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Spain

PRIVATE CLIENT

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This country-specific Q&A provides an overview of private client laws and regulations applicable in Spain.

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SPAIN
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1. Which factors bring an individual within the scope of tax on income and capital gains?

Spanish residence for tax purposes means being taxed in Spain in respect of the taxpayer's worldwide income and capital gains.

Habitual residence, which is the first and most important factor in deciding a person's tax residence, is determined by an individual's presence in Spanish territory for more than 183 days during the calendar year. Sporadic absences are not included.

Another factor for determining tax residence is if the main centre of business, professional activities or economic interests is in Spain.

The availability of a permanent home, centre of vital interests, habitual residence and nationality are used as a tiebreaker in the event of a conflict of residence under the double taxation agreements (DTAs) signed by Spain, as stated in Article 4 of the Model Tax Convention of the Organisation for Economic Co-operation and Development (OECD).

Non-residence in Spain for tax purposes means being taxed in Spain only in respect of Spanish-source income and capital gains. In this case the main factor is the location of the assets or rights in Spanish territory (eg real estate, shares in Spanish companies, etc).

2. What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?

Natural persons resident in Spain for tax purposes are subject to Individual Income Tax (IRPF) on both income and capital gains. In general terms:

- Income is included in the general taxable base and charged at a progressive tax rate ranging from 19% to 48% or 50% (in some autonomous regions).
- Capital gains are included in the savings tax base and charged at a tax rate ranging from 21% to 28%.

The tax year starts on 1 January and ends on 31 December. The period for filing income tax returns is from April (the precise date varies each year) to 30 June of the following year.

Non-resident natural persons who reside in non-treaty countries are subject to Non-Resident Income Tax (IRNR) on Spanish-source income and capital gains subject to a final limited income tax at the following rates:

- Income is taxed at 24%.
- Capital gains and savings are taxed at 19%.

With respect to income obtained by residents of the European Union or of a state that belongs to the European Economic Area with which effective exchange of information exists, the tax rate is reduced to 19%.

Moreover, individual residents and non-residents who transfer real estate are subject to a municipal capital gains tax (*Impuesto sobre el Incremento de Valor de los Terrenos de Naturaleza Urbana*, IIVTNU) that is charged on the gain realized upon the transfer of land classified as urban land. The tax is payable by the seller or by the recipient of the property where no consideration has been paid. The tax rate is fixed by each municipality and may be up to 30%. This tax is a deductible expense when calculating any capital gain on the sale of immovable property.

3. Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?

Withholding taxes are relevant because they are paid on

behalf of the taxpayer in a simpler way and at an earlier stage, when the income is earned.

Spanish-source income from employment, self-employment and capital earned by resident individuals is subject to a withholding tax, which is generally offset against the individual's final tax liabilities as follows:

a. Employment income is first reduced by deductible expenses and by personal, family, and additional allowances. It is then subject to the general withholding tax as per the general progressive rates set out in the table used for annual income tax.

Directors' fees are subject to withholding at the rate of 35%.

b. Dividends, interest and royalties are subject to withholding at the rate of 19% (except royalties paid for the use of intellectual property by an individual other than the author, which are subject to withholding at the rate of 15%).

c. Other income (among other cases):

- Income from the sale of the right to use their image by artists, athletes and bullfighters is subject to withholding at the rate of 24%.
- Payments to self-employed professionals, artists and athletes in consideration of independent professional, artistic or sporting activities are subject to withholding at the rate of 15%. The rate is 7% during the first 3 years of their business activity.
- Income from forests is subject to withholding at the rate of 2%.
- Income from the lease of urban real estate intended for a business activity is subject to withholding tax of 19%.
- Capital gains from the sale of stakes in investment funds are subject to withholding at the rate of 19%, except where rollover relief applies.

4. How does the jurisdiction approach the elimination of double taxation for individuals who would otherwise be taxed in the jurisdiction and in another jurisdiction?

As a unilateral measure for the avoidance of double taxation of income, Spain uses the ordinary credit method. Under this method, a resident taxpayer with foreign-source income may offset against his/her Spanish tax liability on worldwide income the lower of:

- the tax paid abroad on the foreign-source income or capital gains. Any foreign tax paid (either through withholding or assessment) which is similar in character to the Spanish income tax may be offset; and
- the Spanish income tax attributable to the foreign-source income or capital gains.

Carrying over any excess credits is not possible. Under the network of comprehensive tax treaties, the method generally used by Spain for the avoidance of double taxation is the ordinary credit method as described above.

Spain has signed the Multilateral Instrument (MLI), negotiated in the context of the OECD BEPS Framework, which entered into force on 1 January 2022.

5. Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?

There is a wealth tax in Spain.

Residents: The tax is imposed on worldwide net wealth.

For resident taxpayers, there is a general exemption of EUR 700,000 (this figure may vary depending on the autonomous region). The taxable base will encompass the value of the net assets held on 31 December of each of the taxable years.

