

# Private Client: Spain

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A Q&A guide to private client law in Spain. The Q&A gives a high level overview of tax; tax residence; inheritance tax; buying property; wills and estate management; succession regimes; intestacy; trusts; co-ownership; familial relationships; minority and capacity; and proposals for reform.

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## **Taxation**

### **Tax year and payment dates**

#### **1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?**

### **Residents**

For individuals that are tax resident in Spain and subject to personal income tax (PIT), the official tax year

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runs from 1 January to 31 December. If a taxpayer dies before 31 December, the tax year ends and PIT accrues on the date of death. The period for filing PIT returns is, generally, from 3 May to 30 June of the following year.

In addition, wealth tax has been re-introduced in Spain for the tax periods 2011 and 2012. However some Spanish Autonomous Communities have approved certain tax benefits, including a 100% tax allowance for Madrid residents.

### **Non-residents**

Generally, non-resident taxpayers that are subject to non-resident income tax (NRIT) must declare and pay NRIT during the first 20 days of April, July, October and January.

NRIT is paid on income obtained during the calendar quarter immediately preceding these payment periods; for example, NRIT on interest income earned on 20 May will be declared and paid during the first 20 days of July.

If a non-resident sells Spanish real estate, a NRIT return must be submitted during the three months following the transfer date.

For transactions with a taxable base at zero, the NRIT return must be submitted between 1 to 20 January of the year following the transaction year.

If a taxpayer is entitled to a tax refund, the return can be submitted from 1 February of the year following that in which the income accrued, and up to four years later.

Special rules apply for individuals not resident in Spain for tax purposes and operating through a Spanish permanent establishment (PE) (see *Questions 5 and 6*).

## **Domicile and residence**

### **2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?**

#### **Domicile**

Spanish tax law does not differentiate between the concepts of domicile and residence to determine the tax status of residence. A taxpayer's domicile is one of the criteria used to determine where a taxpayer is resident.

#### **Residence**

A taxpayer's residence determines where a taxpayer must pay taxes and the applicable rules.

An individual is a taxpayer for PIT purposes if his habitual residence is in Spain.

Residence tends to be determined according to factual evidence. To be tax resident in Spain, an individual must either:

Spend more than 183 days in a calendar year in Spain. Sporadic absences are not excluded from the calculation of the 183 days, unless the taxpayer can prove that he is tax resident in another jurisdiction.

Have his main activity or economic interests directly or indirectly located in Spain.

In addition, unless the taxpayer proves otherwise, it will be assumed that he is tax resident in Spain if his spouse and minor children, who depend on the spouse, habitually reside in Spain.

#### **Other**

Conventions for the avoidance of double taxation (CDT) include criteria to determine a taxpayer's tax residence. Where there is a conflict between signatory states' domestic laws concerning the state in which a taxpayer is tax resident, the CDT's criteria to determine tax residence should be

considered to establish which state's tax legislation will be applied.

## **Taxation on exit**

### **3. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?**

The PIT Law does not provide for an exit tax when an individual loses his tax residency status.

However, if under a special regime there is any income pending to be included in an exiting individual's PIT base, this income must be included in the tax base of the last tax year when he was a Spanish tax resident (*PIT Law*).

An individual who stops being a Spanish tax resident must inform the Spanish tax authorities.

## **Temporary residents**

### **4. Does your jurisdiction have any particular tax rules affecting temporary residents?**

The PIT Law does not specifically regulate temporary residents. Tax liability depends on whether an individual qualifies as a tax resident under the PIT Law (*see Question 2*).

An individual who obtains Spanish-source taxable income but does not fulfil the requirements to be classified as tax resident is considered a non-resident and liable to pay NRIT (*see Question 1*). In this case, there are both a:

- Special, optional regulation for EU-resident individuals who have obtained, in Spain, either labour income or income from an economic activity.
- Lower tax rate for labour income obtained in Spain by individuals who are considered foreign seasonal workers.

The PIT Law includes a special tax regime for non-resident workers moving their domicile to Spain. These workers are taxed exclusively on their Spanish-source income and capital gains, as if they were non-resident individuals subject to NRIT. This applies subject to certain requirements and for no more than six calendar years. In particular, employment income is taxed at the reduced NRIT rate of 24%. Non-Spanish source income and capital gains are not subject to tax.

