Spain

International Estate Planning Guide

Individual Tax and Private Client Committee

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The Spanish legal system is largely a decentralized one, where the autonomous regions ("*Comunidades Autónomas*") have the power to enact statutes on a wide range of matters, and the law of succession is one of the areas of law where the diversity of systems within Spain is apparent. In Spain, succession is governed by different sets of rules in Aragon, Balearic Islands, Basque Country, Catalonia, Galicia, Navarre, Valencia and the rest of Spain (where it is governed under the Spanish Civil Code ["CC"]).

The choice of law rules establish that succession is governed by the law of the territory in which the decedent had their effective residence during (i) at least ten years (without the need to register with the civil registry), or (ii) two years (with the need to register with the civil registry) prior to their death ("*vecindad civil*", sect. 14 CC).

The residence of people can vary during their life, as can the rules applying to their succession. A last will and testament granted by a testator during his life under a regulation other than the one that rules his succession at the time of his death will be valid to the extent the will does not violate the limitations of the freedom to testate under the rules governing the testator's succession at the time of death.

Under the Spanish Private International Act ("SPIL"), successions should be governed by the law of the country where the deceased was last a national. This rule should be applied whatever the nature of the assets or the country where they are located, following the principles of unity and universality (article 9.8 CC). These principles are considered to be public policy and therefore imply the non-recognition of fractioning the succession.[1] It is not possible to choose applicable succession law.

A. Will Formalities and Enforceability of Foreign Wills

Spanish succession only admits succession by law or by will and testament (article 658 CC), and prohibits joint wills (article 669 CC) and succession agreements (articles 816 and 1271.2 CC). Although, these are allowed under the laws of the other mentioned regions. The following are ordinary forms of wills:

1. Holographic wills (article 678 CC).

This is a handwritten will, drafted and signed by the testator, stating the day, month and year. Any words crossed out, amended or between brackets should be initialed by the testator. A holographic will may only be signed by a person of legal age (18 years). For a holographic will to be fully effective and valid, it must be legally attested to within a period of five years from the death, and certified by a notary public (article 689 CC).

2. Open wills (article 694 CC).

Open wills are the most common form of wills used in Spain, as they provide greater security and are the only type of will that is fully valid with no need for any subsequent procedure to authenticate the will. Open wills are signed before a notary public, who is responsible for the last will and testament expressed, verbally or in writing, by the testator. An open will must (i) express the place, year, month, day, and time the testator granted the will; (ii) state that the notary public has read it aloud to the testator; and (iii) state the testator understands its content and consents. Except for very special circumstances (e.g., the testator cannot read or is deaf), the presence of witnesses is not required.

The original will is kept in the notary public's files, and while the testator is living, only the testator may request a copy of the will. The notary public must file the will with the Registry of Last Wills

[1] In accordance with these principles, Spanish courts do not apply referral regulations to Spanish law regarding properties located in Spain, due to the different legal treatment of the succession to movable or immovable assets (e.g., Supreme Court judgments of November 15, 1996 and May 21, 1999).

and Testaments, dependent on the Ministry of Justice, whose duty is to guarantee knowledge of its existence once the testator has died or is still living.

3. Closed Wills (article 706 CC *et seq*.).

Closed wills are drafted (handwritten or typed) by the testator or a third person, stating the place, year, month and day it was written and signed on each page by the testator. The testator, without revealing its contents, delivers it to the notary public in a sealed envelope (or seals the envelope before the notary public), stating that it contains the testator's last will and testament. Regarding the coverage of the will, the notary public records the granting of the will. In principle, the will may be returned to the testator, leaving a copy of the registration in the testator's records, although it is common for it to be left with the notary public. If the testator or notary public requests, the carrying out of the closed will may be attended by two witnesses. The notary public must file the will with the Registry of Last Wills and Testaments.

4. Foreign Wills

If a foreign testator records his or her will in a language with which the notary public is not familiar, an interpreter chosen by the testator must be present to translate the provisions. The will must be written in both languages, stating which language been used by the testator (article 684 CC).

Regarding the validity and recognition in Spain of the provisions of wills granted abroad, the applicable law is the Hague Convention of 1961, on the Conflicts of Laws relating to the Form of Testamentary Dispositions. The Hague Convention of 1961 provides that (i) its rule is of *erga omnes* scope; (ii) Spain is a contracting state; and (iii) Spain is governed by the principle of the *favor testamenti*, whereby the will is formally valid if it meets the formal conditions of any of the national laws established under the convention.

II. Estate Administration

A. Overview of Administration Procedures

If there is an intestate death, *ab intestato* declaration proceedings should be initiated. These proceedings would be notarial if the heirs are descendants, ascendants or the spouse of the deceased, and judicial if the relationship with the deceased is not one of the above (e.g., siblings, or aunts or uncles).

A notarial statement by *ab intestato* is obtained through an affidavit certified by a notary public qualified to act in the place where the deceased had his or her last place of residence in Spain. An application should be filed, accompanied by the death certificate of the deceased; a certificate from the relevant Registry of Last Wills and Testaments, evidencing that the deceased did not leave a will; the family record (*Libro de Familia*) of the deceased or certificates from the Registry Office providing proof of any marriage or offspring; and statements by two witnesses with no direct interest in the will declaring the facts in the statement by the heirs are true.

The affidavit by the *ab intestato* heirs is processed through the procedures under articles 980 *et seq*. of the Civil Procedure Act 1881 ("LEC") before the court in the place where the deceased had his or her last place of residence.

Under Spanish succession law, the heir is considered to hold the legal position of the deceased, and therefore is responsible for administering and settling the inheritance and rendering the testamentary provisions, unless there is a provision to the contrary from the testator. The testator may entrust one or more faculties of the execution of the inheritance to one or more people. Spanish law differentiates between different figures, for example the court-appointed accountant (*contador-partidor*) (entitled to carry out the distribution); inheritance administrator (entrusted with preserving and managing the hereditary succession), or individual or universal executors (entrusted with complying with some or all of the testamentary provisions).