Exemptions include unquoted shares and comparable interests in companies (other than portfolio or real estate management companies).

The regions are authorized to set their own tax rates and allowances within certain limits. If a region does not set such rates, the standard progressive rate table currently ranging from 0.2% (on the first EUR 167,129.45) to 3.5% (on the excess over EUR 10,695,996.06) applies; Some autonomous regions have approved different measures which include charging a zero rate on their residents (e.g., Andalusia).

The aggregate burden of income tax and net wealth tax to be paid by a resident taxpayer must not exceed 60% of their total taxable income for income tax purposes. If it exceeds this amount, the taxpayer may reduce his/her net wealth tax liability by the excess amount. However, a minimum tax of 20% of the net wealth tax liability as originally calculated (i.e. before the application of the 60% rule) must be paid.

Non-Residents: Non-resident individuals are subject to net wealth tax on the assets or rights they possess in Spain.

Non-resident owners of property in Spain, when calculating the value of their wealth, may deduct only those burdens and encumbrances affecting Spanish assets or rights which are situated or may be exercised or fulfilled in Spain, as well as borrowed capital invested in such assets. Foreign mortgages used for the acquisition of Spanish real estate is deductible.

The maximum burden of income and net wealth tax does not apply to non-residents.

The general allowance of EUR 700,000 is also applicable to non-residents.

Some tax treaties also cover taxes on capital (net wealth).

6. Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?

Inheritance and gift tax exist in Spain.

The Spanish inheritance and gift tax adheres to the principle of the effective residence of the recipient taxpayer.

A recipient who is a resident in Spain is thus liable to the tax with regard to property and associated rights located in Spain or abroad which are acquired through a gratuitous transfer.

Non-resident recipients are subject to this tax:

- with regard to any assets which are located in Spain or rights which may be exercised in Spain; and
- with regard to proceeds under a life insurance policy which was taken out with a Spanish insurance company or with a Spanish branch of a foreign company.

The Inheritance and Gift Tax (ISD) is applied to unpaid transfers of assets and/or rights between individuals. There are deductions and tax allowances on certain assets or in the case of family relationships.

As this is a tax transferred to the autonomous regions, tax liability varies significantly, even within Spanish borders.

7. Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?

The tax relief will vary significantly depending on the autonomous region where the taxpayer is resident or, in the case of non-residents, where most of the assets are located.

Tax relief applies to relatives, unmarried partners, and a particular kind of assets, i.e., family-owned companies, agricultural assets, and assets considered to form part of Spain's cultural and historical heritage.

8. Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?

For contributions to such entities, there are some tax allowances for corporate income tax, personal income tax and non-resident income tax.

Also, associations declared to be of public utility and foundations can apply a more advantageous special tax regime. In addition, there are some tax incentives for these charities or investments in patronage activities.

9. How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?

If an individual owns real estate in Spain, he/she will be liable to pay the following taxes:

- Non-Resident Income Tax, whether the property is rented or vacant.
- Property Tax (*Impuesto sobre Bienes Inmuebles,* IBI), which is charged annually by the municipal authorities on the possession of both urban and rural immovable property located within the municipality.
- If the property is sold, a withholding tax of 3% of the price is applied as an advance payment of the capital gains part of Non-Resident Income Tax and for the IIVTNU (the municipal capital gains tax).

For Non-Resident Income tax purposes, the declared value should be the market value if it is higher than the consideration agreed between the parties.

For the IIVTNU, Wealth tax and Transfer Tax, the Spanish Tax Authority has created a reference value which is calculated following an analysis of the prices of all real estate sales and purchases made before a Notary Public, which will be used to determine the taxable base for these taxes.

10. Does your jurisdiction have any specific rules in relation to the taxation of digital assets?

In Spain, the digital transformation has led to the establishment of new technological tax incentives such as tax deductions for R&D&I, patent boxes, and the promotion of the creation of technological start-ups.

A digital services tax also exists but only for high turnover companies.

11. Are taxes other than those described above imposed on individuals and, if so, how do they apply?

An Additional Wealth Tax on Large Estates *(Impuesto de Solidaridad de las Grandes Fortunas, ISGF)* became effective from 1 January 2022, for tax periods ending on 31 December 2023. The ISGF is a direct tax that supplements the tax levied on the net wealth of individuals above EUR 3 million.

VAT is charged at a general rate of 21%. There are also two reduced rates of 10% and 4%, which are applied to certain goods or services of general use or which are considered basic necessities.

The Spanish tax system provides for a series of excise taxes on the sale of certain goods, including hydrocarbons, alcoholic beverages, and the registration of certain means of transport. The amount of the tax varies according to the different goods. VAT is often charged at the same time.

Transfer Tax and Stamp Duty (*Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados, ITP y AJD*) are applied to the sale and purchase of all types of goods and rights, to certain operations carried out by companies, and to acts or transactions that must be documented by a notary. The tax revenue of these taxes is attributed to the Autonomous Regions, and rates vary between 6% and 11%.

12. Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?

There is a special regime for workers, professionals, entrepreneurs and investors moving to Spain, commonly known as Beckham's law, which has a double advantage: first, the taxpayer only pays tax in Spain on income obtained in Spanish territory, while being allowed to prove tax residence in Spain; and second, tax rates lower than the maximum marginal personal income tax rates are applied.

13. What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?

For tax purposes, the natural person has to ensure that he/she is not considered a tax resident in any other country and, in case of dual residency, to analyse the tie breaker rules for determining residence in a given country that are established in the double tax treaties.

A person can have a residence permit or administrative residence in a country yet not be considered a tax resident there.

A good tax advisor should be consulted to ensure that the requirements for residence in Spain are met as well as to advise on the reorganization of income and assets held outside Spain and to consider whether any special lower tax regime is applicable in Spain, taking into account Spanish and foreign income and the location of the assets owned.

In order to obtain residency, it is essential to follow some specific steps beforehand:

- NIE (foreigner identification number) requirements: As a foreigner in Spain, the NIE is required; it can be obtained at the police station or consulate.
- Registering and notifying to the Spanish Tax Authority the tax residence through form 030.
- Registration of the fact that a natural person lives in a given area with the local authority (*empadronamiento)*.

14. What are the main rules of succession, and what are the scope and effect of any

rules of forced heirship?

Spain is a multi-law state with respect to the area of inheritance law and matrimonial property law, in which the individual regulations of the autonomous regions can take precedence over the application of general Spanish inheritance law. Therefore, there is no standardised Spanish inheritance law, but rather various regional legal systems. Only if no regional inheritance law applies will the regulations of the general Spanish inheritance law in the Spanish Civil Code of 1889 apply.

Aragon, the Balearic Islands (Mallorca, Menorca, Ibiza and Formentera), the Basque Country (Biscay, Alava, Guipuzkoa), Galicia, Catalonia and Navarre have specific regional rights in inheritance matters.

According to the Spanish Civil Code, ownership of the estate and the rights to the estate pass directly to the heirs at the time of the deceased's death, provided that they accept the inheritance.

The heir inherits from the deceased by the mere fact of the latter's death. This means that the succession commences upon the death of the deceased.

Natural persons and legal entities are capable of inheriting a deceased's property. Natural persons appointed as heirs must have been born at the time of the inheritance, i.e. have lived 24 hours outside of the womb. In the case of the aforementioned requirement, conceived children are treated in the same way as children who have already been born, insofar as they only have a legal advantage from the inheritance.

In the absence of a last will and testament, the legal succession in Spain is determined by the degree of kinship to the deceased. The legal heirs are, in order of priority, as follows:

1. children and their descendants
2. parents and their ascendants
3. surviving spouse
4. relatives up to the fourth degree
5. the state

The deceased's relatives in the descending line – i.e. the children of the deceased and their descendants – therefore take precedence over other potential heirs.

According to the rules of the Spanish Civil Code the following relatives are entitled to a part of the estate (forced heirship):

1. the children and their descendants
2. parents and grandparents
3. the spouse

Children and descendants are entitled to two thirds of the estate as a right of inheritance. One third is to be divided equally among the children, while the second third can be used to improve the estate of individual children. Only the final third may be freely disposed of by the testator.

If there are no children or descendants of the deceased, the parents and more distant ancestors are entitled to half of the estate. If there is a surviving spouse, his/her compulsory part is only one third.

An important peculiarity of Spanish inheritance law is that the spouse is only entitled to a mere usufructuary right to part of the deceased's estate because blood ties take precedence. There is no entitlement to any of the deceased's estate if the spouses were separated (legally or de facto). How much the spouse is entitled to receive is determined by the number of other mandatory heirs.

The spouse receives a usufruct over the third of the estate intended to supplement the compulsory share of the descendants, provided there are children or grandchildren.

If there are only ancestors (parents, grandparents) of the deceased, the right of usufruct of the surviving spouse is increased to half of the estate and if there are neither descendants nor ancestors, the compulsory part consists of a right of usufruct over two thirds of the estate.

In this context, it should be noted that some regional laws provide special regulations for spousal inheritance rights and sometimes even give priority to the surviving spouse (e.g. in Aragon).

15. Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?

The distribution of the estate under inheritance law is preceded by the division of the matrimonial property regime under Spanish matrimonial property law. The following matrimonial property regimes exist under the general Spanish civil law:

The legal status of property in the Spanish Civil Code is that of the matrimonial **joint property** regime (*regimen matrimonial de gananciales*). In this case, what each spouse receives as profit or income during the marriage is joint property. If the joint property regime is dissolved, the surviving spouse therefore receives half of the joint assets, while the other half goes to the estate. In the absence of proof to the contrary, all assets are deemed to be joint assets. In practice, this means that all assets

are normally treated as joint property, unless, for example, property is acquired by one of the spouses with his/her own funds before the marriage and the acquisition is defined as a "private asset".