## **Taxes on the gains and income of foreign nationals**

### **5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?**

Individuals who are not resident in Spain for tax purposes or acting through a PE located in Spain are generally taxed under NRIT.

## **Capital gains tax**

Generally, capital gains obtained in Spain by these individuals are taxed at a rate of 19%. Usually, no withholding tax is levied on capital gains (with the exception of redemption on collective investment undertakings and a 3% withholding tax levied on the consideration paid to a nonresident transferring real estate located in Spain).

## **Exemptions from NRIT**

Residents of jurisdictions that have concluded a CDT with Spain that includes an information exchange clause are exempt from capital gains tax under NRIT. This exemption only applies in relation to the following, in a Spanish official secondary securities market:

Transfers of shares.

Reimbursements of units in a collective investment undertaking.

Further, EU residents are entitled to an exemption for capital gains on the disposal of shares, provided that all of the following apply:

The assets of the company to which the shares belong do not consist mainly, directly or indirectly, of real estate located in Spain.

The individual has not held a participation interest of at least 25% in the Spanish company's share capital during the 12 months before the share transfer.

Are not allocated to a PE of the non-resident in Spain.

Do not consist of real estate located in Spain.

■ The capital gain is not obtained through a tax haven jurisdiction.

Most CDTs provide for an exemption from capital gains tax over NRIT, provided the assets:

In some cases, when the assets consist of shares in a Spanish-resident entity, the CDT exemption only applies if the share holding is below significant participation thresholds (that is, below 15% or 25%).

## **6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?**

Individuals who are not resident in Spain for tax purposes or acting through a PE in Spain are generally taxed under NRIT (see *Question 5*).

## Income tax

For these individuals, income obtained in Spain is generally taxed at 24%. However, a 19% reduced tax rate applies to dividends, interest and capital gains.

Each income is taxed separately on its gross amount and no expenses are deductible (with certain exemptions). Normally, a withholding tax equal to the non-resident's final tax liability, other than most capital gains, is levied on the Spanish-source income.

## Exemptions from NRIT

Domestic rules provide certain tax exemptions on income obtained by non-residents for example, income derived from Spanish public debt or interest accrued on non-residents' bank accounts.

Further, individuals resident in the EU are entitled to an exemption on interest obtained in Spain, provided that the interest is not obtained through a tax haven jurisdiction.

Individuals resident in a jurisdiction which has entered into a CDT with Spain can apply the reduced tax rates provided in the relevant CDT (for example, CDTs usually establish rates ranging from 5% to 15% on interest and dividends).

## Inheritance tax and lifetime gifts

### 7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

Spanish inheritance and gift tax (*Impuesto sobre Sucesiones y Donaciones*) (IGT) is charged by the Spanish Autonomous Communities on an individual's acquisition of assets or rights by means of a gift or inheritance (that is, on a free basis).

In the case of *mortis causa* transfers (that is, gifts made during a donor's lifetime that take effect on death) the taxable amount attributed to each inheritor is the market value of the goods or rights received, reduced by the amount of any charges and liabilities assumed. IGT law establishes reductions depending on the inheritor's:

- Age.
- Relationship with the deceased.

In the case of gifts, the taxable amount is the market value of the gifts or rights, minus any charges and debts assumed.

The marginal tax rate is determined by the Autonomous Communities on the basis of the value of the assets received. Multiplying coefficients which apply on the tax due are determined by the:

- Relationship between the acquirer and the donor or the deceased.

- Acquirer's current net wealth.

IGT is not levied on acquisitions by non-resident legal entities (they are subject to the Spanish NRIT).

### **8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?**

Tax rates are determined by the Autonomous Communities (*see Question 7*). As a general rule, rates range from 7.65% for transfers up to EUR7,993 (as at 1 November 2011, US\$1 was about EUR0.7) to 34% for transfers exceeding EUR797,555.

The application of the multiplying coefficients (*see Question 7*) may increase the rate applied to a maximum of 81.6%.

