
Principality of Andorra

International Estate Planning Guide

Private Client Tax Committee

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I. Wills and disability planning documents

The Principality of Andorra is a civil law country in which much of private law, apart from some matters regulated by special laws, is based on the *ius commune* and Roman Law, even if the case law of the Andorran courts has adapted it to the social and economic changes undergone in Andorra in recent times.

Article 27(1) of the Andorran Constitution of 1993 enshrines, together with the right to private property, the right to inheritance. Law No 46/2014 of 18 December, on *mortis causa* succession, represents, as its explanatory memorandum states, a further step towards the 'exhaustive process of regulatory regulation of Private Law, of the laws that directly regulate the lives and relationships of people, their properties and their businesses, their families and their inheritances'.

Andorran succession law is based on the unity and universality of inheritance, without distinguishing between movable and immovable assets, and on the determination of personal law, with nationality as a point of connection, which in turn implies the applicability of Andorran succession law, inherent in personal status, regardless of the place in which the assets are located or where the death took place.

In this regard, the Andorran regulation differs from Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. The first additional provision of Law No 46/2014 sets out the international private law rules and enshrines nationality as a point of connection, rejecting the criterion of habitual residence, as well as the possibility of choosing the applicable law.

However, Andorran law allows a de facto application of the law derived from the habitual residence according to the circumstances of the case, formulating an adaptation clause in two ways:

- the Andorran court has jurisdiction to decide on the entirety of an inheritance when the personal law applicable to the deceased at the time of death is that of Andorra. This also applies to cases in which the deceased was a resident of Andorra at the time of death and where he or she was the owner of property or rights located in Andorra; and
- in the event that, exceptionally, it is clear from the circumstances of the case that, at the time of death, the deceased had an obviously closer link with a different country, the law applicable to inheritance will be that of the other country.

Finally, Andorran citizens can make a will abroad, according to the law of the country in which they are. This will could be holographic, even if the legislation of that country does not allow it, but cannot be a joint will (*testament mancomunat*) even if the legislation of that state allows it. In addition, an open or closed will may be granted before the Andorran diplomatic or consular official with notarial functions.

A. Will formalities and enforceability of foreign wills

1. THE FORM OF LAST WILL AND TESTAMENTS

Wills are regulated in Title III of Law No 46/2014 (Articles 93 *et seq*). Wills or testaments are unilateral, very personal (*personalissims*, in civil law terminology) and revocable documents in which the testator names one or more heirs and instructs, where appropriate, legacies and other provisions for after his/her death. The designation, modification or revocation of the beneficiaries of life insurance policies, pension plans and savings, and retirement plans can be also made, the latter also in a codicil. Notarial wills can be opened or closed.

Open wills

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 state: (1) the place, year, month, day and time the testator grants the will; (2) that the notary public has read it aloud to the testator; and (3) that the testator understands its content and consents to it. Except for very special circumstances (eg, 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.

Closed wills

Closed wills are drafted (handwritten or typed) by the testator or a third person, stating the place, day, month and year, 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, and the notary public records the granting of the will. The will may be returned to the testator, leaving a copy of the registration in the testator's records, although it is usually left with the notary public. At the testator or notary public's request, the sealing of the will may be attended by two witnesses.

Holographic wills

Holographic wills were not recognised until Law No 46/2014. They are handwritten, drafted and signed by the testator, stating the day, month and year. Any words crossed out, amended or in brackets should be initialled by the testator. A holographic will may only be signed by a person of legal age (18 years old). For a holographic will to be fully effective and valid, it must be legally attested within four years from the death and certified by a notary public.

2. CODICILS

A codicil must be executed with the same formalities as a will. The grantor may dispose of assets included in the inheritance, add to or partially reform his/her will or, in the absence of the same, instruct succession provisions for intestate heirs. Heirs cannot be added or excluded, nor can the previous document be revoked. A sole executor cannot be named, nor can substitutions or conditions be instructed. Wills and codicils may include personal instructions, such as the donation of organs or the body.

Andorran legislation also recognises *memòries testamentàries*, which may include provisions that do not affect more than 20 per cent of the inheritance and refer to money, personal objects, jewellery, *trousseau* or obligations of minor importance imposed on the heirs or legatee.

3. SUCCESSION AGREEMENTS

Andorra recognises succession agreements or inheritance agreements, configured as irrevocable instruments for the allocation of equity to an individual. In these contracts, provisions may be made with the same range and same terms as in wills, stating the welfare or business purpose that, if any, is decisive. This instrument is particularly suitable for the transfer of family-owned businesses.

4. POST-DEATH VARIATIONS

The beneficiaries under a will cannot make a post-death variation of the will. The preparation of a will is a strictly personal matter that cannot be delegated to the beneficiaries.

5. THE HAGUE TESTAMENTARY DISPOSITIONS CONVENTION

The Principality of Andorra is not a party to the Hague Conference on Private International Law (Conférence de La Haye de droit international privé or 'HCCH') Convention on the Conflicts of Law Relating to the Form of Testamentary Dispositions 1961 (the 'Hague Testamentary Dispositions Convention').

B. Will substitutes (revocable trusts or entities)

Andorran law does not recognise trusts because it is not a party to the HCCH Convention on the Law Applicable to Trusts and on their Recognition 1985 (the 'Hague Trust Convention'). However, Andorran residents can be grantors, settlers or beneficiaries of a foreign trust.