The statutory matrimonial property regime can only be deviated from by means of a notarised marriage contract, which is recorded in the civil register when the marriage is registered and in the land register when property is acquired.

General Spanish civil law also recognises the property regime of **participation in profits** (*participación en las ganancias*), in which each spouse acquires the right to participate in the profits made by the other during the marriage. There are no joint assets in this matrimonial property regime. Each spouse manages his/her own assets. At the end of the marriage, the initial and final assets are compared and the spouse who has realised the greater gain must pay half of the difference to the other spouse in cash.

Finally, the Spanish Civil Code also regulates the matrimonial **separate property** regime (*separación de bienes*), which also applies if the spouses have excluded the statutory matrimonial joint property regime by means of a marriage contract without choosing another one. The separate property regime applies in Catalonia according to the provisions of the Catalan Civil Code.

it should also be noted that there may also be different regional regulations regarding matrimonial property law and that the EU Matrimonial Property Regulation applies to marriages between people of different nationalities.

16. What factors cause the succession law of the jurisdiction to apply on the death of an individual?

In accordance with the corresponding EU regulation, Spanish private international law stipulates that the law of the country in which the deceased had their **habitual residence** at the time of death applies to cross-border inheritance cases.

The term "habitual residence" within the meaning of the European Succession Regulation is not defined by law. However, the recitals to the Succession Regulation and the legislative materials provide some indications. It is undisputed that a person can only have one habitual residence. It is also undisputed that in order to determine the habitual residence, an overall assessment of the deceased's circumstances in the years prior to his death and at the time of his death must be made. All relevant facts should be taken into account, in particular the duration and regular nature of the deceased's residence in the state concerned and the circumstances and reasons relating thereto; the centre of the deceased's life in family and social terms; the nationality or location of the main assets; language skills and family and social ties; and the intention to remain in one place (intention to remain).

A change of residence solely for professional and economic reasons – even for a longer period of time – need not be sufficient to establish habitual residence in the state concerned if the deceased maintained close and firm ties with the state of origin. The place of professional practice therefore does not necessarily have to correspond to the habitual residence.

If the deceased lived in several states without settling in one state for a longer period of time, the nationality of the deceased or the location of the main assets can determine the habitual residence.

Exceptionally, for those cases in which the circumstances show that, at the time of death, the deceased had a closer connection with a state other than the one of habitual residence, the law of that state will apply.

The Regulation allows the **choice of the applicable law** limited to the law of the state of which the testator is a national at the time of the choice or at the time of death. The choice must be made expressly in a disposition al of property upon death or result from the terms of such a disposition.

The choice of law includes all estate assets. It is not permitted for only part of the estate assets, e.g. the assets located in the home state, to be subject to the deceased's home law.

A choice of law has no influence on the applicable tax law.

The extent to which **regional rights** can be applied to foreigners is a much-discussed legal issue in Spanish law and practice. The relevant Spanish internal conflict-of-law rules, to which the EU regulation refers, only apply to Spaniards and there is still no Supreme Court ruling on this issue.

17. How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?

According to the EU Regulation, in general, the application of the law of a third state designated by the

Regulation will be deemed to mean the application of the rules of law in force in that state, including its provisions of private international law in so far as those provisions provide for a renvoi to the law of a Member State or the law of another state.

Renvoi should be accepted in order to ensure international consistency. However, it should be excluded in cases where the deceased has made a choice of law in favour of that of a third state.

Renvoi may not be accepted if the law designated under the EU Regulation is: 1. exceptionally, the law of the state with which the deceased had at the time of his death a manifestly closer connection than that which he had with the state of his habitual residence; 2. – the law chosen by the deceased; 3. – the law applicable to the form of dispositions of property upon death; 4. – the law of the State of the habitual residence of the deceased where it is applicable to the formal validity of a declaration concerning an acceptance or renunciation; and 5. – the law of a State containing special provisions concerning certain immovable property, undertakings or other special categories of property which, for economic, family or social reasons, affect or impose restrictions on the succession to such property.

Spanish case law does not consider that the location of the property in Spanish territory provides a sufficiently strong connection with Spanish law to enable the renvoi to be accepted if the deceased did not have either residence or domicile in Spain.

18. In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?

There are several reasons why a person should draw up a will. Firstly, of course, to regulate the succession, especially where, in addition to property and bank accounts, there are also business assets and shares in companies.

In addition, a choice of law can be made in favour of the law of the testator's home country in the will, thereby excluding the application of the inheritance law of the country of habitual residence or in certain cases the application of different succession laws.

Another reason for drawing up a will is the fact that notarised wills are entered in the Spanish register of wills and therefore must be taken into account in any inheritance procedure in Spain.