The universal executor is voluntary, non-delegable, cannot be waived (except under specific circumstances) and is unremunerated, unless the testator provides otherwise (although this aspect is different in some regional (*foral)* legislative systems). One or more executors may be appointed, to act jointly. The universal executor is authorized by the testator to fully comply with his or her last will and testament until it is completely fulfilled (article 894 CC). The universal executor's powers depend on the wishes of the testator and may be broad enough to border on arbitrariness. Among the universal executor's powers are the power to take possession of, and administer, the inheritance (e.g., paying debts and inheritance charges, leasing, and undertaking ordinary obligations), to dispose of assets (when expressly conferred by the testator), and to carry out anything else required to fulfill the will (e.g., carrying out inventory and evaluation of the inheritance estate, paying parts of the estate and giving bequests, carrying out the distribution and adjudication of the inheritance to the co-heirs). Unless otherwise indicated by the testator, the period to comply with the execution of the will is one year from the testator's death.

If the testator has not appointed a universal executor, and if the heirs cannot come to an agreement, any of the heirs may bring special legal proceedings for the division of the inheritance, regulated under articles 782 *et seq*. of the Civil Procedure Act 1/2000 ("LEC 2000"). Proceedings for the division of the inheritance have the purpose of the heirs carrying out an inventory, evaluation and all the dividing operations of the inheritance estate, subject to the appointment of a court-appointed accountant (*contador-partidor*) and of any experts that may have to evaluate the inheritance assets.

The spouse, any co-heir or legatee of a share requesting the division of the inheritance, as well as certain creditors whose debt has been inventoried or recognized in the will or public document, may request judicial intervention of the inheritance.

B. Intestate Succession and Forced Heirship

As mentioned, in Spain, the succession is governed by different sets of rules in Aragon, Balearic Islands, Basque County, Catalonia, Galicia, Navarre, Valencia, and the rest of Spain (where it is governed by the CC). The regulation of the succession in Spain in the listed regions, as well as under the CC, has the common characteristic of forced heirship rules, with the exception of the regulation in Navarre. The constraints to testamentary freedom apply to movable and to immovable property, located in Spain or abroad.

Under the constraints to the freedom of testament, people closely related to the testator must receive a part of the estate, called the *legítima*. As to the extent of forced heirship, for the sake of simplicity, we will focus on the regulation under the CC and examine the three most common scenarios:

- <u>The testator is survived by his or her spouse and children</u>: (i) one third of the estate must be distributed in equal parts among the testator's children (*tercio de legítima estricta*), and (ii) one third must go to the children and grandchildren of the deceased. The deceased can decide whether to distribute it in equal or non-equal parts, or only give it to some heirs or to just one of them ("tercio de mejora"). The testator's widow or widower has the right to receive at least a usufruct of this one-third portion of the estate. The last third can be disposed of freely by the testator ("*tercio de libre disposición*").

- <u>The testator is survived by his or her spouse, one or two of his or her parents or one or more of his or her grandparents, and has no children</u>: one third of the estate must be distributed in equal parts among the testator's parents ("*tercio de legítima*"). The testator's widow or widower has the right to receive at least a usufruct of half of the estate. The rest of the estate can be disposed of freely by the testator.

- <u>The testator is survived by his or her spouse, the testator has no children and his or her parents and grandparents have died</u>: the widow or widower of the deceased has the right to receive at least a usufruct of two thirds of the estate. The rest of the estate can be disposed of freely by the testator.

If there are no testamentary heirs, under the CC, any intestate succession follows the following order: 1) matrimonial or extra-matrimonial descendants or those through adoption, in a position of total equality; 2) relatives in ascending line; 3) surviving spouse; 4) siblings and nieces and nephews; 5) collateral relatives to the fourth degree of kinship; and 6) the state. The preference within each call of heirs is determined by the principle of the nearest relative excluding the most distant, except for the right to representation when applicable.

C. Marital Property

The law of marital property is another area of law where the diversity of systems within Spain is apparent. Thus, apart from the CC, other systems of regional civil rights (*derechos civiles forales*) coexist, offering a wide range of solutions, all recognizing the principle of freedom of choice regarding the option of various systems. Under article 1325 CC, spouses have the right to grant before a notary public, in a public deed, any clauses, amendments or replacements of the financial arrangement governing a marriage.

If there is no marital agreement, to determine the supplementary marital law between spouses, their nationality must be considered, and, regarding Spanish citizens, their place of residence. Also, it must be determined whether the marriage was held before or after December 29, 1978 (the date on which the Spanish Constitution came into force). If the marriage was held before this date, any property relations will be governed by the personal law of the husband—based on his residence—at the time the marriage was held. If the marriage was held after this date, it will be regulated under article 9.2 CC, under the wording in Act 11/1990, of October 15 (through reference to article 16.3 CC):

1. The common law governing both spouses;

2. If the spouses are not governed by a common law, the law governing one or the law governing the habitual residence of either of them, chosen by both in a certified document granted prior to the marriage;

3. If there is no such certificate, the law of the common habitual residence immediately subsequent to the marriage; or

4. If there is no common habitual residence, the law of the place where the marriage was held.

In any event, any subsequent change to the law governing the spouses does not alter the financial arrangement governing the marriage, although it does amend the financial arrangement applicable to succession.

The CC establishes a supplementary legal system of joint ownership of property (*Sociedad de Gananciales*) (article 1315 CC), regulated under articles 1344 CC et seq. This is the most common system applicable to married couples in Spain. The CC also regulates the separation of assets (*separación de bienes*) and gainsharing (*participación en las ganancias*) as conventional systems.

Under the system of joint ownership of property, there are three types of assets: (i) separate assets that the spouses hold individually, (ii) separate assets held under ordinary co-ownership, and (iii) community property. Common opinion is to consider the system of joint ownership of property as a Germanic type of community property, i.e., separate common autonomous property, of which both spouses are holders of an abstract share of the assets, only directing the disposition of specific assets and rights upon the dissolution of the system.

Under the system of joint ownership of property, the following are considered community property (1.347 CC): (i) the spouses' income; (ii) rent or interest arising from any property in which the spouses have a separate or joint interest; (iii) any property purchased using the spouses' common funds; (iv) any property acquired through a right of first refusal connected with property that is of a joint property nature, even if it is acquired with separate funds; and (v) companies incorporated during the marriage by either of the spouses, paid for by common assets. Any assets that are not proven to belong to a spouse individually (article 1361 CC) are presumed to be community property.

