Calculation of the limitation period for the inheritance and gift tax on the estate of a deceased person whose heir dies before exercising the right to accept or disclaim the inheritance, right that passes to the latter's heirs

The Spanish Supreme Court, applying Article 24(3) of Act 29/1987, concludes that the *dies a quo* of the limitation period for the inheritance and gift tax on the estate of a deceased person, when the heir thereof dies before exercising the right to accept or disclaim the inheritance and such right is passed on to the latter's heirs, is the day on which the second predecessor in title dies.

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1. The Supreme Court's stance

The Supreme Court, in its Judgment of 23 April 2024 (app. no. 7570/2022), determines the *dies a quo* of the limitation period for the inheritance and gift tax on the estate of a deceased person when the heir dies without exercising the right to accept or disclaim the inheritance (*ius delationis*) and such right passes on to his or her own heirs, who are the ones who accept the inheritance and acquire the status of taxpayers of the inheritance tax. Specifically, it is a question of determining whether the start of said limitation period should be placed on the date of death of the first predecessor in title - as held by the Tax Tribunal of Catalonia and the heir of the second predecessor in title (the appellant in this case) - or, on the contrary, when the death of the second predecessor in title occurs - a position defended by the judgment under appeal and upheld by higher courts such as that of Madrid in, for example, its judgment of 20 December 2018 (app. no. 734/2017).

The Supreme Court - which, as mentioned, shares the view held in the judgment of the Catalonia High Court of Justice under appeal

– starts off recalling that the right to have the *ius delationis* pass on (*ius transmissionis*) arises when the heir of the original predecessor in title dies without exercising the right to accept or disclaim the inheritance and the same right that he or she had passes on to his or her heirs (the transferees). In this context, the Court brings up case law in which it concluded that, in scenarios such as the one analysed here, there is a single acquisition of inheritance and, therefore, a single taxable event under the inheritance and gift tax, not two taxable events or two accruals of tax liability, since the right of the deceased person to accept or disclaim the inheritance (*ius delationis*) is passed on to his or her own heirs (*ius transmissionis*) according to Article 1006 of the Civil Code (CC): "upon the death of the heir without accepting or disclaiming the inheritance, the same right that he or she had shall pass on to his or her heirs". This statement, as the court points out, is valid both for mortis causa successions governed by the Civil Code and for those occurring in devolved regions that also recognise in their common or special civil law the *ius transmissionis*, as is the case with the Civil Code of Catalonia.

In this context, the Supreme Court considers the conclusion reached by the judgment under appeal to be correct - setting the *dies a quo* of the limitation period for the tax as the time of death of the transferor - a position it defends after analysing several provisions of the inheritance and gift tax legislation.

Thus, firstly, it recalls that, in accordance with Article 3(1)(a) of the Inheritance and Gift Tax Act 29/1987 (LISD), the taxable event in the inheritance and gift tax is "the acquisition of property and property rights by inheritance, bequest, devise or any other means of succession", from which it follows that acquisition through acceptance is an essential requirement for the taxable event to occur, acceptance that the second predecessor in title did not give in this case, so that it cannot be deemed that such an acquisition and, therefore, the taxable event and the possibility for the tax authority to issue a notice of assessment, has taken place.

On the other hand, it is true that Article 24 LISD establishes as a general rule that the tax becomes due on the day of the death of the predecessor in title, but in the Court's opinion, this only means that the effects of the tax are retroactive to that moment, and this must be understood in accordance with Article 989 CC, which establishes that "the effects of the acceptance or disclaimer of the inheritance are always retroactive to the moment of death of the person from whom it is inherited", which means - the Court points out - that the acceptance is the determining event of the acquisition.

However, the Court goes on to argue that Article 24(3) LISD also provides that "any acquisition of property whose effectiveness is suspended due to the existence of a condition, term, trust or any other limitation, shall always be deemed to have taken place on the day on which such limitation disappear", and in order to determine the accrual of tax - in accordance with Article 47 of the inheritance tax regulations - the time at which such limitation disappears must be taken into account, not only to deem the acquisition to have taken place, but also to determine the value of the property and the tax rates. Therefore, from the interplay of both provisions, it can be deduced that the accrual of tax does not take place on the day of the death of the predecessor in title in the mortis causa transfer, which makes it possible for the acquisition to take place at a later time when there is a limitation.

In this context, the Supreme Court, in line with what is stated in the contested ruling, considers that the failure to exercise the *ius delationis* that passes to the heirs of the transferor "is a limitation on the acquisition of the original transferor's property, as provided for in Article 24(3) LISD, preventing the taxable event from occurring". That is to say, the Court adds, the acquisition of the property of the first predecessor in title "was suspended" until the limitation disappeared, which took place on the death of the transferor, which is the moment when the *ius delationis* is transferred to his or her heirs, who can then exercise it; with its exercise, the acquisition of the property of the first predecessor in title takes place, there being a single hereditary transfer whose accrual took place at the moment of the death of the transferor, the moment when the limitation disappeared.

