

THE SPANISH NATIONAL HIGH COURT EXTENDS TO NON-EU NON-RESIDENTS THE RIGHT TO DEDUCT EXPENSES IN THE NON-RESIDENT INCOME TAX (IRNR) ON RENTAL INCOME

Non-EU non-residents have been discriminated against compared with EU residents because the latter may deduct expenses directly related to the property and pay IRNR on the net rental income at a 19 % rate, while non-EU taxpayers must pay tax on the gross income, without deducting any expenses, and at a 24 % rate. Another difference is that, in their IRNR filings, they are not allowed to apply the significant reductions that Spanish-resident individuals can apply in their Personal Income Tax (IRPF)—reductions of 60 % until 2023 and between 50 % and 90 % from 2024 onward.

A judgment issued on 28 July 2025 by the National High Court (Administrative Chamber, case no. 636/2021) has now been published. The Court held that limiting the possibility of deducting necessary expenses to obtain rental income only to residents of the EU or the EEA—without extending that possibility to non-resident taxpayers from third countries—violates EU law and Article 63 of the Treaty on the Functioning of the European Union (free movement of capital).

This ruling represents a crucial change for non-EU non-residents in Spain, as it recognizes their right to deduct expenses for IRNR purposes on rental income, placing them on an equal footing with EU taxpayers and offering significant tax savings.

The judgment is not yet final while possible appeals to the Supreme Court remain pending. Until then, although it is a highly relevant precedent, there may be variations or qualifications in its practical application.

Still pending is a decision by the National High Court on other appeals concerning possible discrimination arising from:

- The 24 % tax rate applied to non-EU taxpayers compared to the 19 % applicable to EU residents, and
- The impossibility of applying, under the Non-Resident Income Tax, the reductions on net rental income set out in Article 23 of Law 35/2006.

1. ACTS AND CONTENT OF THE JUDGMENT

- The case concerns an individual resident in a third country (outside the EU/EEA), specifically the United States, who earned rental income from a property located in Barcelona.
- Until now, the Non-Resident Income Tax (IRNR) regulations did not allow non-EU taxpayers to deduct expenses related to that rental—such as loan interest, property tax (IBI), community fees, depreciation, repairs, insurance, etc. By contrast, EU/EEA residents did enjoy this right.
- The Tax Administration denied the deductions, the Central Economic-Administrative Court upheld the denial, but the National High Court overturned that decision

2. MAIN LEGAL BASIS

- The Court grounded its decision on the principle of free movement of capital set out in Article 63 of the Treaty on the Functioning of the European Union, which prohibits discriminatory tax treatment between residents of EU Member States and those of third countries regarding capital movements.
- It also relied on Double Taxation Treaties (DTTs) to which Spain is a party, many of which include non-discrimination or equal-treatment clauses. In the case at hand, the Spain–U.S. DTT was invoked to argue that Spanish domestic law must be interpreted in accordance with these international obligations.
- The Court found that prohibiting expense deductions for non-EU taxpayers violates both EU-aligned domestic legislation and the jurisprudence of the Court of Justice of the EU and the Spanish Supreme Court on non-discrimination in taxation.

3. WHAT CHANGES: PRACTICAL EFFECTS FOR NON-EU TAXPAYERS

As a result of this judgment, non-EU taxpayers who own rental property in Spain may now:

- **Deduct expenses** directly related to the property (loan interest, property tax–IBI, community fees, depreciation, repairs, insurance, municipal charges, etc.), provided they are directly connected with the rental income.
- **Enjoy equal treatment** with EU/EEA residents with respect to those deductions.
- **File claims or amendments:** taxpayers who paid IRNR without deducting these expenses, and whose tax years are still open (generally within a four-year statute of limitations), may request corrections and obtain refunds of undue payments.

At **Manuel Jódar Asesores**, we offer our non-EU clients a dedicated service to calculate potential refund amounts and to request the rectification of non-expired self-assessments.

Lorca, 18th September 2025



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