The elimination of IGT is currently being discussed and analysed. Six of the 19 Autonomous Communities apply a 99% exemption on gifts and inheritances between ascendants (that is, ancestors, descendants and spouses). These Autonomous Communities are:

- Madrid.

- The Basque Country.

- Valencia.

- Castilla León.

- Castilla-La Mancha.

- The Canary Islands.

Other Autonomous Communities, such as Catalonia, Galicia and Aragon have approved important tax benefits for these kinds of gifts.

### **Exemptions**

Under certain conditions, the *mortis causa* acquisition of a family business and the *mortis causa* acquisition of the deceased's principal residence benefit from a 95% tax credit of its total value. In both cases, exempt taxes will be due with late interest if the acquirer does not hold onto the inherited assets for at least five years (ten years, in some Autonomous Communities).

The *inter vivos* (that is, a transfer made during one's lifetime) acquisition of the shares in a family business also benefits from a 95% tax credit of its total value if certain conditions are met.

### **Techniques to reduce liability**

Techniques to achieve a tax-efficient succession should be considered on a case-by-case basis.

## **9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?**

IGT applies to non-resident individuals on the:

- Acquisition of goods which are physically located in Spain or rights which can be exercised in Spain.
- Receipt of amounts from an insurance policy entered into with a:
  - Spanish insurance company; or
  - foreign insurance company operating in Spain (if the policy was signed in Spain).

Spain has signed CDTs regarding IGT with:

- Greece (6 March 1919).
  - France (8 January 1963).
  - Sweden (25 April 1963).

## **10. Are there any other taxes on death or on lifetime gifts?**

A capital gain arising on a lifetime gift of an asset located in Spain may be subject to NRIT, taxable on the owner of the transferred property.

The *mortis causa* or *inter vivos* transfer of urban real property located in Spain will also be subject to a municipality tax.

## **Taxes on buying real estate and other assets**

### **11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?**

#### **Purchase and gift taxes**

The acquisition of assets or property by a non-resident individual can be subject to Spanish indirect taxation.

The general rules applicable to sale and purchase transactions are as follows:

- The standard 18% Spanish value added tax (VAT) applies on a transfer of assets or property in Spain (other than in the Canary Islands, Ceuta and Melilla, where alternative indirect tax



rules apply) by:

a professional;

any person or entity which operates a business.

Where the transfer of assets or property located in Spain for consideration is not subject to VAT, 3% to 10% transfer tax applies. Transfer tax may also apply on certain real estate transactions which are subject to but exempt from VAT (unless the VAT exemption is waived under certain conditions).

■ In addition to VAT (if applicable), transactions which are not subject to transfer tax may be subject to 0.25% to 2% stamp duty if the relevant transaction is documented in a notary public deed registered in a public register. This is the case for deeds documenting, among others, the:  
transfer of real estate; and

granting of mortgages.

## **Annual rates**

Real estate ownership is subject to a local tax (*Impuesto sobre bienes inmuebles*) (IBI) by the local municipalities:

On an annual basis.

At 0.4% to 1.3% on the cadastral value of the relevant real estate.

In addition, non-resident entities (as opposed to individuals) which own Spanish real estate assets can be subject to a special annual 3% tax on the cadastral value of the relevant asset (with certain exemptions).

## **Wealth taxes**

Wealth tax has been re-introduced in Spain for the tax periods 2011 and 2012 (see *Question 1, Residents*) also for non-resident individuals, who are subject to a rate of 1% to 2.5% of the value of Spanish property. The first EUR700,000 of property value is tax exempt.

## **12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?**

Non-resident individuals can use the following tax-advantageous property holding structures:

**Spanish special purpose vehicles (SPVs).** Spanish SPVs are frequently used to hold non-collective investments of non-resident individuals in Spanish real estate. These investments are acquired through SPVs located in a European jurisdiction (such as The Netherlands or the UK) to minimise Spanish capital gains tax. However, the tax authorities may challenge these structures when they are used solely for passive investments and lack economic substance.

