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# *“Everything changes so that everything remains the same: New (?) ruling of the Supreme Court on the IRPH”*

With its rulings issued on November 11, the Spanish Supreme Court has added another chapter to the long judicial history of mortgage clauses in consumer banking contracts. Although some media outlets have attempted to promote the idea that this new decision opens a window of opportunity for claims, the truth is that the Supreme Court remains firm in its established case law—namely, the overall validity of IRPH clauses.

Before coming to this conclusion, which we have already anticipated, it is worth recalling that the clauses examined by the Supreme Court on this occasion are those that designate the IRPH as the reference index for calculating the variable interest rate of a mortgage loan. Unlike the Euribor—used in most variable-rate mortgages—the Mortgage Loan Reference Index (IRPH) is calculated based on the simple average of the interest rates applied in the mortgage market over the previous three years. This very structure puts it at a disadvantage compared to other reference rates in the mortgage market (particularly the Euribor itself).

This circumstance, together with certain questionable banking practices that led to its inclusion in mortgage contracts, ultimately resulted in the IRPH being challenged before the courts. The dispute was partially addressed by the Court of Justice of the European Union (the “CJEU”) in its judgment of March 3, 2020 (C-125/2018), in which it concluded that the lawfulness of including this type of clause depended on passing the so-called “transparency control.” This essentially consists of verifying whether the consumer understood the clause’s inclusion in the mortgage contract. However, the “case-by-case” analysis imposed by the CJEU on national courts when assessing the clause’s abusive nature led to discrepancies in judicial evaluations—a matter that the Supreme Court has now settled with judgments No. 1590/2025 and 1591/2025, which we examine here.

Addressing the substance, the Supreme Court once again emphasizes that subjecting the variable interest rate to the IRPH is not null and void per se. Instead, it must be examined under the transparency control, which in this context means ensuring that the consumer had access to information about the index’s essential parameters (its composition, values, and historical evolution) and, specifically in this case, to Bank of Spain Circulars 5/1994 or 5/2012, depending on the contract’s date, where these parameters were sufficiently defined.

Thus, the Supreme Court reiterates that the IRPH clause is not inherently abusive and focuses the analysis on its transparency—something that is neither new nor does it signal the beginning of a new wave of consumer claims related to banking practices.

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# Change in TEAC criteria on the deduction for investment in primary residence: Mortgage cancellation after the sale is deductible.

The recent decision of the Central Economic-Administrative Tribunal (TEAC) of 20 October 2025, Case No. 2995/2025, has brought the deduction for investment in a primary residence back into the spotlight—an issue that seemed almost settled since its elimination in 2013. The deduction was only maintained, under Transitional Provision 18 of the Personal Income Tax Act (IRPF), for those who had purchased their home and applied the deduction in tax years prior to 2013.

The matter analyzed by the TEAC in this ruling stems from the situation of a taxpayer from Santa Cruz de Tenerife who, upon selling the primary residence in June 2018, used part of the sale price to pay off the mortgage and applied the full deduction in his tax return. The Tax Agency initially only recognized as deductible the instalments paid before the sale—i.e., up to May—excluding the final repayment. The new decision specifically corrects this interpretation.

Until now, the Tax Agency had argued that paying off the mortgage with funds from the sale could not be considered an investment in the residence, because the property was being transferred and therefore was no longer being acquired. As a consequence many taxpayers were denied a significant portion of the deduction and, in some cases, its incorrect application was even accompanied by a penalty.

The interpretation upheld by the Tax Agency resulted in the following paradox:

- Anyone with enough savings to pay off the mortgage early before selling could claim the deduction.
- In contrast, anyone who depended on the sale proceeds—which is a very common situation—was excluded from applying the deduction on that amount.

This approach, inconsistent with the reality of property transactions—in which sale and mortgage cancellation often occur simultaneously—generated multiple legal disputes and case law that began to shift in favor of taxpayers. Thus, the TEAC adopts this interpretive trend and now establishes it as binding precedent, finally accepting a view more aligned with the legal and economic reality of such transactions.