The following is considered separate property (article 1.346 CC): (i) any assets or rights belonging to each spouse at the time they got married; (ii) any assets or rights acquired by each spouse after they married through inheritance, bequest or donation; (iii) any asset or right acquired by each spouse by selling or replacing separate property; (iv) any asset or right acquired through only one spouse's right of first refusal; (v) patrimonial assets and rights inherited; (vi) any property or assets required to exercise the spouse's profession or career, except when these form an integral part of or belong to a common business or establishment that both spouses benefit from.

The system of the administration and disposal of the Joint Ownership of Property is that of the co-administration or co-disposal of the community property, requiring the consent of both spouses. Each of the spouses may dispose through their will of half of the community property, but such testamentary disposal shall only render all effects if adjudicated to the inheritance of the testator. Otherwise, the value of the asset will be deemed to have been bequeathed. An important exception to the general rule of co-management and co-disposal applies to any cash and securities. Any acts of the administration of assets or disposal of cash or securities carried out by the spouse in whose name they appear or in whose possession they are found will be considered valid (article 1384 CC).

Regarding the system of financial liability, a distinction is made between community charges or debts, which always burden the common estate, and the financial liability of community property in respect of third-party creditors in the collection of an individual credit in certain circumstances (i.e., in the exercise of a profession or trade).

Under other regional (*foral*) civil rights, the financial matrimonial regime between spouses is mainly that of a community estate (*comunidad de bienes*). Thus, in Galicia, there is a general reference to the common law system of the joint ownership of property; in Navarre, the supplementary legal system is a system called the Conjugal Conquest Society (*Sociedad Conyugal de Conquistas*), and in Aragon it is called the system of legal community (*Comunidad Legal*), both similar to the system of joint ownership of property under common law. In the Basque Country, the provinces of Álava and Guipúzcoa also use a supplementary joint ownership of property system, and the province of Vizcaya uses the supplementary legal system of the joint ownership of property (in force in some municipalities *no aforadas*, including Bilbao) and the supplementary legal system of the Regional Communication of Assets (*Comunicación Foral de bienes*) (in force in the rest of the province or Tierra llana), which is a type of universal estate in which all the assets are considered community property of the spouses, whether acquired before or after the marriage, under any title. In the Balearic Islands, Catalonia and Valencia, the separation of assets is in place as a supplementary financial-matrimonial system.

In Spain, no national regulation exists for *de facto* couples, although there is different regional legislation on the matter,[2] the operation of which is virtually identical to legislation regarding married couples, although no financial arrangement is established, as a separation of assets is maintained, unless otherwise agreed.

III. Trusts, Foundations, and Other Planning Structures

A. Trusts

The "trust" is not regulated under Spanish law. Spain has not ratified The Hague Convention on the Law of Trusts (1985). In addition, Spanish legislation does not recognize, in general terms, a difference between formal and beneficiary ownership. Under Spanish law, trusts are generally considered to be a group of assets without legal personality.

[2] The regions that have regulated *de facto* couples are: Andalusia, Asturias, Aragon, Balearic Islands, Basque County, Canary Islands, Cantabria, Castilla-La Mancha, Catalonia, Extremadura, Galicia, Navarre and Valencia.

Spanish tax legislation does not contain any provisions on the taxation of trusts or settlors, beneficiaries or trustees, which has caused legal uncertainty when dealing with trusts for Spanish tax purposes. The only existing guidelines on the tax treatment of foreign trusts under Spanish law can be found in the legal doctrine and a few rulings issued by the Spanish tax authorities on the matter.

In some recent rulings by the Spanish tax authorities, the government has disregarded the existence of trusts under Spanish law and considered transactions carried out through trusts as transactions made directly between the settlors and beneficiaries, even in cases where the trustees had discretionary powers to allocate or distribute the assets held by the trusts to the beneficiaries.[3] The mentioned rulings do not comment on the revocable or non-revocable nature of trusts. These rulings are questionable, as they simplify the issues arising from the incorporation and existence of a trust, but they do provide guidance of how the use of trusts is understood by the Spanish tax authorities. There is no case law yet on the tax treatment of trusts. The tax authorities have only issued their opinion on *mortis-causa* transfers. Based on existing tax rulings, distributions made by trusts to beneficiaries upon the settlor's death will be considered *mortis-causa* transfers between the settlor and the beneficiaries.

Based on these rulings, Spanish-resident beneficiaries would be subject to inheritance and gift tax ("IGT") on the value of the assets received and the tax liability would be calculated under the rules set by the autonomous regions or the central state, depending on where the settlor was resident when he or she died. According to the Spanish tax authorities, the relationship between the settlor and beneficiaries (relevant to apply lower IGT rates) should be considered. Non-resident beneficiaries in Spain would be subject to IGT on the Spanish assets acquired or rights that can be exercised in Spain. The Spanish tax authorities established in the above-mentioned rulings that Spanish residents would be liable to pay IGT *"in the moment of receipt of the assets, that is, upon death of the decedent, disregarding the incorporation of the trust for Spanish tax purposes."*

B. Foundations

1. In General

The Spanish Foundation State Act 49/2002 of December 23 establishes a special tax regime applicable only to registered Spanish non-profit entities. To apply for this regime, a notification must be filed with the Spanish tax authorities and the requirements discussed below need to be fulfilled.

A foreign foundation will receive the same tax benefits as Spanish foundations if it establishes a formal branch in Spain, which is registered with the relevant public body, and meets the legal requirements for foundations under Spanish regulations. If the foundation seeks private interests, it would not be able to apply for the special tax regime.

2. Conditions to Apply the Special Tax Regime

To apply the special tax regime, foundations must pursue general interest objectives, such as social assistance, education, culture, science or health; therefore, their main purpose cannot be to devote their services to their founders, or to the founder's relatives or to the members of the board of trustees. In particular, at least 70% of their net income should be used for carrying out activities related to their main non-profit objective, within five years (including the year that the income is used) of the receipt of the income. The foundation's object may include carrying out commercial activities that do not qualify for the tax exemption, but the income obtained through commercial activities cannot exceed 40% of the foundation's total income. In any case, the foundation's assets must not revert to being the founder's property.