**Spanish real estate funds (*sociedades de inversión inmobiliaria* and *fondos de inversión inmobiliaria*).** Collective investment by non-residents in Spanish real estate may be channelled through Spanish real estate funds, which are subject to a 1% corporate income tax (CIT). Capital gains and dividends derived by non-residents from real estate funds may be exempt or partially exempt from Spanish taxation.

**Spanish real estate investment trusts (*Sociedades Cotizadas de Inversión en el Mercado Inmobiliario*) (REITs).** REITs are subject to a reduced 19% corporate income tax rate on qualified income. Capital gains and dividends derived by non-residents from Spanish REITs may be exempt or partially exempt from Spanish taxation. Spanish REITs must comply with a number of regulatory requirements.

## **Taxes on overseas real estate and other assets**

### **13. How are residents in your jurisdiction with real estate or other assets overseas taxed?**

Spanish resident individuals are subject to PIT, and Wealth Tax (for 2011 and 2012), on a worldwide basis. Generally, no tax distinction is made between Spanish assets and overseas assets.

## **International tax treaties**

### **14. Is your jurisdiction a party to many double tax treaties with other jurisdictions?**

There is a wide network of double tax treaties (that is, CDTs). As of September 2011, Spain had entered into 93 CDTs including with:

- The UK.
- The US.
- France.
- Germany.

■Belgium.

■Luxembourg.

Singapore (not yet in force).

Hong Kong (not yet in force).

## Wills and estate administration

### Governing law and formalities

#### **15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?**

There is no legal obligation to make a will. If no will has been made, a legal intestate succession regime applies.

A will that was executed in another jurisdiction, can be recognised in Spain (*Article 11.1, Civil Code*).

In relation to Spanish assets, for a will executed abroad to be enforced, it must be translated and legalised before a Spanish *Consul* or following the 1961 Hague Convention requirements. The authorities also require an inheritance tax declaration to carry out the change in title in the relevant registries (for example, the Land Registry when concerning real estate). Therefore, if there are a significant number of Spanish assets within the estate, it may be quicker and more cost effective to grant a will in Spain.

To determine which law applies to succession, the applicable law is the national law of the deceased at the time of his death (*Article 9.8, Civil Code*).

The provisions of international treaties on dual nationalities apply if an individual has dual nationality under Spanish law. If there is no applicable treaty, the nationality of the last place of habitual residence is preferred (or if this is not applicable, the last nationality acquired) (*Article 9.8, Civil Code*).

#### **16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?**

If the clear legal formalities for making a will in Spain are not observed, the will is void (*Article 687, Civil Code*).

The required formalities are different for each kind of will. Common wills can take the form of any of the following (*Article 676, Civil Code*):

■**Holographic will.** A holographic will can only be made by persons who are of legal age

(*Article 688, Civil Code*). A will is holographic if the testator writes it by hand (*Article 678, Civil Code*). To be valid, it must be:

■ complete;

signed by the testator; and

dated with the exact date on which it is made.

**Open will.** A will is open if the testator declares his last will in the presence of a notary public who is aware of the dispositions made (*Article 679, Civil Code*).

**Closed will.** A will is closed if the testator, without revealing his last will, declares that it is contained in the document presented to a notary public (*Article 680, Civil Code*).

Special wills are a different set of wills, but their use is rare.

## Redirecting entitlements

### 17. What rules apply if beneficiaries redirect their entitlements?

Once the inheritance is attributed to and accepted by the beneficiaries, the specific assets become their property. Unless the testator has imposed specific conditions that the beneficiaries must fulfil, the beneficiaries can manage the assets as they choose.

The beneficiaries cannot modify testamentary dispositions if the will has not been implemented. However, the beneficiaries can agree on a specific interpretation of the will if the testamentary dispositions are unclear.

## Validity of foreign wills and foreign grants of probate

### 18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

#### Validity of foreign wills

Wills which have been executed abroad are generally recognised in Spain, unless they are considered contrary to public order. For example, a foreign will can be enforced in Spain if a foreign ruling which establishes the will's validity is recognised by a Spanish court.

#### Validity of foreign grants of probate

Foreign grants of probate duly legalised and translated into Spanish are recognised in Spain,

provided that the law which regulates the succession allows them (*Article 11.1, Civil Code*).

