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Tax Law Department

**THE SPANISH SUPREME COURT VEINS THE TAX DISCRIMINATION REGARDING
INHERITANCES OR DONATIONS WITH RESIDENTS IN NON-EU COUNTRIES**

The Spanish Supreme Court in its recent judgment No. 242/2018 of February 19, 2018 has affirmed that non EU tax residents can't be discriminated by the Inheritance and Gift Tax. Until now those tax payers were been forced to pay for this tax according to the State regulations, so that, unlike residents of the EU, they could not access the reductions in the tax base and tax quote contemplated by the regional regulations.

In the aforementioned ruling, the High Court has ordered the State to return to an individual residing in Canada the difference between what he paid by applying the State regulations and what he would have paid by applying the regulations of Catalonia, since, according to the jurisprudence of the Supreme Court, inheritances and donations are undoubtedly capital movements and Article 63 TFEU prohibits "*all restrictions on the movement of capital between Member States and between Member States and third countries*".

This new ruling of the Supreme Court paves the way for all those extra-EU taxpayers who in the past have had to pay the Inheritance and Gift Tax according to State regulations, for any inheritance or donation with residents of non-EU countries, and, thus, they can request and obtain from the Spanish tax authorities the corresponding returns (provided that the right has not been prescribed, over the course of more than four years).