

SPANISH CGT REFUNDS, NEW OPPORTUNITIES

Have you heard of the important new ruling from the European Court of Justice against Spain, for not complying with EU law, in relation to the discriminatory treatment applied between residents and non-residents, in relation to capital gains tax rates (35% versus 15%)?

It is now possible for the taxpayer, adversely affected by the above in the past, to submit claims for a refund of the excess tax paid or withheld. In addition it is a real pleasure for us to share with you the good news of a favorable ruling we have received for one of our clients from the Administrative Tribunal of Malaga admitting the claim for unfair tax charged to non residents for capital gains obtained prior to 31st December 2.006 (35%). As far as we know this is the first such ruling, obtained in Andalucía from a tribunal that is directly controlled by the Ministry of Finance. This creates a very good precedent for other similar cases.

Until now an important limitation existed to find a legal process to recuperate this unjust tax charge. In this respect, curiously, a very recent sentence from the Luxembourg Court dated 26 January 2.010 supports and guarantees the possibility of claiming responsibility against the Spanish Government for the economic damage caused by infringing on the EU Law, and hence oblige them to refund the unfair tax charged, even if it is now time barred. This legal procedure of claiming responsibilities to the State has a deadline of 1 year from the 6th October 2009.

If you are interested in receiving more information on the above, drop us an email or give us a call!

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