According to the Tribunal's reasoning, what matters is not where the money comes from, but what obligation is being paid. If part of the sale price is used to repay a loan that originally financed the purchase of the primary residence, that repayment is part of the deductible investment, as it constitutes early amortization of the debt associated with the purchase.

The Tribunal also adds a practical point: in a property sale, the transfer of the home and the cancellation of the mortgage typically occur as a single act, not as isolated events. The transaction is structured so that the property is transferred free of encumbrances, which requires the seller to settle the mortgage at that moment with the sale proceeds.

This interpretive criterion leaves behind years of restrictions and may, in many cases, lead to significant refunds for taxpayers applying the transitional regime for the deduction on investment in a primary residence.

The transitional rules allow a 15% deduction on amounts paid each year towards the purchase or financing of a primary residence, with an annual maximum base of €9,040—placing the maximum annual deduction at €1,356. The TEAC's change in criteria can significantly alter the result in the year of the sale.

To illustrate: consider a taxpayer who, during the tax year, paid €3,000 in regular mortgage instalments, and upon selling the property used €6,040 from the sale price to pay off the remaining mortgage. Before the TEAC ruling, only the €3,000 paid during the year could be counted. However, under the new criteria, the deductible base becomes the full €9,040 limit, as the final repayment is now included. Applying the 15% deduction rate, the deduction increases from €450 to €1,356, reaching the annual limit.

Taxpayers who previously sold their primary residence and did not apply the deduction on the final mortgage repayment now have the option to correct their self-assessments for tax years still open for review—currently 2021 to 2024—so long as they provide documentation proving both the sale and full repayment of the mortgage loan. Earlier periods can no longer be amended due to the four-year statute of limitations. Accordingly, it is advisable to review each case without delay and gather all necessary supporting documents in advance.

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# Voluntary employer improvements regarding temporary incapacity supplements

## Supreme Court Judgment of 2 July 2025 (No. 715/2025)

In the field of employment relations, employers have the autonomy to grant voluntary improvements to workers. These are benefits that may go beyond what is established in law or in the collective bargaining agreement, introduced as incentive measures or human-resources policy tools. However, withdrawing or limiting these improvements often generates significant legal disputes, particularly concerning the doctrine of “more beneficial conditions,” potential violations of the principle of equality, and the prohibition on establishing dual pay scales.

The Supreme Court Ruling of 2 July 2025 (No. 715/2025) analyzes a case of this nature. The case began in 2017, when a company, unilaterally, decided to grant its workforce a package of conditions superior to those provided in the collective agreement. Among them, a notable improvement was the supplement to temporary incapacity benefits, raising them to 100% of salary from the first day of sick leave and for a maximum of 18 months.

However, in March 2023 the company changed its policy and stopped applying this supplement to new hires, limiting itself to what was agreed in the collective agreement. As a result, employees hired from that date onward were not granted the supplement, which remained in place only for those who had already consolidated it. Employee representatives challenged the decision, arguing that it created discrimination and, in practice, established a dual pay scale.

On the one hand, the Supreme Court recalls that a more beneficial condition applies to the group of employees who acquired it, and therefore does not have to be recognized for newly hired personnel. On the other hand, the Court emphasizes that Article 14 of the Spanish Constitution does not impose absolute equality of treatment in employment relations. The autonomy afforded to private parties allows employers, through agreement or unilateral decision, to freely determine the worker’s compensation. The Court therefore holds that deciding not to extend the temporary incapacity supplement to employees hired later—provided no additional discriminatory or dignity-related circumstances exist—cannot be deemed a dual pay scale that violates the principle of equality.

The Court links this interpretation with its case law on seniority supplements. In those cases, to prevent dual pay scales based on hiring date, the Court reiterates that the right must be structured in a static, not dynamic, manner. This means that the conditions already enjoyed by the group that acquired them are consolidated and preserved, but there is no obligation to extend them indefinitely to workers hired in the future. This framework aims

to preserve what has already been granted, without violating the equality principle in respect to those who never had such benefits.

