INHERITANCE TAX RELIEF EXTENDED TO NON-RESIDENTS - LENER

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## **Following a European Court of Justice ruling, Spanish parliament changes tax regime so non-residents also receive inheritance and gift tax breaks**

In a recent judgment, the European Court of Justice (ECJ) ruled that Spain's inheritance and gift tax law is contrary to European Union (EU) law because the tax reliefs and reductions it offers are not available to non-resident tax payers, explains Lener tax partner Miguel Ángel Albaladejo. In Spain there is a huge difference among autonomous communities, or regions, regarding inheritance and gift taxation, according to Albaladejo. "In some regions – for example, Madrid – tax payers have access to a 99 per cent tax credit that reduces the tax to almost zero," he says. "The dispute arises from the inability of non-residents to access these kind of regional tax credits." Albaladejo adds the ECJ ruled that the difference between tax residents and non-residents for inheritance and gift tax purposes violates EU rules on the freedom of capital movement.

Consequently, in most cases, non-residents who paid inheritance and gift tax in Spain during the last four and a half years have the chance to claim taxes paid as an "excess compared to a Spanish tax resident in equal situation", Albaladejo says. He adds: "In any case, the diversity of regimes that could be applicable depending on the personal circumstances of the deceased and the heir makes necessary a case by case analysis to evaluate if we have a relevant difference between resident and non-resident, under equal circumstances."

Albaladejo says although the European judgment should be directly applicable to claim taxes paid in the past, the Spanish parliament, within the framework of the tax reform for 2015, has made changes so that residents and non-residents have equal access to the relevant tax credits. Meanwhile, the wealth tax system has been amended to enable the application of the tax regime of the region where most assets are located.

The problem is these tax measures only affect EU residents and not non-EU residents. This is also contrary to the EU's position on the freedom of capital movement, which also applies to non-EU countries.