In particular, this also applies to persons who only have real estate assets in Spain, as the Registrar of the Land Registry will always ask for official confirmation from the Registrar in charge of the register of wills before entering the heirs in the Land Register.

If a testator dies without having made a last will and testament, the statutory rules on succession described in point 14 will apply insofar as Spanish law is applicable.

In addition, the settlement of the estate is more complex and expensive, as a notarised certificate of inheritance must first be obtained. This requires the involvement of two witnesses without any direct interest in the deceased's estate, which might be especially complicated in cases where the deceased has no family or friends in Spain.

Any person who has reached the age of 14 and has legal capacity may freely dispose of their assets for the period after their death in the form prescribed by law and in compliance with the statutory limits. Making a will is a highly personal legal act and therefore cannot be done through a representative. Testamentary dispositions are freely revocable at any time, even if the testator has declared otherwise.

With regard to the form of testamentary dispositions, it should be noted that joint wills and inheritance contracts are not permitted under general Spanish law. This prohibition also applies to joint wills drawn up abroad by Spaniards. However, some regional laws expressly authorise joint wills and inheritance contracts e.g. Aragon, Navarre, Catalonia and the Balearic Isles.

Ordinary wills can take the following three forms:

– open will

– handwritten will

– sealed will

The most commonly used form of will in Spanish inheritance law is the so-called **open will** (*testamento abierto*). The testator expresses his last wishes orally or in writing to a notary, who draws up a corresponding record. The minutes are marked with the year, month, day and hour in which they were drawn up, read to the testator and approved by him. The notary must satisfy himself as to the identity and testamentary capacity of the signatory. The presence of witnesses is generally not required – only in the case of incompetence or danger of death.

A **handwritten will** (*testamento ológrafo*) must be signed in the testator's own hand, stating the year,

month and day. The testator must be of legal age. Foreigners can write a handwritten will in their own language. In the event of inheritance, those who hold a will in their own hand are obliged to submit it to the court or a notary at the testator's place of residence within 10 days of becoming aware of the testator's death. If they fail to do so, they will be liable for damages. Irrespective of the obligation to present the will, the handwritten will must be presented to the competent notary at the testator's place of residence within a period of 5 years so that the Notary, with the assistance of 3 witnesses, confirms the authenticity of the handwritten testamentary disposition and finally orders it to be recorded by a notary.

A **sealed will** (*testamento cerrado*) is when the testator hands a sealed envelope to the notary and declares that it contains his last will and testament. The sealed will can be handwritten or typed by the testator or by another person. If the will was drawn up by another person, it must bear the testator's signature on each page. The notary seals the envelope containing the will and records the testator's declaration that it is his/her last will and testament and whether it was handwritten or typed by him/her or another person. The notary verifies the testator's testamentary capacity and notarises the execution of the will on the envelope. In principle, the presence of witnesses is not required for this form of will either. The sealed will can be kept either by the notary or the testator. It must be submitted to the court or a notary within 10 days of the testator's death in the same way as a handwritten will. Anyone who fraudulently fails to present the will or removes, conceals, destroys or otherwise renders the sealed will unusable loses all inheritance rights, including their rights as a legal heir.

In terms of **content**, the testator can appoint persons capable of being heirs to all or part of their assets, taking into account the mandatory heirs of certain parts of the estate, as mentioned above. The appointment of an heir may be subject to a condition subsequent or a condition precedent. If the condition subsequent is fulfilled, the legal heir is deemed to have been appointed. Until the condition precedent is fulfilled, the inheritance is subject to administration by the co-heirs. The testator may also attach conditions to testamentary dispositions. However, conditions that are impossible or contrary to the law or morality are invalid.

The testator may appoint substitute heirs. If he/she does not do this, the corresponding share of the estate accrues to the other heirs in the event of an heir pre-deceasing the testator, since the right of inheritance under a will cannot be inherited.

The testator can disinherit any would-be beneficiary within the statutory limits provided or stipulate legacies.

19. How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?

Until the inheritance is settled, there is a community of heirs, which is not regulated under inheritance law in the Spanish Civil Code. The provisions on joint property therefore apply.

Each **heir** may divide the estate unless this was expressly prohibited by the testator. The testator can make a division order in his or her will or nominate an heir, the so-called *contador – partidor*, who may not be a co-heir. If the testator does not do this, the heirs or legatees can also apply to the court for the appointment of an heir if they represent more than 50% of the estate. Otherwise, the adult heirs divide the estate at their own discretion.

If the heirs are unable to agree on the division, they may apply to the court to resolve the issue. The court of first instance in whose district the deceased was last domiciled has jurisdiction. If, as is often the case with foreign inheritance procedures, no such domicile exists, the court in whose district the majority of the estate is located has jurisdiction.

