

ARE YOU ENTITLED TO SPANISH IHT REBATE?

Albeit Inheritance and Gift Tax are regulated at a National Law level, it provides for regional governments to establish additional reliefs for their residents. All provincial governments have opted in, and as a consequence their residents pay considerably less inheritance tax than non resident individuals, who will not benefit from any financial advantage, other than the general reliefs established by National Law. For example, in regions such as Madrid or Valencia, a resident spouse would pay 1% IHT whereas the same spouse non-resident would pay 12%.

The European Commission found such discrepancy based on the fact of residency to be an obstacle to the fundamental principle of free movement of people and capital, and in breach of the Treaty on the Functioning of the European Union. Spain was requested to correct the position back in 2010, but failed and the matter was referred to the European Court of Justice who on 3.09.14 supported the Commission's argument (case C-127/12). As a consequence the Spanish Central Government has to introduce the necessary amendments to avoid the current discriminatory tax treatment towards non residents.

The second consequence is that a non resident having overpaid Spanish IHT is now entitled to claim for a refund in the amount corresponding to the difference between the tax liability calculated and paid in accordance to the Spanish Law and the one that would had corresponded, had regional law been applied.

The Spanish Government's proposal is that as from January 2015 the place where the estate is located or where the deceased was living (in the event that he was residing in Spain) will determine the regional applicable law. Although it has not been established yet by the Authorities, it is highly likely that the same criteria will result of application for those cases whereby a claim for undue excessive IHT has been paid.

Finally, it has to be taken into account that Spanish legal time limits prevent claims being made after four years as from the moment in which the payment of the tax liability became due. In the event that this period has already elapsed, it would be possible to obtain a refund by claiming against the Spanish State for patrimonial responsibility; however this process is more complex and will imply litigation.

If you think you could be entitled to obtain a rebate from the Spanish Tax Authorities, Scornik Gerstein's Tax Department will be happy to assist you with preparing and submitting your claim before the Spanish Tax Authorities. Please contact us as soon as possible to analyse your case in detail complimentary.