The foundation's governing body must be formed with at least three members or trustees, who cannot be remunerated. However, they can be remunerated for any other professional services

[3] Tax rulings issued by the Spanish Directorate of Taxes dated October 30, 2008, January 14, 2010 and May 14, 2010. In the same line, earlier tax ruling issued on May 4, 1993.

they provide the foundation, when the founder has not expressly forbidden it, and it has been expressly authorized by the Protectorate (a public body that monitors foundations by controlling and reviewing them). The foundation submits its annual accounts to the Protectorate, which they will review, approve, and deposit in the Register of Foundations, once the Protectorate has examined and verified them, and that the annual action plans have been fulfilled. In addition, a financial report, which complies with information requirements regarding the foundation's activity, must be submitted annually to the corresponding tax authorities.

If the foundation is dissolved, all of the foundation's assets should be committed to another non-profit entity that also qualifies for the application of the special tax regime under Act 49/2002.

a. Special Tax Regime

Income obtained by Spanish foundations (or branches of foreign foundations) that meet the requirements under Act 49/2002 (i.e., capital gains, interests, rental income from immovable property and income from qualifying business activities described in the mentioned Act) are exempt from corporate income tax. However, expenses related to exempt income and depreciation of assets related to exempt activities are not deductible. Qualifying Spanish foundations are also exempt from other taxes, such as business tax, immovable property tax, capital duty and urban land appreciation tax, provided that they are related to the foundation's non-profit objectives and activities.

The corporate income tax rate applicable to a business activity carried out by the foundation that does not qualify for the tax exemption is reduced to 10%. Spanish foundations not complying with the special regime will be subject to tax at a 25% tax rate.

b. Donor's Taxation

Individuals are entitled to a tax credit of 25% of the value of the gift made to a foundation, up to a limit of 10% of the donor's total liquid taxable income. The amounts exceeding 10% cannot be applied in the following taxable periods (i.e., they cannot be carried forward). In addition, the donor will be exempt from taxation on the capital gain arising from the donated asset (other than cash).

In the case of contributions made by legal entities, they are entitled to a tax credit of 35% on all gifts, up to the limit of 10% of their taxable base. Amounts exceeding this limit may be used in the tax periods ending in the immediate and subsequent 10 years.

IV. Taxation

A. Personal Income Tax

Personal income tax ("PIT") is regulated under the Spanish Personal Income Tax Act 35/2006, of November 28 (the "PITA"). The PIT is one of the pillars of the Spanish tax system, projecting the principles of economic capacity, and the correlated principles of equality and progressive taxation. Income includes all of the taxpayer's earnings, returns, capital gains and losses, and attributed income under law, regardless of where it was obtained or the payer's place of residence. The tax period coincides with the calendar year, with the tax accruing on December 31.

PIT is applied throughout the Spanish territory, although the Basque country and the Navarra region have their own tax regimes, albeit very similar to the one in the rest of the Spanish territory. Under the PITA, only individuals whose habitual residence is in Spain pay PIT. Individuals are considered to have their habitual residence in Spain when:

- They stay in Spanish territory for more than 183 days in the calendar year; or
- Their main center or base for business activities or interests is directly or indirectly located in Spanish territory.

Unless proved otherwise, taxpayers are considered to have their habitual residence in Spain when, under the above criteria, their spouse (provided they are not legally separated) and underage dependent children habitually reside there.

When dealing with countries or territories legally classified as tax havens, the tax authorities may require individuals to prove their presence for 183 days in the calendar year in those jurisdictions. Spanish tax residents that change their residence to tax havens are considered Spanish tax residents during the year of this change and the following four years.

As mentioned, Spanish tax residents are taxed on their worldwide income. Taxable income is divided into two categories:

- General income: Ordinary income, mainly including employment income, income from immovable property, business income, and income from capital gains.

- Savings income: Speculative earnings, mainly including investment income and capital gains.

It is important to classify the income of taxpayers in the corresponding categories, because different tax rates apply.

B. General Income

1. Employment Income

Under the PITA, earned income includes all considerations or utilities, regardless of their name or nature, which are derived directly or indirectly from personal work or employment, or any other similar perception not considered business earnings. Employment income includes salaries, unemployment benefits and salaries of administrators and members of boards of directors.

2. Income from Immovable Property

Income from immovable property includes all income derived from real estate, mainly rental income. The amounts of rental income that property owners receive (excluding VAT) must be included in their taxable income. From that income, they can deduct the expenses directly related to obtaining it, in addition to the property amortization. However, these deductions cannot result in a negative taxable base. Tax on income earned from renting residential property is generally reduced by 60%. This reduction increases to 100% when the property is rented to young people between the ages 18 and 30, who have a minimum annual income.

Under the PITA, taxpayers should include in their tax returns income for urban real estate that is not used for business activities or is not rented, excluding permanent dwellings and land with no buildings. This imputed income results from applying a percentage of between 1% and 2% to the cadastral value. However, this amount is lower than the market rental income.

3. Business Income

Business income includes income received from entrepreneurial and professional activities, and is generally calculated according to the corporate tax rules (see section on corporate income tax). Rental income is considered business income if a taxpayer has premises used exclusively to manage the rental purposes and employs a person to deal with this activity.

4. Capital Gains

Capital gains that do not derive from the transfer of assets, such as prizes or indemnities, are considered general income.

5. Investment Income

Certain investment income is considered general income (i.e., royalties, income from image rights and rental of movable property).

C. Savings Income

1. Investment Income

The following are considered investment income: (i) income earned from participating in a company's capital, such as dividends; (ii) income derived from assigning one's own capital to third parties, such as interest; and (iii) income received from fixed income assets. In general, dividends are exempt from tax for an amount up to EUR 1,500 per year.

2. Capital Gains

Under the PITA, capital gains and losses are the variations in the value of the taxpayer's wealth that arise when this value changes, unless the PITA classifies them differently. As mentioned, the gains and losses derived from transferring assets are considered savings income. The capital gain is the difference between the transfer price and the acquisition cost. For transfers of real estate property, the acquisition cost is amended according to inflation. This rule also applies to gifts, in which case taxpayers should consider the market value of the gifted asset.

As mentioned, the general income base and the savings income base are taxed differently. After calculating each taxable base, taxpayers can apply deductions (i.e., a minimum amount is exempt from tax according to personal and family circumstances, a deduction can be applied when acquiring the primary residence, and certain reductions may apply when contributions are made to pension schemes).

