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Non-resident taxpayers may also apply the tax shield under Article 31 of the Wealth Tax Law

Article 31.1 of the Wealth Tax Law ("**WTL**") establishes a mechanism for limiting full tax liability, which operates jointly with Personal Income Tax ("**PIT**").

Under this provision, the sum of the total tax liabilities payable under both taxes may not exceed 60% of the sum of the PIT tax bases for taxpayers subject to wealth tax on the basis of a personal obligation. Should this limit be exceeded, the wealth tax liability will be reduced, although the reduction may not exceed 80% of the full wealth tax liability. Until now, unlike resident taxpayers, non-resident wealth tax taxpayers in Spain, who are taxed on the basis of a real obligation, could not apply this limit, given that the PIT tax bases and liabilities must be taken into consideration, a tax which non-residents do not pay. This is yet another instance in which non-residents received different, and usually worse, treatment than residents.

The Supreme Court has recently issued two judgments of great significance on this issue: the Supreme Court judgments of 29 October 2025 (ECLI:ES:TS:2025:4849) and 3 November 2025 (ECLI:ES:TS:2025:4846). Both judgments have held that habitual residence, whether in Spain or abroad, does not justify the different treatment of residents and non-residents, whereby the latter may not avail of the limit on the full tax liability provided for in Article 31.1 of the Wealth Tax Law. This difference in treatment is both discriminatory and unjustified. The cases in question concern taxpayers who were resident in Belgium but owned property in Spain. The taxpayers filed wealth tax self-assessments on the basis of a real obligation and subsequently sought to amend these self-assessments to apply the limit under Article 31.1 of the WTL. The taxpayers, who provided their Belgian tax returns for this purpose, calculated this limit on the basis of the income tax which they paid in Belgium. The Spanish tax authorities rejected their requests to amend their self-assessments, but the High Court of Justice of the Balearic Islands upheld the appeals filed by the taxpayers, since it considered that the difference in treatment was discriminatory.

On appeal, the State Attorney's Office argued that the limit established in Article 31.1 of the WTL is based on the legislature's knowledge of the income subject to PIT on the basis of a personal obligation and the rates that apply. The State Attorney's Office argued that allowing a non-resident to avail of this limit by submitting an income tax return from their country of residence would distort the purpose of the limit, as there is no way of knowing what income is subject to tax in that country and at what rates. Furthermore, it argued that the application of the limit requires that the total amount of the liabilities be homogeneous, i.e., that the taxation of the taxpayer's total wealth in relation to the tax they pay on their worldwide income, both in terms of taxation in Spain on worldwide income and wealth, is not confiscatory. The State Attorney's Office argued that taxpayers who are subject to wealth tax on the basis of a real obligation are not in the same position as taxpayers who are subject to a personal obligation, who must also pay Spanish PIT. This means that both types of taxpayers must be treated differently under the principle of equality, which means treating those who find themselves in different situations unequally. Thus, according to the Administration's argument, there was an objective and reasonable justification based on habitual residence, which did not involve any discrimination or arbitrariness.

The taxpayers in question rejected the argument that the legislature was unaware of the Belgian tax regime, noting that Spain and Belgium have had a double taxation convention in place since 1995, which necessarily involves mutual knowledge of the respective tax systems. The Convention between the Kingdom of Spain and the Kingdom of Belgium expressly equates Spanish PIT and Belgian personal income tax (IPPTA), and includes clauses on non-discrimination and the exchange of information between both countries. The taxpayers argued that the aforementioned homogeneity of liabilities is not a requirement under the WTL, and that the Explanatory Memorandum of the WTL states that the wealth tax must function independently of PIT, as it is endowed with a stable and autonomous character. Finally, the taxpayers argued that the non-application of Article 31.1 of the

WTL to non-residents contravenes not only Article 31 of the Spanish Constitution, but also European regulations, as it breaches the freedom of residence and the free movement of capital as a result of arbitrary discrimination.

