

Tax non-discrimination: right of non-residents to deduct expenses related to real estate in Spain

The National Court rules in favor of the deduction of expenses related to real estate located in Spain by citizens who are not residents of the European Union or the EEA.

CONTEXT OF THE CASE

A citizen residing in the United States requested to **amend his IRNR tax return** for income from a property rented in Spain, as according to this taxpayer, he **was entitled to deduct expenses related to this real estate** in accordance with Article 24.1 of the TR IRNR Law.

Until now, the administrative interpretation and that of the TEAC (Central Economic-Administrative Chamber) **established that only residents of EU or EEA member states could deduct such expenses** (as stated in Article 24 of the TR IRNR Law), excluding those from third countries. The appellant argued that this exclusion **contravenes the principle of free movement of capital in Article 63 TFEU**, as well as the **prohibition of discrimination in the Spain-US Double Taxation Agreement**.

REGULATORY DEVELOPMENTS

In 2004, Law 5/2004 (TR IRNR Law) was passed, establishing that the tax base consisted of the full amount of **income without any deduction of expenses**.

In 2010, Law 2/2010 introduced the right to deduct expenses for taxpayers resident in the EU, while in 2014, Law 26/2014 extended

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THE KEY TO THE CASE: THE RULING OF THE NATIONAL COURT

In its ruling of July 28, 2025, the National Court established that **all non-resident taxpayers, including citizens residing in the European Union, residents of the EEA, and residents of third countries (such as the US), are entitled to deduct expenses related to their rented properties in Spain.**

This interpretation complies with **Article 25 of the Spain-US Agreement** on non-discrimination and information exchange mechanisms, avoiding double deduction.

Likewise, the National Court ruled that the previous exclusion of residents of third countries **is not compatible with the case law of the CJEU or with the free movement of capital.**

PRACTICAL IMPLICATIONS

The **deduction of rental expenses** in IRNR (non-resident income tax) is extended to residents of third countries. This measure reinforces the **consistency between Spanish regulations and EU principles, avoiding discrimination against taxpayers.**

Despite the very positive progress in this area, which brings about **non-discrimination in taxation** between non-EU non-residents and residents of the EU and the EEA, **this ruling does not set a precedent**, and its practical application is therefore subject to future rulings or interpretations by the tax authorities and other courts.