The Supreme Court applies this doctrine, explaining that the case concerns preserving consolidated rights for a specific group of workers, structured in a static manner, relating to a voluntary improvement granted outside the collective agreement and expressly recognized as a more beneficial condition. Thus, the Court allows the consolidation of a temporary incapacity supplement exceeding the collective agreement provisions for employees hired before a specific date, while simultaneously setting a limit to prevent its indefinite extension to future hires.

This configuration strengthens legal certainty for companies by establishing criteria that define the scope of voluntary improvements—linked to employers’ freedom of decision—and prevent them from turning into perpetual obligations that would be difficult to sustain in the long term.

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# How tokenization is transforming the real estate market

Tokenization consists of converting a real asset into a token—in other words, creating a digital representation of that asset. Thus, for example, a high-value work of art can be tokenized to enable the online purchase and sale of its digital representation as if it were a share on the stock market.

In recent years, tokenization has become one of the main innovations in the real estate sector. In contrast to an environment traditionally characterized by high-value transactions, low liquidity and complex financing processes, this model makes it possible to economically split a project without altering ownership of the property. For developers, it represents a more direct and flexible source of financing; and for investors, it drastically reduces the entry barrier, allowing participation in high-value assets starting from amounts that, in some cases, range between €100 and €200.

Real estate tokenization digitally represents, through tokens, economic rights linked to a property. These tokens in the real estate sector are classified as security tokens due to their financial nature. It is not the ownership of the property that is tokenized, but the instrument granting access to economic flows—rents, interest, or capital gains. Put simply: just as a share represents an aliquot part of a company and can be transferred without affecting the company's activity, a token represents an economic stake in a real estate project and can be bought or sold without modifying ownership of the underlying property.

In real estate, security tokens are generally divided into two major categories: equity tokens and debt tokens. The difference lies in the nature of the economic right they incorporate.

On the one hand, **equity tokens** allow the property to be integrated into a special-purpose vehicle whose shares are digitally divided. The investor acquires an economic percentage of the project and participates in the income derived from its operation and its final revaluation. For example, if a company owns a property valued at €500,000, it may issue 5,000 tokens representing the company's shares, thus allowing flexible entry into the capital. This enables investors to access the project with small amounts, without the high outlay traditionally required in real estate investments.

On the other hand, **debt tokens** are used to finance acquisitions, renovations or project developments. The developer issues a financial instrument and divides it into multiple tokens representing a credit right with an agreed interest rate and set maturity. Thus, a €200,000 loan can be split into 2,000 tokens of €100, enabling each investor to receive a fixed pre-agreed return. This model can also offer tax efficiencies for developers by avoiding certain costs associated with traditional guarantees or mortgage structures.

Both models are already being applied in major international transactions. One of the most cited examples is the tokenization of the St. **Regis Aspen Resort (USA)**, where equity tokens representing a special-purpose vehicle owning the hotel were

issued, raising USD 18 million under a regulated framework. In Spain, the first real-estate debt tokenization took place in 2020 to finance the renovation of a building in Barcelona. The transaction allowed investors to acquire tokens entitling them to a 7% annual interest and the possibility of trading them on a secondary market, demonstrating the usefulness of the model for financing needs that traditional banks seldom meet.

Based on transactions like these, several platforms have been developed in Spain which, without altering the property's registry ownership, enable investments through security tokens. Their operation varies depending on the type of project, but they generally follow two main models: platforms oriented toward short-term operations—such as acquisitions, renovations, and quick resales—which structure financing through debt tokens with low entry tickets; and others with a more long-term, asset-management approach, integrating the property into a special-purpose vehicle and issuing equity tokens so investors can participate in periodic rents and the final appreciation of the asset. There are also platforms aimed at more sophisticated investors that combine both instruments in complex projects or prime locations, with higher minimum investments.

Although each model addresses different economic needs, they all share an essential element: they have opened access to real estate investment to previously excluded profiles and have provided developers with new financing pathways complementing traditional banking.

For all these reasons, tokenization represents a truly revolutionary change in the real estate market: it transforms how investment in real assets is structured, financed and accessed, introducing unprecedented liquidity and flexibility into a historically rigid sector. While it does not replace traditional structures, it decisively complements them, allowing the investment to be split, participations to be transferred more easily and dependence on bank financing to be reduced through more dynamic and accessible mechanisms.