The tax rate applicable to the general income base is the following:

General tax base	**Gross tax charge**	**Rest of general tax base**	**Applicable rate (percentage)**
0.00	0.00	17,707.20	24.75%
17,707.20	4,382.53	15,300.00	30.00%
33,007.20	8,972.53	20,400.00	40.00%
53,407.20	17,132.53	66,593.00	47.00%
120,000.20	48,431.24	55,000.00	49.00%
175,000.20	75,381.24	125,000.00	51.00%
300,000.20	139,131.24	Thereafter	52.00%

Some regions in Spain have increased the maximum tax rates. For example, the maximum tax rate in Catalonia is 56%.

The tax rate applicable to the savings income base is the following:

Savings tax base	Gross tax charge	Rest of savings tax base	Applicable rate (percentage)
0.00	0.00	6,000.00	21.00%
6,000.00	1,260.00	18,000.00	25.00%
24,000.00	5,760.00	Thereafter	27.00%

PITA establishes a tax credit method to mitigate double taxation from foreign source income or capital gains. Under this method, a resident taxpayer with foreign-source income may credit against his Spanish tax liability on worldwide income the lower of: (i) the tax paid abroad on the foreign-source income or capital gains, or (ii) the Spanish income tax attributable to the foreign-source income or capital gains.

D. Controlled Foreign Corporation (International Tax Transparency)

The controlled foreign corporation regime ("CFC") aims to tax the worldwide income of Spanish taxpayers and discourage the use of conduit companies in countries with low taxation. It applies to both Spanish individuals and Spanish companies taxed under the corporate income tax law. Under this regime, taxpayers must report income obtained by companies that are not resident in Spain and located in a low tax jurisdiction, if the following requirements are met:

- the taxpayer alone or together with a related party holds at least a 50% interest in the capital, equity, profits or voting rights of the foreign company; and

- the effective tax rate of the foreign company is less than 75% of the Spanish corporate income tax rate of 30%, i.e., 22.5%.

Income is attributed to the resident company at the pro rata share, provided the income qualifies as "passive" income. The following items are considered "passive" income:

a) Income from immovable property, unless used in a business activity or used by non-resident companies in the same group.

b) Income from equity (dividends and profit distributions), and interests from finance activities unless obtained from the course of a business activity.

c) Income from credit, financial, insurance and service activities, except those directly related to export activities, performed directly or indirectly with persons or companies resident in Spain. This rule does not apply if more than 50% of the income is obtained from non related parties.

d) Capital gains or losses derived from transferring real estate or rights thereon or from the disposal of financial assets (i.e., securities).

Income that the non-resident company earns from the means highlighted in a), b) and d) will not need to be reported by the taxpayer if it derives from companies in which the non-resident company directly or indirectly holds more than a 5% share, when the following two requirements are met: (i) the non-resident company manages the holdings with its material and human resources; and (ii) At least 85% of that company's income derives from business activities. Also, passive income is not attributed to the Spanish taxpayer if the income is less than 15% of total income of the foreign company or less than 4% of the total turnover of the company or of all the non-resident companies belonging to a group of companies.

In the case of individuals, the CFC regime does not apply to companies resident in the European Union unless it is a tax haven jurisdiction (exceptions apply to tax havens within the EU). The

Spanish legislation also provides for a special anti-abuse tax regime that aims to discourage the use of conduit companies holding image rights.

E. Inbound Expatriates

The PITA establishes a special tax regime for individuals who become tax residents in Spain. They may choose to be taxed under the non-resident income tax rules during the tax period in which they acquire Spanish tax residence, and for the following five years, if they meet the following conditions:

- They must not have been resident in Spain during the last 10 years.
- They are moving to Spain as a result of an employment contract.
- They work physically in Spain for a company or entity resident in Spain or for a Spanish permanent resident.
- They will carry out their work for a resident company or corporate body, or for a permanent establishment in Spain of a corporate body that is not resident in Spain. This condition will be met if the income received for work performed abroad does not exceed 15% of the total employment income received during that year. This increases to 30% if the work is performed for group companies.
- Their income earned from employment is not exempt from non-resident income tax.
- Their expected salary does not exceed €600,000 for each period to which the special tax regime for inbound expatriates applies.

Generally, non-tax residents (and taxpayers that choose to be taxed as non-residents) are subject to tax in Spain on their Spanish-source income (i.e., work performed in Spain or investments located in Spain) at a general flat rate of 24.75%.

F. Non-Resident Income Tax

Spanish non-resident income tax is levied on Spanish-source income and capital gains that non-resident taxpayers obtain in Spain.

1. Taxpayers

Non-resident individuals are those who are not considered Spanish tax residents. As discussed above, individuals are considered resident in Spain for tax purposes when they meet either of the following requirements:

- They are in Spain for more than 183 days during a calendar year. Sporadic absences are included when calculating this period unless a tax residence certificate is issued by another country. The Spanish tax authorities can require taxpayers residing in tax havens to prove that they are present there for 183 days in a calendar year.
- They have their main base or center of activities or economic interests, directly or indirectly, in Spain.

Unless proved otherwise, married individuals are resident in Spain if their spouses and dependent underage children have their habitual residence in Spain.

Non-resident companies are companies that are not incorporated under Spanish law or do not have their legal seat or place of effective management in the Spanish territory. The Spanish tax authorities may consider a company located in a tax haven or a low-tax territory to be resident in Spain if its main assets are immovable property located in Spain, or rights to immovable property in Spain, unless the location in Spain is based on valid economic reasons other than the pure management of securities. Permanent establishments in Spain of non-resident companies are generally subject to the same tax rules as resident companies. This means, *inter alia*, that (i) permanent establishments are taxed on their worldwide income, (ii) their income and expenses must be calculated on an arm's length basis, and (iii) their tax liability is calculated under the Spanish corporate income tax rules. Non-resident companies that do not have permanent establishments in Spain would be subject to non-resident income tax on their Spanish-source income and Spanish-source capital gains.

2. Withholding Taxes

Spanish-source income obtained by non-residents without a permanent establishment in Spain is generally subject to a final withholding tax on the gross amount. If the taxpayer is resident in the European Union, the taxation of the non-resident will be on the net income. The current general non-resident tax rate is 24.75%. For interest, capital gains and dividends, the applicable general tax rate is 21%, although several exemptions are available depending of the residency of the recipient. In addition, the transfer by a non-resident of a real estate property located in Spain is subject to a tax of 3% of the sale price. If the tax is not withheld by the buyer, the tax authorities can place a lien on the underlying property to collect the tax due. Certain exceptions apply to this rule.

