

WRITTEN QUESTION P-0561/09
by Glenys Kinnock (PSE)
to the Commission

Subject: Spanish IBI Tax

Would the European Commission please refer to the action brought by the Commission before the European Court of Justice (ECJ) on 19 December 2007, Case C-562/07 – Commission of the European Communities v Kingdom of Spain. The Commission will be aware that the ECJ found that the Spanish Government's tax treatment of EC non-residents regarding capital gains tax paid up to 31 December 2006 was discriminatory.

In 2006 the Spanish Government passed Law 35/2006, establishing an 18% flat tax rate for all capital gains. However, no statutory provisions were made to correct the discriminatory regime applied to non-residents up to 31 December 2006. As a result, Spain was referred to the ECJ, on the grounds that the higher tax burden on non-residents is discriminatory in nature and restricts freedom of movement for workers and the free movement of capital, as provided for in Articles 39 and 56 EC and Articles 28 and 40 of the EEA agreement.

The ECJ has expressed the position that 'under Spanish legislation in force until 31 December 2006 the taxation of capital gains of non-residents was subject to a proportional rate of 35%, while that of residents was subject to a progressive schedule if the capital assets remained their property for a period of less than one year, and to a proportional rate of 15% if the period of ownership exceeded one year. Consequently, the tax burden borne by non-residents if they sold their assets after the lapse of one year following acquisition was always greater. In the event of disposal of assets within the year following acquisition, non-residents also bore a greater tax burden, except when the average rate applied to resident taxpayers exceeded 35% (which would imply very considerable capital gains).'

In light of this argument, can the European Commission confirm whether the Spanish Government can differentiate between residents and non-residents for the purposes of the Impuesto sobre Bienes Inmuebles (IBI) tax? Would the European Commission please comment on reports that I have received which suggest that in the Costa del Sol region of Andalucia, Spain, the 2008 IBI tax for non-residents has increased by 70% while the rate for Spanish residents has increased by only 4%?