

# Additional taxes on non-Spanish tax resident individuals who hold Spanish real estate assets through companies

On 10 November, the Spanish Government published a proposal for a series of amendments that would increase taxation for non-Spanish tax resident individuals who indirectly hold Spanish real estate. If approved, the proposal would come into force before the end of 2022, so it is advisable to review investment structures into Spain as soon as possible to anticipate the tax impact. This briefing addresses the key aspects of these measures.

## 1. PROPOSED MEASURES

The proposed measures would tax non-Spanish tax resident individuals who directly or indirectly own real estate in Spain through one or multiple entities, under both the Net Wealth Tax (“NWT”) and the recently announced Solidarity Wealth Tax for High-Net-Worth Individuals (“**Solidarity Tax**”). The proposal, which the Spanish Parliament is currently debating, aims to:

- (i) amend current NWT rules to tax non-Spanish tax resident individuals who indirectly own real estate in Spain through one or multiple entities; and
- (ii) create the Solidarity Tax.

## 2. TAXABLE EVENT AND SCOPE

### (A) NWT

It is proposed that non-Spanish tax resident individuals be made subject to the NWT when they hold shares in any entity in which “*at least 50% of its assets are directly or indirectly made up of real estate located in Spain*”.

To determine the composition of the assets, the net book value of the entity’s real estate must be replaced by the highest of the following three values: (i) the cadastral value; (ii) the value determined or verified by the Public Administration; or (iii) the price, consideration or acquisition value of the real estate. The net book value of the remaining non-real-estate assets or rights must be replaced by their market value on the date the tax accrues (December 31) .

Currently, the NWT Law, which is levied on non-Spanish tax resident individuals who own assets or rights located in Spain, allows those individuals to apply those rules passed by the autonomous region where the majority of the individual’s assets and rights (based on value) they own in Spain is located. Under this location-based rule, our understanding is that non-Spanish tax resident individuals that indirectly own

Spanish real estate through entities would be entitled to opt for the law of the autonomous region where the underlying real estate of the company in which they hold shares is located.

According to this interpretation, the proposed reform on the NWT would not result in additional tax for those individuals who indirectly own real-estate assets that – in terms of the majority of their value – are located in Spanish regions such as the Madrid and the Andalusia regions, where a 100% NWT allowance applies, and no NWT is due. However, as explained below, additional tax may nevertheless be due under the new Solidarity Tax if these individuals are subject to the new Solidarity Tax (on the basis that either the direct or indirect (in the case of real estate assets) value of their Spanish assets or rights exceeds EUR 3 million).

#### (B) Solidarity Tax

The Solidarity Tax is designed as a federal tax, payable annually, which would be complementary to the NWT (and the NWT paid will be creditable against the Solidarity Tax). Among those affected by the new tax are non-Spanish tax resident individuals with a net wealth in Spain (including stakes in companies holding Spanish real estate, as explained above) of at least EUR 3 million.

We have prepared a brief summary of the general aspects of the Solidarity Tax, available [here](#).

It is currently unclear how shares in these entities which own a majority of Spanish real estate assets should be quantified for the purposes of their inclusion in the taxable base of the NWT or the Solidarity Tax (although it is reasonable to assume that the valuation rules applicable to the ownership of shares in companies should be the same as those that apply here), or whether the part that proportionally corresponds to the assets of the entity that are not located in Spain should be subject to tax (which does not seem to be fair, although the literal wording of the rule suggests this conclusion).

### 3. ENTRY INTO FORCE

The NWT and the Solidarity Tax accrue on 31 December each year. The new measures will enter into force the day after their publication in the Spanish Official Gazette (*BOE*). Therefore, if the law is published before the year end, it would be applicable with respect to Spanish real estate assets held on 31 December 2022.

Payment of both taxes should, pursuant to the current wording of the regulations, be made in June or July of the following calendar year, as established in the implementing regulations of the Solidarity Tax.

### 4. MITIGATION

It is likely that the Government will have sufficient parliamentary support for the proposed measures to go through Parliament and be passed before the end of the year.

Given that likelihood, we recommend (i) reviewing the situation of non-Spanish resident entities that hold Spanish real-estate investments to determine the potential impact of these taxes, and (ii) exploring the possibility of adopting measures or planning alternatives under tax law to mitigate the corresponding tax burden.

The text of the draft bill that was recently announced must go through the parliamentary procedure and could be modified. The approval of the Solidarity Tax itself is not guaranteed, nor is its permanence in the Spanish legal system (as per the current proposal, it will apply for, at least, tax years 2022 and 2023).

There have also been reasonable concerns regarding the constitutionality of the current drafting of the bill and its compatibility with legislation regulating the authority of Spain's regions regarding the NWT. It is therefore foreseeable that, if passed, the Solidarity Tax will give rise to considerable litigation in the future.

## 5. CONTACT LAWYERS



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