3. Tax Treaties

Spain has entered into over 80 tax treaties with other countries that are based on the OECD Income and Capital Model, and it is constantly expanding its treaty network. These tax treaties provide for reduced rates of withholding tax or exemptions for certain types of income, e.g., dividends, interest and royalties.

G. Spanish Corporate Income Tax

Spanish corporate income tax is mostly regulated by Act 4/2004, of March 5, (the "CITA"). Under section 1 CITA, corporate income tax is a personal and direct tax levied on Spanish legal entities and others assimilated to them (e.g., investment funds). Companies subject to corporate income tax are taxed on their worldwide income[4] (i.e., on all their income), whether from Spanish sources or not.

In general, the tax period coincides with the financial year of the company, but in practice it typically coincides with the calendar year, with the tax accruing on December 31. The CITA follows the Spanish Accounting Plan, enacted through Spanish Royal Decree 1514/2007, of November 16, which entered into force on January 1, 2008.[5] Unless stated otherwise in the CITA, the income generated by companies is calculated according to the accounting rules in the Spanish Accounting Plan. When there is a difference, the income calculated under the latter must be adjusted for tax purposes. These are the so-called tax adjustments to the accounting profit, and they refer, among others, to the following concepts:

- Amortization and depreciation of assets (section 11 and 12 CITA).
- Provisions or write offs (section 13 CITA).
- Non-deductible expenses (section 14 CITA).
- General and specific valuation rules for certain transactions without consideration and corporate restructurings (section 15 CITA).

[4] Capital gains are included within the term "income."
[5] The Spanish Accounting Plan is based on the global accounting amendment carried out by Spanish Act 16/2007, of July 14, which incorporated the provisions of EU Regulations 1606/2002/CE and 1126/2008 (that rewrites EU Regulations 1725/2003, 2086/2004 and 2237/2004), which in turn incorporated the International Financial Reporting Standards by the International Accounting Standards Board. In addition, Spanish Royal Decree 1515/2007, of November 16, 2007, enacted the Spanish Accounting Plan for small- and medium-sized enterprises.

- Transfer pricing rules between related parties in accordance with the arm's length principle (section 16 CITA).

- Special valuation rules for changes of residence, closing of permanent establishments, and transactions carried out with residents in tax haven jurisdiction (section 17 CITA).

- Thin-capitalization rules (section 20 CITA).

- Participation exemption regime (sections 21 and 22 CITA).

- Income derived from intangible assets (patent box regime) (section 23 CITA).

Once the income has been calculated according to the accounting rules and, if necessary, adjusted for tax purposes according to the above sections, the resulting tax base may be set off against tax credits generated during the year or in previous years.

Under section 25 CITA, tax credits may be carried forward for up to 18 years. The resulting tax base is multiplied by the general tax rate of 30% (20% or 25% for small- and medium-sized companies). The resulting amount is the gross tax payable, which may be reduced by applying any of the deductions in sections 31 to 44 CITA. After applying these deductions and calculating the gross tax payable, the final tax payable will be the difference between the gross tax payable and the tax prepayments made in the tax period.

Tax losses may be set off against all income of the same financial period. Losses can be carried forward 18 years but cannot be carried back. For tax years starting in 2011, 2012 and 2013, limits have been established on the amount of losses that can be carried forward by companies whose turnover exceeds a certain amount. There are anti-avoidance provisions to combat transfers of loss-generating companies.

1. Tax Credit To Avoid Double Taxation

Dividends and capital gains are included in the recipient's taxable income. A 50% tax credit applies to dividends received from resident companies, which increases to 100% (equal to an exemption) if the recipient of the dividend held a direct or indirect participation of at least 5% in the capital of the subsidiary continuously for at least a year (this period can be complied with after the distribution). Under certain conditions, the 100% tax credit will also apply to cases where the shareholding of 5% has been reduced to at least 3%, as a consequence of the subsidiary carrying out a transaction subject to a special tax neutrality regime.

Capital gains from the sale of shares in resident companies may also be exempt from tax if the shares held prior to the transfer amounted to at least 5% and were held continuously for at least a year. The exemption is limited to the amount of the net capital gain realized on non-distributed profits.

Under section 21 CITA, dividends and capital gains derived by a Spanish company from shares in non-resident companies are exempt from corporate income tax under certain conditions. If those conditions do not apply, a tax credit to avoid double taxation may be applied, also under certain conditions. The main requirements to apply the exemption method are: (i) a direct or indirect stake of at least 5%; (ii) uninterrupted holding period of at least one year on the date the dividend is due (or commitment to hold the shares for at least one year); (iii) the non-resident company is not resident in a tax haven jurisdiction and is subject to a tax comparable to the Spanish corporate income tax (this condition is met if the nonresident company is resident in a country with which Spain has a tax treaty in force); and (iv) at least 85% of the profits of the non-resident company derived from the performance of business activities outside Spain.

2. Spanish Holding Companies ("ETVE")

ETVE is provided for under sections 116 to 119 CITA. Spanish companies can apply the ETVE regime by notifying the Spanish tax authorities (applicable in the tax year in which the notification is made) if:

- their corporate purpose, as stated in their by-laws, includes (not exclusively) managing shareholding interests in foreign entities;

- they organize their material and human resources appropriately to carry out this activity; and

- their shares are nominative.

Under this regime, dividends derived from foreign subsidiaries, and capital gains derived from transferring shares in those companies, benefit from the exemption under section 21 CITA, mentioned in section 1 above. In addition, dividends and capital gains obtained by the shareholders of the companies applying ETVE and deriving from income that is exempt under section 21 CITA and the ETVE regime are also exempt from Spanish taxation unless the shareholder is resident in a tax haven jurisdiction.

3. Private-Equity Regime

Under section 55 CITA, private-equity companies regulated under Act 25/2005, of November 24, on Private Equity Companies and their Managing Companies are eligible to apply this regime. In addition, Circular 11/2008, of December 30, of the National Stock Exchange Commission (*Comisión Nacional del Mercado de Valores*) (the "CNMV"), contains their specific accounting rules.