In short, this advancement is enabling new ways of understanding economic participation in a property, opening the door to previously excluded investors and promoting the entry of international capital through digitalized and efficient structures. The scale of the change is already measurable: according to Boston Consulting, the global market for tokenization of real-world assets will reach USD 16 billion by 2030, with annual growth of 63%, confirming that this is not a passing trend but a structural transformation that will continue reshaping the sector in the coming years.

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**DECEMBER**

# The Inviolability of the Home in Light of New Forms of Intrusion

Article 18 of the Spanish Constitution guarantees the right to honor, personal and family privacy, and one's own image, and incorporates the inviolability of the home as one of the strongest safeguards against external interference. It provides that no entry or search may take place without the consent of the owner or without a judicial order, except in cases of flagrante delicto.

To understand its scope, it is useful to clarify two aspects: (i) the concept of "home" for constitutional purposes, and (ii) the legal interest protected by the provision.

The Constitutional Court has interpreted the inviolability of the home as a guarantee that protects the private space where a person freely develops their private life, shielding it from any external interference. Its purpose is not to safeguard the physical property but rather the personal and family sphere projected within it.

The Court also considers the home to be a reserved space where individuals exercise their most personal freedom, free from social conventions, and whose protection extends both to the physical space and to everything that reflects the personality and private life of its occupant. The concept is not limited to the primary residence but encompasses any enclosed place where private life occurs with the intention of excluding third parties. Consequently, Article 18.2 SC protects personal privacy, understood as the reserved sphere of private life where the individual can act freely.

The Supreme Court's case law has reinforced this interpretation, extending protection not only to physical intrusions but also to observations or surveillance that provide visual access to the protected space using technical means. In the Court's words, *"to interpret that blinds left raised or curtains left open by the resident imply implicit authorization to observe the interior of the property carries the risk of irreparably weakening the substantive content of the right to home inviolability,"* thereby rejecting any presumption of tacit consent derived from mere visibility of the interior (Supreme Court Judgment No. 329/2016, of 20 April).

This interpretation becomes especially relevant in the face of new remote surveillance technologies. In this context, Supreme Court Judgment No. 797/2025, of 2 October, analyzes the use of a drone by the police in a gated community during a drug-trafficking investigation. The device was used to locate the suspect's bungalow, after which a judicial warrant for entry and search was requested.

The defense alleged a violation of Article 18.2 SC, arguing that the overflight amounted to covert surveillance over a private space. However, the Supreme Court rejected this claim, holding that the drone's flight was limited to common areas classified as "de facto public spaces," did not record the interior of the home, nor involved continuous surveillance, and that the judicial order was based on prior and independent information.

Nonetheless, this interpretation has been questioned. Although the Supreme Court recognized that the residential complex had a

domiciliary nature, it simultaneously characterized it as an area of public transit. However, the common areas of a residential complex are for the exclusive use of residents and form part of the sphere of privacy protected by the Constitution. The Constitutional Court has reaffirmed this by requiring judicial authorization to install cameras in community garages, considering that these spaces—despite their collective use—belong to the private sphere protected by the Constitution (Constitutional Court Judgment No. 92/2023, of 11 September). Therefore, the capturing of images by drones in gated communities must be subject to the same level of protection, since the shared nature of the space does not remove it from residents' private sphere.

The Supreme Court's assertion that the images did not influence the judicial authorization raises doubts from the standpoint of causality, since the use of the drone made it possible to locate the property to be searched, playing a relevant role in the police operation. According to the "fruit of the poisonous tree" doctrine, repeatedly affirmed by the Court itself, any evidence obtained directly or indirectly through an unlawful intrusion into the home must be declared void.

Consequently, although Supreme Court Judgment No. 797/2025 validates the use of the drone by appealing to a formal interpretation of the concept of "public space," its reasoning risks weakening the fundamental right protected by Article 18.2 SC. The inviolability of the home, as an expression of personal privacy and human dignity, constitutes a barrier against any external interference, physical or technological. Its protection requires that any capturing, observing, or overflying of private spaces be subject to prior judicial oversight.

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