## Death of foreign nationals

### 19. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

The place of death by itself is irrelevant when considering the law applicable to the inheritance. However, Spanish tribunals are competent on succession matters if the last domicile of the deceased was located in Spain.

## Administering the estate

### 20. Who is responsible for administering the estate and in whom does it initially vest?

#### Responsibility for administering

The estate is administered by the person appointed by the deceased. If no appointment is made, the estate is administered by the heirs. If there are pending court proceedings regarding the estate, an administrator can be appointed by the court.

The administrator acts as the representative of the estate and is obliged to preserve it and keep it in good condition. The administrator is empowered to act on behalf of the estate and obliged to periodically give an account of the estate's status and the profits obtained (if any).

#### Vesting

The executor is in charge of executing the testator's intentions. If the testator has not specifically determined the executor's powers, the executor has the following powers (*Article 902, Civil Code*):

■ To decide on and pay for as provided by the will:

any religious services;

the testator's funeral.

In the absence of provisions to this effect, the executor can carry out a service and funeral according to local custom.

To pay legacies consisting of cash, with the heir's knowledge and approval.

To take the necessary precautions for the preservation and custody of the property, with the intervention of the heirs who are present.

■ To supervise the performance of all other mandates contained in the will, and to uphold the will's validity, both in and out of court.

The heirs are in charge of executing the testator's intentions if either (*Article 911, Civil Code*):

No executor has been appointed.

The appointed executor cannot perform his obligations.

## **21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:**

**Establishing title and gathering in assets (including any particular considerations for non-resident executors)?**

**Paying taxes?**

■ **Distributing?**

### **Establishing title and gathering in assets**

Article 794 of the Civil Procedure Act determines how to compile the inventory of all the estate's assets. The court clerk, in co-operation with all those that may have an interest in the inheritance, compiles a list of all the assets that comprise the estate.

If a conflict arises over the inclusion or exclusion of assets in the inventory, the court clerk must summon those concerned to a hearing, which will follow what is set out in the oral proceedings. The judgment issued on the inclusion or exclusion of assets in the inventory will safeguard the rights of third parties (*Article 794, Civil Procedure Act, paragraph 4*).

### **Procedure for paying taxes**

The procedure for paying taxes is outlined below.

### **Inheritance tax**

Beneficiaries of the will must present a declaration to the tax authorities of all assets of the estate which are being inherited. The declaration must include all relevant documents for example, will, description of assets, valuations and so on. If this obligation is not met, the transfer of title in the assets cannot be registered with the relevant public registry (*Article 31, IGT*).

The beneficiary can deduct all sums that have been paid under a similar tax in another jurisdiction in respect of the same assets (*Article 32, IGT*).

## Distributing the estate

The beneficiaries must designate an accountant to divide the estate. If the parties cannot agree on an accountant the court will appoint one (*Article 728 et seq, Civil Procedure Act*).

Once an accountant is appointed, he must (*Article 786.1, Civil Procedure Act*):

Carry out the division in accordance with the provisions in the law applicable to the succession of the testator. If the testator has established other rules for the inventory, evaluation, settlement and division of his assets, these are followed on the condition that they do not damage the legitimate proportions of the forced heirs.

Endeavour to prevent non-division or the excessive division of the property.

Present the proposal to the beneficiaries, which should include the evaluation of the assets along with their division and assignment to each of the parties.

All parties should agree on the proposed distribution of the assets so that it can be considered final. If an agreement is not reached, proceedings will commence for the court to determine the final division of the assets.

Once the division is finalised, the court clerk must hand over to each of the beneficiaries what has been adjudicated to them and their ownership entitlements. An actuary notes the adjudication (*Article 788.1, Civil Procedure Act*).

### **22. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?**

If Spanish law applies to an inheritance, the forced heirship regime applies to all assets of the estate, including those held outside Spain.

### **23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?**

All those with a legitimate interest can challenge a will. Challenging a will always involves judicial proceedings.

The claimant can challenge the will through either an:

Annulment action, which renders the will invalid.

Action for a supplementary share (*acción de suplemento*), which increases the forced heir's share until the will complies with the provisions of the forced heirship regime.