Private-equity companies are taxed under the general corporate income tax rules. However, section 55 CITA provides for an exemption of 99% on their income if derived from the transfer of non-listed securities if the transfer takes place between the second and fifteenth year (exceptionally, until the twentieth) from the acquisition of the shares. If the target company has immovable property that represents more than 50% of its assets, the exemption only applies if at least 85% of the immovable property is used in business activities.

Dividends benefit from a 100% tax credit irrespective of the percentage or the holding period.

4. Collective Investment Regime

Sections 28 and 57 *et seq.* CITA provide for a special regime applicable to collective investment schemes incorporated under Act 35/2003, of November 4, on Collective Investment Schemes, and subject to the supervision of the CNMV. These collective investment schemes can be divided into financial schemes (investment funds and investment companies with variable capital–SICAVS) and non-financial schemes (real estate investment funds and companies). The applicable accounting rules are set out in the CNMV's Circular 3/2008, of September 11.

The tax rate applicable to financial collective investment schemes is 1%, provided they have at least 100 shareholders. Non-financial schemes (real estate) must exclusively invest in urban real estate to lease and their by-laws must not stipulate a shareholder's right to a dividend. Collective investment funds or companies cannot claim any tax credit, although they can recover domestic withholding taxes.

5. Controlled Foreign Corporation (International Tax Transparency Regime)

The Controlled Foreign Corporation (CFC) regime applies both to resident individuals and companies and has been described in detail in the PIT section. In the case of corporations, the CFC regime potentially applies to all non- resident companies, including EU resident companies, except for those that were not created for valid economic reasons and do not carry out business activities.

H. Tax On Individuals' Wealth

In Spain, two taxes are levied on individuals' wealth: (i) net wealth tax (*Impuesto sobre el Patrimonio*), which is levied on an individual's net wealth; and (ii) IGT (*Impuesto sobre Sucesiones y Donaciones*), which is levied on lucrative wealth transfers and applies to an individual's acquisition of properties and rights.

Although each of these taxes is regulated under the state legislation, described below, their regulation has been partially transferred to the autonomous regions, allowing them to set their own benefits and tax rates, within certain limits. Therefore, individuals' tax burdens may vary depending on where they reside. However, the tax benefits and rates applicable to non-residents are established in the general regime, notwithstanding that the European Union is reviewing this point due to the possible discrimination in its application.

We provide an overview of the state regime below, which is the regime generally applicable to non-residents.

1. Wealth Tax

Wealth tax has been re-established for 2011 and 2012, as a special measure to mitigate the effects of the financial crisis. Wealth tax is charged on individuals' net wealth, and the taxable event is ownership of the net wealth on the date of accrual of the tax, which is December 31. This tax applies to the worldwide property and rights of residents in Spain, and in the case of non-residents, it only applies to their wealth located in Spain. The residence criterion is the same as the one applied to PIT.

Under the Wealth Tax Act, several exemptions are applicable, although the autonomous regions can additionally approve some others, for example exceptions for (i) family businesses if certain requirements are met, (ii) the habitual abode (up to €300,000), (iii) some art and antiques, or (iv) pension plans. In addition, there is a general exemption of €700,000 (which can be increased or reduced by the autonomous regions).

For non-residents in Spain, wealth tax is levied on the net value of non-resident individuals' assets and rights that are located, or are to be exercised, in Spain. Debt taken on to finance the acquisition of assets and rights located in Spain is deductible when calculating the tax base, provided the debt was taken to acquire the Spanish asset and right. Certain exemptions apply on Spanish financial assets.

Immovable property is valued according to the highest of the following values: (i) the cadastral value (ii) the value confirmed by the tax authorities for the purposes of other taxes; or (iii) the price, consideration or acquisition value.

The method used to calculate the value of shares will depend on whether these are traded on an organized market. The value of shares listed on an organized market is calculated based on the average traded value in the last quarter of the year. In the case of shares not traded on a stock market, if accounts are audited, their value will be calculated based on the net book value. If there is no audited balance sheet, the value will be the highest of the following three values: (i) the face value; (ii) the net book value of the last approved balance sheet; and (iii) the value resulting from capitalizing, at a rate of 20%, the average profit made in the last three financial years.

The tax rate is progressive and is calculated according to the table below.

Tax base	Gross tax charge	Rest of tax base	Applicable rate (percentage)
0.00	0.00	167,129.45	0.2%

167,129.45	334.26	167,123.43	0.3%
334,252.88	835.63	334,246.87	0.5%
668,499.75	2,506.86	668,499.76	0.9%
1,336,999.51	8,523.36	1,336,999.50	1.3%
2,673,999.01	25,904.35	2,673,999.02	1.7%
5,347,998.03	71,362.33	5,347,998.03	2.1%
10,695,996.06	183,670.29	thereafter	2.5%

The sum of PIT and wealth tax due is limited to 60% of the total taxable income for the taxpayer's income tax purposes. If it exceeds that amount, the net wealth tax liability may be reduced by the excess amount. However, a minimum tax of 20% of the net wealth tax liability must be paid. A number of Spanish tax treaties include provisions on wealth tax.

a. Inheritance and Gift tax

The taxable event is the acquisition of property and rights through: (i) inheritance, bequest or other title; (ii) gift or *intervivos* transfer; or (iii) proceeds of a life insurance policy where the beneficiary and the policyholder are not the same individual. The taxable persons are those receiving the property and rights: (i) heirs, (ii) donees, and (iii) beneficiaries. The tax liability arises on the date of death or, in the case of an *intervivos* gift, on the date the assets or rights are given or when the donee accepts the donation.

Under the Inheritance and Gift tax Act (IGT), several deductions and tax rebates are applicable, which might be significantly different in the autonomous regions: for example (i) regarding family businesses if certain requirements are met, and (ii) for the habitual abode transferred through inheritance. As in the case of wealth tax, the tax residence of the deceased in the case of a *mortis causa* transfer or the beneficiaries in the case of an *intervivos* transfer also plays an important role when determining the applicable law.

Individuals tax resident in Spain will be taxed on the worldwide properties and rights acquired either through inheritance or by donation. Non-residents will only be taxed on property located in Spain or on rights that may be exercised in Spain, as well as on life insurance policies with a Spanish entity or with a non-Spanish entity operating in Spain.