Special problem: Proof of foreign law in Spanish civil proceedings. Spanish law treats foreign law as a fact that must be proved by the party relying upon its application. The proof must be provided by means of a legal opinion drawn up by two practising lawyers of the country in question. If the application of foreign law is not so proved, the court will apply Spanish law.

The testator can also order the execution of the will in his last will and testament. He/she may appoint one or more **joint or individual executors** (*albacea*). The testator must appoint the executor(s) him/herself i.e. this cannot be left to a third party. Any natural or legal person with legal capacity, including heirs or legatees, may be an executor.

The position of executor is deemed to have been accepted if the person appointed does not reject this appointment within 6 days of becoming aware of it. If the executor rejects the appointment without giving a reason, he/she loses whatever the testator had left to him/her, with the exception of any emergency inheritance rights to which he/she may be entitled. If the testator has not appointed a substitute executor, the

heirs will be responsible for the division of the estate.

The testator will determine the period of the executor's appointment, failing which this period is limited by law to one year. The term may be extended. The executor must fulfil his/her duties in accordance with the testator's instructions. If the will does not contain any provisions of relevance in this regard, the general law provides that the executor's duties will be as follows:

– Carrying out the funeral and ordering and paying for funeral services;

– Payment of monetary legacies with the authorisation of the heirs;

– Monitoring the fulfilment of all other testamentary dispositions of the testator;

– Enforcing the validity and effectiveness of the will; if necessary, in court;

– Taking all necessary measures to secure and preserve the estate.

The executor must render an account to the heirs once his/her work has ended. Generally, an executor acts free of charge. However, the testator may provide for remuneration to be paid.

20. Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?

There is no express recognition under Spanish law of trusts, private foundations, family companies, family partnerships or similar structures that are set up to hold and administer private family wealth in Spain and regulate succession thereto. In addition, it is worth noting that Spain did not ratify the HCCH Convention on the Law Applicable to Trusts and on their Recognition of 1985. As a result, there is no equivalent of, amongst other things, an *inter vivos* trust under Spanish law. The Supreme Court has accepted – except where they are used for fraudulent ends and with restrictive effects – the existence of the following concepts: (i) the *fiducia cum amico*, in which the trustee undertakes to hold something for the benefit of the settlor or a third party, so that they do not have actual ownership; and (ii) the *fiducia cum creditore*, in which the settlor transfers full ownership of a given asset or right to the trustee in order to guarantee payment of a debt and the trustee undertakes to return the property or right to the former owner when the guaranteed obligation has been complied with.

The Spanish Civil Code regulates all forms of succession of persons, including those cases in which the heir is entrusted with the conservation and transfer to a third party of all or part of the deceased's estate. This is the only form of trust expressly permitted under Spanish law and it must be expressly stipulated by the testator. It may not go beyond the second degree (or second transfer to two beneficiaries), nor may it be in favour of persons who are not alive at the time of the testator's death. Moreover, it is not possible to encumber or charge the two-thirds of the estate which, under Spanish law, must go to the legitimate heirs, except in the event of the incapacity of any of them.

The corporate structures generally used in Spain to hold assets are the public limited company (S*ociedad anónima)* and the private limited company (*Sociedad limitada*), depending on the purpose and the amounts involved. To administer and regulate succession in private families, the latter can use either of these types of company to safeguard their wealth, keeping it separate from the individual wealth of each family member. In exchange for the assets being kept together, each member will receive shares in any such company with the concomitant rights of legal and economic ownership.

21. How are these structures constituted and what are the main rules that govern them?

All forms of companies and partnerships are regulated under the Royal Legislative Decree 1/2010, of 2 July, approving the revised text of the Limited Liability Companies Act (*Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital*).

The type of company to be created will depend on the client's needs and the capital to be incorporated. Spanish law establishes a wide range of companies, the most common and widely used being the public limited company (S*ociedad anónima)* and the private limited company (*Sociedad limitada*), depending on the purpose and the amounts involved. These companies offer limited liability, shielding shareholders from the company's debts, and must be incorporated through a notarised deed which is then registered in the Spanish companies register.

To set up any of these companies in Spain, it is necessary to: (i) obtain a Spanish Tax Identification Number or Spanish Foreigner's Identity Number (depending on whether the shareholders are legal or natural persons), (ii) execute a deed of incorporation before a notary public and register the company with the Spanish companies register, (iii) comply with the legal requirements pursuant to the Limited Liability Companies Act (including providing a registered address, the company`s purpose and its articles of association), (iv) open a bank account for the company and deposit the share capital (please note that, depending on the type of company, the law will require a minimum amount to be contributed), and (v) request a Spanish Tax Identification Number for the new company.

22. What are the registration requirements for these structures and what information needs to be made available to the relevant authorities? To what extent is that information publicly available?

Pursuant to Spanish law, these types of companies must be registered in the Spanish companies register. In addition, the company must notify and register with the Spanish companies register any changes to the company name, address, share capital, members of the board of directors, among others. The annual accounts must also be filled with the Spanish trade register.