Provisions of the will.

Preservation of the estate.

In addition, all those who have a legitimate interest can challenge the executor's or administrator's decisions if they are deemed to be contrary to either the: The administrator is responsible for damages caused to the estate due to his own negligence or fault (*Article 1031, Civil Code*).

## Succession regimes

### 24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

There is a forced heirship regime applicable throughout Spain (*Articles 806 to 822, Civil Code*). This does not apply to those who have either:

- Their civil residence in certain Spanish territories or localities (for example, Navarre).
- No material limitations to their testamentary dispositions.

### Forced heirs

The following qualify as forced heirs (*Article 807, Civil Code*):

- Descendants, in respect of their parents and ascendants.

In the absence of the above, the ascendants, in respect of their descendants.

The widower or widow in the manner and to the extent set out in the Civil Code.

### Shares of the estate subject to forced heirship

The Civil Code determines the shares of each of the forced heirs:

Descendants are attributed a forced share of two thirds of the estate (*Article 808, Civil Code*).

If no descendants exist, ascendants are attributed a forced share of half of the estate. If there is a living widow or widower, the share of the ascendants as forced heirs is reduced to one-third of the estate (*Article 809, Civil Code*).

■ Widows or widowers are a special type of forced heir. They are not entitled to the property of the estate's assets but rather to the usufruct of a share of the assets (that is, a life interest in the spouse's estate). This forced share attributed to a widow or widower varies:

- if the descendants are forced heirs, the widow or widower is entitled to the usufruct of a share of one-third of the estate (*Article 834, Civil Code*);
- if the ascendants are forced heirs, the widow or widower is entitled to the usufruct of a share of half of the estate (*Article 387, Civil Code*);

if no other forced heir exists, the widow or widower is entitled to the usufruct of a share of two thirds of the estate (*Article 838, Civil Code*).



Any testamentary disposition that does not comply with the legally established shares of the forced heirship regime is void. All gifts given by the deceased in life are considered when calculating the forced shares. They can be discounted to comply with the forced heirship regime and may have to be repaid.

Only one-third of the estate can be freely distributed by the deceased through testamentary dispositions.

### **Claims against trust assets**

Spanish law does not recognise trusts, the typical purposes of which are achieved using other legal means. Trust assets are therefore considered regular assets of the estate and are taken into account to determine the share of the estate that should be attributed to forced heirs. If a trust violates the share of the estate which should be attributed to the forced heirs, it is deemed void under Spanish law, and claims can be brought against the trust assets.

### **Forced heirship regimes**

**25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?**

#### **Avoiding the regime**

It is not possible to avoid the forced heirship regime.

#### **Assets received by beneficiaries in other jurisdictions**

The forced heirship regime takes into account assets received by beneficiaries in any jurisdiction.

#### **Mandatory or variable**

Forced heirship is a mandatory regime. Therefore, the forced heir cannot agree to a different distribution of the assets, even through an agreement with the testator during his lifetime.

## Real estate or other assets owned by foreign nationals

### 26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

Spanish law is based on the principle of unity of succession. Under this, the succession is generally subject to the laws of one jurisdiction, which will be the national law of the deceased at the time of his death (see *Question 15*).

If the deceased has multiple nationalities or no determined nationality, the law that applies to the succession is the national law of the deceased's last habitual residence (*Article 9.9, Civil Code*).

### 27. Do your courts apply the doctrine of *renvoi* in relation to succession to immovable property?

Spanish courts have exclusive jurisdiction over issues involving immovable property located in Spain and cannot refuse jurisdiction over these assets.

## Intestacy

### 28. What different succession rules, if any, apply to the intestate?

There is a specific succession regime which applies to those who die intestate, to determine the estate's heirs. Intestate succession occurs in the following cases (*Article 912, Civil Code*):

- When a person dies without making a will, or has made a will which is void or invalid.
  - When a will is incomplete.
- Non-fulfilment of a condition imposed on the appointment of the heir.
- When the appointed heir is incapable of succeeding. In these cases the intestacy rules attribute the estate to the (*Article 913, Civil Code*):
  - relatives.
  - widower and widow.
- State. The order for succession is the following:
  - Descendants (*Article 930, Civil Code*).
  - Ascendants (*Article 935, Civil Code*).
  - Widow or widower (*Article 944, Civil Code*).