When determining the taxable base for inheritance and gifts, the market value is generally used (defined by law as the "real" value), from which the following are deducted: (i) burdens and encumbrances on the asset; (ii) certain debts; and (iii) other expenses, such as medical costs and funeral-related expenses. When calculating the taxable base of heirs or legatees, and also beneficiaries of life insurance policies, certain deductible allowances apply; the amount depends on the relationship with the deceased. However, these allowances do not apply to *intervivos* transfers.

Once the taxable base is calculated, the tax due is calculated, at progressive rates, in accordance with the table below.

Tax base	**Gross tax charge**	**Rest of tax base**	**Applicable rate (percentage)**
0.00	0.00	7,993.46	7.65%

7,993.46	611.5	7,987.45	8.5%
15,980.91	1,290.43	7,987.45	9.35%
23,968.36	2,037.26	7,987.45	10.2%
31,955.81	2,851.98	7,987.45	11.05%
39,943.26	3,734.59	7,987.46	11.9%
47,930.72	4,685.10	7,987.45	12.75%
55,918.17	5,703.50	7,987.45	13.6%
63,905.62	6,789.79	7,987.45	14.45%
71,893.07	7,943.98	7,987.45	15.3%
79,880.52	9,166.06	39,877.15	16.15%
119,757.67	15,606.22	39,877.16	18.7%
159,634.83	23,063.25	79,754.30	21.25%
239,389.13	40,011.04	159,388.41	25.5%
398,777.54	80,655.08	398,777.54	29.75%
797,555.08	199,291.40	Thereafter	34%

The final tax liability of the acquirer is the amount resulting from applying fixed surcharges to the basic tax due. Those surcharges depend on both the recipient's previous net wealth and on the acquirers' relationship with the deceased or donor. The surcharges are indicated in the table below.

Recipient's net wealth	**Kinship category**[6]		
	I and II	**III**	**IV**
up to €402,678.11	1	1.5882	2
From €402,678.11 to €2,007,380.43	1.05	1.6676	2.1
From €2,007,380.43 to €4,020,770.98	1.1	1.7471	2.2
Over €4,020,770.98	1.2	1.9059	2.4

The different autonomous regions have legislative powers to approve their own tax rates and to establish the reductions they consider convenient.

[6] Group I: descendants and adopted children under 21.
Group II: descendants and adopted children aged 21 or older, spouses, ascendants and adoptees.
Group III: second- and third-degree relatives, ascendants and descendants by affinity.
Group IV: others.

A tax credit to avoid double taxation applies against the Spanish tax due, which will be the lower of: the IGT paid abroad or the Spanish tax attributable to that property. Spain has entered into only two treaties for the avoidance of double taxation of inheritance, with France and Sweden.

I. Indirect Taxes

The *Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados* (“ITPAJD”) is an indirect tax on various taxable events that are taxed through three different taxes:

- Transfer tax, charged on the transfer of assets and rights between individuals or companies, which do not constitute their business activities.

- Capital duty, charged on corporate transactions.

- Stamp duty, charged when formalizing transactions in notarial deeds, corporate documents or administrative documents.

Transfer tax, capital duty and stamp duty (stamp duty when it is charged at variable rates) cannot be charged at the same time, while stamp duty at a fixed rate is always charged on officially documented acts, regardless of whether transfer tax, capital duty or VAT applies. Capital duty and stamp duty can be charged simultaneously with VAT.

Transfer tax is only charged on the transfer of assets located in Spain and rights that could be exercised or have effect in Spain or abroad, but in the latter case, only when the individual is tax resident in Spain. There is no transfer tax on the transfer of immovable assets or rights located abroad.

Capital duty is only charged on corporate transactions carried out by companies. The charge is imposed when the company (i) has its place of effective management in Spain; or (ii) has its legal seat in Spain or carries out business transactions in Spain, but does not have a place of effective management in an EU Member State that applies a similar tax.

Stamp duty is only charged when formalizing certain transactions in Spain, or when these transactions are formalized abroad, but have legal or economic effects in Spain.

Each autonomous region is responsible for ITPAJD, and can establish different rules, particularly for tax rates.

1. Transfer Tax

Transfer tax is charged on onerous and *intervivos* transfers of any kind of assets and rights that belong to individuals and companies, but are not part of the transferor’s professional or business activity. Transfer tax is not charged if the transaction is subject to VAT, regardless of whether it is exempt from VAT. However, transfer tax can also be charged on the transfer or rental of immovable property, as well as the creation or transfer of real estate rights over immovable property when these are subject to, but exempt from, VAT.

In general, the taxpayers are the individuals or companies acquiring the assets.

The transfer tax rate depends on the type of asset transferred:

a. Transfer of Immovable Property

Transfers of immovable property and rights over any property[7] are taxed at the general rate of 6% (7% or 8% in most autonomous regions), except when VAT applies.

i. Transfer of Movable Property

[7] Except guarantees.

Transfer tax is charged at a rate of 4% when rights over movable property are created or transferred, as well as when administrative concessions are granted. However, it is charged at a rate of 1% when *in-rem* rights, pensions, deposits or loans are created.

ii. Transfer of Securities

The transfer of shares or other securities is exempt of transfer tax. However, under article 108 of Act 24/1988, on the securities market, a 6% transfer tax (or 7% or 8% in most autonomous regions) applies to the transfer of securities of a company whose real estate assets in Spain represent more than 50% of its total assets, or whose assets include securities in another company whose real estate assets in Spain represent at least 50% of its total assets, if the acquirer acquires control of the real estate company, or increases its controlling stake, as a result of the transfer.

2. Capital Duty

Capital duty applies to capital redemptions and liquidations, and is charged at a rate of 1% on the value of the net assets distributed to the shareholder (with the taxpayer being the shareholder). Since December 2010, 1% capital duty no longer applies to the incorporation of Spanish companies, the transfer of the legal seat of foreign company to Spain, capital increases or contributions made by shareholders.

3. Stamp Duty

Stamp duty is charged on officially documented acts (i.e., notarial, corporate or administrative acts) that are formalized in Spain, or have legal or economic effects in Spain.

There are fixed and variable rates. The fixed rate is not significant: €0.30 per sheet of paper, and €0.15 per page, while the variable rate ranges from 0.5% to 1.8%, depending on the rules of each autonomous region. The variable rate is only charged when the officially documented transaction is not subject to transfer tax or capital duty, and it documents a valuable amount or object that can be registered in an official register.

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