All information provided to the Spanish companies register is public and may be accessed by any person or organization by simply requesting it and paying a fee. The main information made available to the public is: (i) main corporate details (name, address, date of incorporation, tax identification number, purpose), (ii) shareholder details (only when the company has a sole owner), (iii) share capital, (iv) directors' information, and (v) annual accounts.

In addition, pursuant to Royal Decree 609/2023, the Public Registry of Beneficial Ownership (*el Registro Central de Titularidades Reales*) makes it possible for any person or organisation, that can show a legitimate interest, to consult the beneficial ownership of any Spanish legal and trust-like entities, together with other similar legal instruments that operate in Spain.

23. How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?

The Spanish tax authorities do not recognize trusts and the relationships between the contributors of assets and rights and their recipients are considered to be carried out directly between them as if the trust did not exist, thus imposing a regime of fiscal transparency.

Consequently, transfers of assets and rights of the person who set up the trust – or of the income produced by such assets and rights – ordered by the trustee in favour of the beneficiaries, for the purposes of Spanish tax law, are considered to be direct transfers from the settlor to the beneficiary.

Inheritance and gift tax implications

Upon the death of the settlor, the assets and rights contributed to the trust are transferred *mortis causa* to the extent that the transfer is not deemed to have taken place by the contribution of the assets to the trust.

If, after the contribution of assets to the trust, a donation of all or part of the assets contributed is formally executed in a document to that effect in which the beneficiaries accept the donation, an *inter vivos* transfer will be deemed to have taken place directly from the settlor to those beneficiaries who have accepted the donation, since such transfer is not deemed to have taken place with the contribution of the assets to the trust.

Personal income tax implications

Interest received by the trust as a result of the granting of a loan is included in the beneficiary's personal savings taxable income.

The income from movable capital must be attributed to the year in which it becomes chargeable, and a subsequent material delivery to the beneficiary from the trust of the funds corresponding to this income does not give rise to fresh taxation.

Although the creation of a trust does not have any tax benefits in Spain, it can be useful for those who have significant international assets when planning their future succession.

24. Are foreign trusts, private foundations, etc recognised?

Yes, foreign trusts may be recognised in Spain, provided that they have been validly set up in their place of origin and are not contrary to Spanish law.

25. How are such foreign structures and their settlors, founders, trustees, directors

and beneficiaries treated for tax purposes?

See the answer to point 23.

26. To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?

The transfer of any asset, provided that it is done in accordance with the applicable law and not in a fraudulent manner, will be legally valid and binding as regards creditors. Thus, given that transactions between the settlor and the beneficiary are considered to be carried out directly between them, the creditor of the person that no longer holds the property will not be able to oppose the transfer.

However, please note that, as mentioned above, under Spanish law trusts are only possible for succession purposes and not for asset protection. The Spanish authorities do not recognize trusts in general and the relationships between the contributors of assets and rights and their recipients are considered to exist directly between them as if the trust did not exist, thus imposing a regime of transparency.

27. What provision can be made to hold and manage assets for minor children and grandchildren?

All natural persons can inherit property, including minors (see above point 18). When a person dies and his/her heir is a minor, the latter must be represented by an adult who will act on his/her behalf in deciding whether to accept the property to be inherited and how the distribution of assets will be carried out. In principle, minors will be represented by their parents.

A person can decide in his/her will the legal guardian of the minor children in the absence of one or both parents. In addition, he/she can designate in the will an administrator of the minor's estate.

This position usually exists until the minor reaches the age of majority or until the age fixed in the will to administer his or her property. The testator may consider that there is a certain age at which his/her children acquire a sufficient degree of maturity.

Appointing a guardian is very common in the case of divorced parents, the purpose being to prevent the assets from being administered by a former spouse; it is also possible to expressly prohibit a parent from administering these assets.

The administrator of the estate has no power over the education of the heirs; he/she can only administer the assets that make up the estate.

The administrator is obliged to follow the instructions of the testator and to perform his duty with the diligence of a good parent.

28. Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?

Under Spanish law one person can grant to one or more persons a **lasting power of attorney** (*poder preventivo*). This is a type of power of attorney (PoA) that enables the grantor to be represented in the event of loss of full mental capacity. The person who wishes to execute such a PoA must do so while in full use of his/her mental faculties, otherwise it will not be valid.

The lasting PoA is executed before a notary and thereafter must be registered in the civil registry. The notary notifies the civil registry of the party granting the lasting PoA.

The lasting PoA is a simpler solution for family members than bringing incapacity proceedings, since it avoids lengthy delays while waiting for court rulings and the high costs of litigation. The granting of a lasting PoA is highly advisable for the purposes of estate administration and guardianship of the person.

One point particularly worthy of note with regard to this instrument is that it is not valid as a will. This means that the provision to be made by the person concerned after his/her death as regards his/her property must be established by will, which is a different type of legal instrument.