The Supreme Court based its decision on the case law of the Court of Justice of the European Union, particularly the judgment of 3 September 2014 (Commission/Spain, C-127/12), which concerned Inheritance and Gift Tax, but which addressed comparable situations. The Court summarised the key points of the CJEU case law as follows:

i) Any restriction on the movement of capital between Member States is prohibited.

ii) Prohibited measures include those that may dissuade non-residents from making investments in a Member State.

iii) The free movement of capital allows for exceptions that must be subject to a restrictive interpretation.

iv) Permitted differences in treatment must not constitute either a means of arbitrary discrimination or a disguised restriction; they may only be authorised when they affect situations that are not objectively comparable or are justified by overriding reasons in the general interest.

v) The comparable nature of a cross-border situation and an internal situation of a Member State must be examined by taking into account the objective pursued by the national legislation in question; and

vi) Overriding reasons in the general interest require that the achievement of the objective pursued be guaranteed without exceeding what is necessary to achieve it.

The Supreme Court emphasised that the fact that national legislation treats taxpayers differently based on their residence, when they find themselves in a comparable situation, may constitute a restriction on the free movement of capital. The legislation considers those who are the owners of the assets to be taxpayers, although it differentiates between a personal obligation and a real obligation depending on whether the entirety of the wealth or only those assets or rights located in Spain are included. The key issue is that this tax applies to the holding of assets and rights, meaning that it is irrelevant whether one is dealing with a real or personal obligation, since the crucial factor is that the situation is comparable, as both national residents and EU residents are taxed on the same assets and are both in the same situation: the accumulation of income and wealth. The existence of a real or personal obligation is irrelevant, as it does not alter the nature of the tax or its purpose, which remains the same.

Similarly, the Court held that no objective grounds of general interest were provided that could justify this difference in treatment. Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation may be invoked by a Member State in order to obtain all the information necessary for the correct assessment of taxes from the competent authorities of another Member State. In addition, the Convention between the Kingdom of Spain and the Kingdom of Belgium includes clauses on non-discrimination and the exchange of information.

Furthermore, the Supreme Court noted that it is unreasonable to attempt to justify the exception to the free movement of capital on the basis of non-confiscation, given that national taxpayers and those from third countries are in the same situation. Limiting wealth tax payments to reconcile this tax with income tax, thereby avoiding the confiscatory nature of the tax, is an objective that affects both national and cross-border situations.

Consequently, the Supreme Court held that the principle of the free movement of capital established under European Union law had been breached.

These judgments have an immediate and significant impact on non-resident taxpayers with assets in Spain, especially those with high levels of wealth that generate limited income. Thus, taxpayers who are affected will be able to apply the limit provided for in Article 31.1 of the WTL, calculated on the basis of the PIT liabilities paid in their country of residence in future tax years. Those taxpayers who have filed their self-assessments without applying the joint limit may seek to amend their self-assessments and request a refund of the amounts paid in excess, together with any applicable interest for late payment.

These judgments raise important questions that must be resolved in the future, both by case law and, ultimately, by the legislature. Firstly, the question arises as to whether this doctrine applies exclusively to residents of European Union Member States and the European Economic Area, as well as third countries with which Spain

has double taxation conventions or exchange of information agreements and whether, therefore, residents in countries without such treaties would be excluded or whether, as the case may be, they could provide some other form of proof of the tax paid in their country of residence. The Supreme Court noted that the situation of residents and non-residents may be considered different when there is no way of obtaining relevant information from property owners. This specifically concerns countries not bound to the levying Member State by any conventional obligation to communicate tax information, which could limit its application. Fortunately, Spain has an extensive network of conventions to avoid double taxation, meaning that the application of the case law criterion will be possible in most situations.

Secondly, the question arises as to what happens to taxpayers resident in countries where different rules apply to the attribution or accrual of income, such as the valuation of assets at market value at the end of each financial year, controlled foreign company rules or the classification of certain income as investment income or capital gains (short/long term). The existence of such rules, which differ substantially from Spanish rules, could significantly alter the tax base of the income tax in the country of residence compared to the Spanish system. In other words, the question arises as to how to proceed when the income tax in the country of residence is not analogous to Spanish PIT, whether because it taxes a substantially different tax base, applies very low or even non-existent tax rates, or has a completely different structure. The Court noted that non-residents pay a tax equivalent to PIT in their respective countries of residence, but did not establish clear criteria on what should be understood by "equivalent". The determination of the analogy between tax systems and the mechanisms for proving the tax actually paid abroad will be crucial to the practical application of this doctrine.

These questions will require a case-by-case analysis and are likely to give rise to new judgments that will gradually define the exact scope of this important case law development. In the meantime, non-resident taxpayers who are affected should consider requesting the amendment of their wealth tax self-assessments for tax years which are not time-barred to claim the refund of the corresponding amounts.

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