Therefore, the Court concludes, "the *dies a quo* of the limitation period for the tax authority to assess the inheritance and gift tax in those cases of acquisitions through death in which the heir dies without exercising the right to accept or disclaim the inheritance and such right passes on to his or her own heirs, who are the ones who accept the inheritance and acquire the status of taxpayers of the inheritance tax, is the moment of the death of the transferor".

However, the aforementioned judgment has a dissenting opinion in which the dissenting justice disagrees with the aforementioned stance, fundamentally because he considers that the fact that the second predecessor in title has died without accepting the inheritance of the first predecessor in title is not a situation that can be equated to one of the "limitations" on the acquisition of the original predecessor in title's property under Article 24(3) LISD.

In said justice's opinion, the Court's ruling does not fit in well with the interpretative guidelines that emerge from the Supreme Court's judicial review and civil case law as taken up by the ruling itself. He recalls that, according to Article 24(1) LISD, in acquisitions through death, the tax is payable on the date of death of the predecessor in title and, for all purposes, the predecessor in title, as can be seen from the assessment issued to the transferee, was the first deceased.

Furthermore, Article 24(3) LISD is not designed for situations such as the one in question, so that the death of the second predecessor in title can in no way be understood as a limitation on the acquisition (by a third party) of the property of the first predecessor in title which prevents the production of the taxable event. On the contrary, the death of the former without having accepted or disclaimed the inheritance only entails the transmissive effect of the right that operates as a prerequisite to legitimise the acceptance or disclaimer of the inheritance, a right that is held *ex lege* by the transferee heir. Therefore, it cannot be understood that the latter has had his or her right to acquire the property of the first predecessor in title limited, basically because he was not the holder of such a right.

Therefore, in the opinion of the dissenting justice, the *dies a quo* of the limitation period should be placed at the time of the death of the first predecessor in title, since the effects of the acceptance are retroactive to that moment (Art. 24 LISD and Art. 989 CC).

2. Final comment

Bearing in mind the premises on which the Supreme Court based its analysis of this case, drawn from a wealth of case law in both the ju-

dicial review and civil divisions, we understand that the conclusion reached by the Court in this case is not exempt from criticism. In this sense, the interpretation that the Court makes of Article 24(3) LISD in order to apply it to this case is not in line with that made in other previous rulings. For example, in Judgment no. 265/2024 of 19 February, the Supreme Court pointed out that the stipulations relating to the limitations referred to in the aforementioned provision are designed for agreements between parties that condition or postpone the acquisition of ownership over property. For this reason, the Court rejected its application in a case in which the heir-at-law status had been acquired as a consequence of the acknowledgment of parentage by a final and conclusive judgement given after the death of the parent and predecessor in title, which did not prevent the Court from concluding that the moment in which inheritance tax became due was that of the death of the predecessor in title and not the date of the final and conclusive judgement adjudicating parentage.

Non-acceptance by the second deceased person "is a limitation" for acquiring the property of the original predecessor in title

However, the truth is that the judgment under discussion deals with a case of inheritance that could be described as "special", leading the Supreme Court to address the issue by applying the aforementioned Article 24(3) LISD by means of a sort of procedural analogy that can certainly offer a logical solution to some tax issues that arise in these cases and which do not have a specific solution under the applicable legislation.

If the date of death of the first predecessor in title is the *dies a quo* for calculating the limitation period, it should be understood that it also marks the start of the period for filing the inheritance and gift tax return. This could lead the transferee, if the limitation period has not elapsed, to bear the surcharges for late filing when he or she does not submit his or her self-assessment within the statutory period counting from the death of the first predecessor in title, when in fact it would have been impossible if after this period the second predecessor in title dies without accepting the inheritance, since until this last moment the transferee would not have received the *ius delationis* in relation to the inheritance from the original predecessor in title.

In fact, this situation was addressed by the High Court of Justice of Castilla y León in its judgment of 4 February 2021. In this case, the transferee, who had filed the inheritance and gift tax self-assessment after accepting inheritance following the death of the transferor - who had died without accepting the inheritance of the first predecessor in title -, received a surcharge for late filing because the tax authority took the date of death of the first predecessor in title as the *dies a quo*. In this context, the regional court, applying the aforementioned Article 24(3) LISD in the same sense as the Supreme Court has now done, upheld the arguments made by the heir in order to place the start of the self-assessment tax return period on the date of death of the second predecessor in title, on the understanding that this period cannot begin until, with the death of the transferor, the right to accept the inheritance of the first predecessor in title is received.

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