The lasting PoA will expire in the following circumstances:

- If it was granted to the spouse, as a result of separation, unless this is due to hospitalisation of the grantor.
- For the reasons expressly established by the grantor in the document.
- At the request of any person entitled to initiate guardianship or support proceedings if the grantor has incurred in any of the circumstances for removal from guardianship.

It is necessary to distinguish a "**living will**" or advanced instructions from the lasting PoA. The living will is a document in which a person of legal age, with sufficient legal capacity, freely gives his/her instructions regarding the medical action to be taken when he/she is in a situation in which he/she cannot express his/her will.

The living will therefore reflects its author's wishes in relation to the following points:

- The instructions and limits on the medical care that he/she wishes to receive or not, in the event of suffering from an irreversible illness (which cannot be cured) or a terminal illness (which will most probably lead to death).
- At the time of death, the wish to be buried or cremated.
- Whether a person wants to donate his/her organs after he/she dies.

The living will must also state the authorised representative who is the person who will help interpret, if necessary, the instructions that it contains and to make the appropriate decisions when they are not provided for. It is a document that allows its author to influence the future care decisions to be taken by healthcare professionals, which must respect the patient's wishes.

A living will can be executed by anyone once they have reached full age. Those over the age of 16 but under the age of 18 may also do so if they are emancipated, i.e. if they are no longer subject to parental authority.

In order to publicise the living will, it should be registered with the National Register of Advanced Instructions, where all documents submitted by the registers of the different Autonomous Regions are deposited.

Each Autonomous Region has its own legal regulations; however, there are basically three ways of executing a living will:

- Before a notary.
- Before three witnesses, who must sign the document. Two of them cannot be parents, children, aunts, uncles or nephews or nieces, nor may they have an economic relationship with the person making the living will.
- Before the staff of the relevant Autonomous Region's register.

29. What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?

In Spain, non-profit associations are regulated by Organic Law 1/2002, of 22 March, regulating the Right of Association (*Ley Orgánica 1/2002, de 22 de marzo, reguladora del Derecho de Asociación*). In addition, private foundations are regulated by Organic Law 50/2002, of 26 December, on Foundations (*Ley Orgánica 50/2002, de 26 de diciembre, de Fundaciones*). Article 8.1 of Law 50/2002 establishes that "*natural persons and legal persons, whether public or private, may set up foundations*".

To set up a non-profit association, the parties must register the founding agreement (by public deed or private contract) with the Spanish Register of Associations. To be able to set up an association, the law requires that it carry out activities for the general interest.

In order to set up a foundation, the parties must register the public deed pursuant to which it was founded with the corresponding Spanish Register of Foundations. Foundations must pursue general interest objectives and, moreover, they must allocate 70 percent of their income or revenue to their mission, keep accounts in accordance with the established rules and comply with the applicable tax regime, among other requirements.

30. What is the jurisdiction's approach to information sharing with other jurisdictions?

The General Tax Law approved in December 2003 established that "those countries or territories that sign an agreement with Spain to avoid double international taxation with an information exchange clause or a tax information exchange agreement expressly stating that they will cease to be considered tax havens, from the moment these agreements or treaties are applied, will cease to be considered tax havens".

From that moment on, Double Taxation Avoidance Agreements and information exchange agreements began to be signed with different countries that until now had been considered tax havens.

In Spain, the term "tax haven" was updated to mean non-cooperative jurisdictions and the references in the legislation made to states with which there is an effective exchange of tax information or in tax matters are now understood to be made to states with which there are regulations on mutual assistance in the

exchange of tax information.

Information exchange agreements are currently in force with Andorra, Aruba, Bahamas, Curaçao, San Martin and San Marino, as well as the Agreement with the United States of America for the improvement of international tax compliance and the implementation of the Foreign Account Tax Compliance Act (FATCA). Information exchange agreements with Bermuda, Guernsey, Cayman Islands, Cook Islands, Isle of Man, Jersey, Macao, Monaco, St Vincent and the Grenadines, St Lucia and St Vincent and the Grenadines are at various stages of the legislative process.

In addition, on a multilateral basis, the Multilateral Agreement between Competent Authorities on Automatic Exchange of Financial Account Information, done in Berlin on 29 October 2014, is in force.

31. What important legislative changes do you anticipate so far as they affect your advice to private clients?

Due to the fact that trusts are not expressly recognised under Spanish law, predicting specific legislative changes in trust law in Spain is uncertain. However, it is worth noting that, due to the recent changes in government, the new administration may focus its attention on changes to tax rates and tax thresholds in areas such as succession, corporations and wealth management in general.

Given the evolving nature of legislation and regulatory environments, as advisors of private clients involved in trusts, it is crucial that we remain vigilant and stay informed of all potential changes in tax law in Spain so that we can adjust strategies accordingly to ensure compliance with the law and optimisation of wealth management structures.

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