

Spain; Germany

# Spanish Supreme Court Confirms Incompatibility of NRIT Withholding Taxation, on Dividends Distributed to German Hedge Funds, with EU Law

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The Spanish Supreme Court has admitted the cassation appeal of Unión Investment Institutional GMBH, Internationale Kapitalanlagegesellschaft MBH, and Universal InvestmentGesellschaft MBH (the Appellants) against the refusal of the Spanish tax authorities for refunding withholding taxes on dividends paid by Spanish companies.

The Appellants are alternative investment fund management companies (AIFM) of German alternative investment funds (AIFs) or hedge funds. The AIFs were subject to withholding taxation on the dividends received from Spanish companies at 21% (19% in some cases, depending on the tax year) or at 15% on application of the [Germany - Spain Income and Capital Tax Treaty \(2011\)](#). The Appellants requested a partial refund of the taxes withheld, arguing that non-refund implied an infringement of the EU free movement of capital, on the grounds that Spanish hedge funds (*fondos de inversión libre*) can benefit from a 1% CIT tax rate.

Following its previous reasoning for French hedge funds (see [Spanish Supreme Court Declares Incompatibility of NRIT Withholding Taxation, on Dividends Distributed to Foreign Hedge Funds, with EU Law \(28 April 2023\)](#)), the Supreme Court admitted the Appellants' claim and the AIFs' right for a refund of NRIT withholding taxes on dividends, considering that the German hedge funds were comparable to Spanish hedge funds. This decision, together with resolutions in the appeals [7260/2021](#), [8220/2021](#), [7123/2021](#) and [7127/2021](#), forms a case precedent that implies that the Court's reasoning can be considered case law applicable to other proceedings.

The decision STS 1845/2023 - ECLI:ES:TS:2023:1845, of 25 April 2023, published on 15 May 2023, is available [here](#) (as a PDF and in Spanish only).

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