■Siblings.

Other relatives up to the fourth degree (that is, cousins, great uncles and so on) (*Article 954, Civil Code*).

The State, if none of the above exists.

Generally, distant relatives do not inherit under the intestacy rules. Relatives of the same degree inherit in equal shares (*Article 921, Civil Code*).

### **29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?**

When a person dies intestate, the establishment of heirs is by either a notarial or judicial declaration taking into account the succession order (*see Question 28*). The notarial declaration is only available for descendants, ascendants and/or the surviving spouses. The judicial declaration is available for all heirs. Both declarations can be challenged following judicial proceedings.

## **Trusts**

### **30. Are trusts (or an alternative structure) recognised in your jurisdiction?**

Spanish law does not recognise trusts and there is no distinction between legal and beneficial ownership.

The Spanish tax authorities can disregard a trust structure and consider the related transfers, acquisitions and agreements to be directly between the settlor and the beneficiaries (criteria adopted by the Spanish General Tax Directorate and the Supreme Court's decision of 30 April 2008) (RJ 2008/2685). The relevant trust structure should be analysed on a case-by-case basis.

### **31. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?**

Spain has not ratified the HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (Hague Trusts Convention).

However, according to international private law principles, Spain should recognise the legal effects of trusts that cover assets located outside Spain.

However, without specific Spanish regulations or case law on the legal effects of trusts in Spain, the approach that Spanish courts would take is uncertain (*see Question 30*).

**32. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?**

Not applicable (*see Question 30*).

**33. If your jurisdiction has its own trust law:**

**Does the law provide specifically for the creation of non-charitable purpose trusts?**

**Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?**

**Can the trust document restrict the beneficiaries' rights to information about the trust?**

Not applicable (*see Question 30*).

**34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?**

Not applicable (*see Question 30*).

**35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?**

Not applicable (*see Question 30*).

## **Ownership and familial relationships**

### **Co-ownership**

**36. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?**

The Civil Code governs co-ownership of assets by individuals. The most relevant impact of these provisions is on the rules governing the community of joint assets regime (*see Question 37, Matrimonial regimes*).

### **Familial relationships**

**37. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitees/civil partners in real estate or other**

## assets protected by law?

### Matrimonial regimes

There are three main matrimonial regimes:

**Community of joint assets (*Gananciales*).** Any gains or profits obtained during the marriage by either spouse are common to both spouses. If the marriage is dissolved, these assets are divided equally between the spouses (*Article 1.344, Civil Code*). All assets held by a spouse before the marriage, or acquired by way of inheritance, belong exclusively to that spouse.

**Property separation regime (*Separación de Bienes*).** The assets held by a spouse before the marriage, as well as any asset which they subsequently acquire, belongs to that spouse. In addition, each spouse shall have the right to the administration, enjoyment and free disposal of their property (*Article 1.437, Civil Code*).

**Participation regime (*Participación*).** Each spouse acquires a right to participate in the gains obtained by the other spouse during the time that the regime is in force (*Article 1.411, Civil Code*). Any increase in the value of each spouse's assets is distributed between the couple.

The spouses can choose which matrimonial regime will apply to their marriage (*Article 1,315 and 1,316, Civil Code*). If no regime is chosen, the community of joint assets regime applies. However this provision depends on the region and in Cataluña and the Balearic Islands for example, the property separation regime applies if the spouses have not chosen a specific regime.

### The rights of cohabittees and civil partners

12 of the 17 Spanish Autonomous Communities regulate the rights of cohabittees and civil partners.

Further, some courts have extended the *post mortem* rights, (that is, forced heirship) derived from marriage to cohabittees and civil partners. If a couple is registered under these regulations, inheritance and gift tax applies in the same way as it would to a married couple. This interpretation can be avoided by clarifying in writing that the assets cannot be considered common to both cohabittees and partners.

### 38. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

Same-sex marriage has been valid since 2005 in Spain and has the same effects as heterosexual marriage (see *Question 37, Matrimonial regimes*). Same-sex married couples are treated for tax and succession purposes in the same way as heterosexual married couples.

### 39. How are the following terms defined in law:

■Married?

■Divorced?

■Adopted?

■Legitimate?

■Civil partnership?

## **Married**

Marriage is a legal agreement between spouses who express the will to enter into a legally regulated union, which is intended to be stable throughout their lives. The only essential element for marriage is matrimonial consent (*Article 45, Civil Code*). However, specific persons cannot marry, including (*Article 46, Civil Code*):

■Non-emancipated minors.

■Persons who are already married.

Further, since 2005, same-sex marriage is valid in Spain and has the same effects as heterosexual marriage.

## **Divorced**

Divorce legally dissolves a marriage. It can only take place by way of a court judgment and it is effective from the time the judgment becomes final.

## **Adopted**

Adoption is a legal act which requires a judicial decision by means of which a person (generally a minor) is considered to be the legal son or daughter of another person.

## **Legitimate**

Under Spanish law there is no legal concept of a legitimate child. Spanish law recognises equal rights to all children, whether they were born in or out of wedlock.

## **Civil partnership**

There is not a legal definition for civil partnership (*see Question 37*).

## Minority

### 40. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

A person is considered a minor until he is 18 years old (legal age). There are several limitations concerning minors, including:

A person who is not of legal age has limited legal capacity (*Article 322, Civil Code*).

When a minor is determined as the heir, he may acquire possession over assets by any title (including through testamentary provisions). However, he requires the assistance of his parents or guardians to use the rights linked to these assets (*Article 443, Civil Code*).

A minor may not be an executor of a will, even with his parents' or guardians' authorisation (*Article 893, Civil Code*).

## Capacity and power of attorney

### 41. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

## Incapacity

A person can only be declared incapable under a court judgment based on Article 199 of the Civil Code.

Persistent physical or mental illnesses or deficiencies which prevent a person from governing himself are a cause for incapacitation (*Article 200, Civil Code*).

## Court procedure

Those who have a legitimate interest in the incapacitation of a person must request the court to rule on that person's capacity.

The declaration of incapacity can be requested by the (*Article 757, Civil Procedure Act*):

- Person presumed incompetent.
- Spouse or person in a *de facto* situation of a similar nature, such as cohabitants or civil partners.
- Descendants, ascendants or siblings of the presumed incompetent.

However, public authorities can also initiate incapacitation proceedings when they deem it appropriate.

A court hearing requires the participation of the person whose capacity is in question.

## Powers of attorney

The formalities of contracts, wills and other legal acts shall be governed by the law of the country in which they are executed (*Article 11.1, Civil Code*). Therefore, a power of attorney which meets the formal requirements established by the laws of the country where it has been granted is considered valid in Spain, as long as the power of attorney is legalised by a Spanish Consul or through the 1961 Hague Convention process.

## Proposals for reform

### 42. Are there any proposals to reform private client law in your jurisdiction?

Currently, there are no specific proposals to amend private client law.

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#### Recent transactions

- Tax advice to certain Spanish tax resident beneficiaries of several trusts governed by English law and managed by a Swiss trustee.
- Tax advice on the reorganisation of the holdings owned by a Spanish resident individual, including the incorporation of a family office company in a suitable EU jurisdiction.



- Tax advice to a Spanish individual in the context of a tax audit on undisclosed bank accounts held outside of Spain.
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### Recent transactions

- Change of residence of Spanish tax resident individuals to other jurisdictions, ensuring that their remaining Spanish economic interests do not result in their tax residence to be fixed in Spain.
- Sale of a family-owned company, distributing the revenue from the sale between a holding company and individuals.
- Tax regularisations of Spanish tax residents' assets and income located in other tax jurisdictions.
- Succession between non-Spanish tax residents with several assets in Spain.

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**Recent transactions**

- Design and execution of an investment structure with several family holding companies, including a virtual tracking stock.
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- Divestment of a holding family company in a real estate project located in the Pacific Coast of Mexico.
- Reverse merger of holding family company into a listed entity, giving to the family member's direct ownership of the shares in the listed entity.

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