C. Powers of attorney, directives and similar disability documents

If a person is put under legal restraint (*curatele*) by the Andorran civil court (*Batllia*), the court appoints a legal guardian (*curator bonis*) to represent him or her. A court can also impose fiduciary administration on an adult's property if the adult cannot administer his or her own property. The fiduciary administrator manages the property.

A power of attorney, given before the loss of capacity, remains valid. Foreign powers of attorney are normally recognised.

To plan for loss of capacity, a 'living will' or '*testament vital*' can be made. A living will usually contains one or more powers of attorney and may also contain medical provisions, such as a 'do not resuscitate' order, but it is not a succession will.

II. Estate administration

A. Overview of administration procedures

Under Andorran succession law, the heirs have the legal position of the deceased, and are responsible for administering and settling the inheritance and rendering the testamentary provisions, unless the testator provided otherwise. The testator may grant powers to execute the inheritance to one or more people. Spanish law recognises:

- the court-appointed accountant (*marmessor* or *comptador partidor*), who is entitled to carry out the distribution; and
- an arbitrator or judge if there is controversy between the heirs.

The *marmessor* or universal executor position is voluntary and cannot be delegated, waived (except under specific circumstances) or remunerated, unless the testator provides otherwise. The testator can appoint one or more executors to act jointly and authorises the universal executor to fully comply with the last will and testament until it is completely fulfilled. Their powers depend on the wishes of the testator and may be broad enough to border on arbitrariness.

They include:

- taking possession and administering the inheritance (eg, paying debts and inheritance charges, leasing and fulfilling ordinary obligations);
- disposing of assets (when expressly conferred by the testator); and
- taking care of anything else required to fulfil the will (eg, inventory and evaluation of the estate, paying parts of the estate and giving bequests, and distributing the inheritance to the co-heirs).

Unless the testator indicated otherwise, the will must be executed within 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 can start special legal action to divide the inheritance. Under no circumstances can the term to execute the testator's will exceed 15 years.

B. Intestate succession and forced heirship

1. INTESTATE SUCCESSION

If Law No 46/2014 of 18 December is applicable, when an individual dies in Andorra without leaving valid instructions for the disposition of the estate, the law calls the deceased's relatives, widow spouse or legal partner under a stable couple union as heirs. In the absence of heirs, the Andorran government will be appointed as the heir.

Once the heirs are determined, they must irrevocably accept or reject the inheritance (there is no time limit on the decision); they may only accept the inheritance for the benefit of the inventory within six months from when they were called to accept or reject the inheritance.

Acceptance or rejection is pure and simple, and cannot be partial. Acceptance can be express or tacit, while the rejection of the estate must be made expressly before an Andorran public notary or before the Andorran courts.

2. FORCED HEIRSHIP AND DISINHERITED HEIRS

In Andorran succession law, the will of the deceased prevails. However, the will is limited in the sense of protecting certain individuals with family ties from disinheritance. Andorran legislation provides for forced heirship obligations in favour of descendants, who are entitled to inherit a quarter of the net value of the estate. If there are no descendants, then ascendants will become forced heirs.

Another quarter of the estate must be transferred to the surviving spouse if he or she does not have sufficient economic resources (*quarta vidual*).

A lawful heir cannot be excluded from an inheritance unless there's a legitimate reason. In other words, legislation offers some protection to certain people in order to avoid unfair disinheritance.

Law No 46/2014 of 18 December provides for five legitimate reasons for disinheritance:

1. the legitimate reasons stated in Article 7 are acts of violence with intent to harm, physically and morally, the deceased or someone in his or her closest circle, such as a partner, descendants or ascendants;
2. the lawful heir hasn't taken care of the deceased when there has been a legal obligation to provide care;
3. the lawful heir has seriously mistreated the deceased;
4. if the custody that belonged to the lawful parent over the deceased has been suspended or deprived; and
5. there is a proven and continuous absence of a family relationship between the deceased and the heir, and this has been caused solely by the lawful heir.

C. Marital property

1. COMMUNITY OF PROPERTY REGIME

Qualified Law No 30/2022 of 21 July on the person and the family provides that, in the absence of marriage contracts or where these are insufficient, the matrimonial property regime is determined by the common national law of the spouses; and otherwise, by the direction of the place of residence of the marriage or the law with which the spouses have a closer link.

In the absence of an agreement in the marital contracts on the matrimonial property regime, an Andorran marriage is subject to the separation of property regime, which entails the enjoyment, administration and disposal of the property of each of the spouses without any intervention by the other.

This regime does not exclude the right to a compensatory payment or pension in the event of divorce if one of the spouses is clearly at an economic disadvantage as a result of the divorce.

Andorran law allows marriage contracts on matrimonial property regimes. However, to be valid and produce legal effects, these marriage contracts must meet specific requirements. According to the Civil Registry Law of 11 July 1996, marriage contracts and other agreements

on the economic regime of marriages and civil unions made by public deed authorised by one of the notaries of Andorra must be notified to the Civil Registry by these notaries.

2. SAME-SEX COUPLES

Same-sex marriage has been legal in Andorra since 17 February 2023, the date on which Qualified Law No 30/2022 of 21 July entered into force. Andorra first established stable unions on 23 March 2005, providing same-sex couples with some of the rights and benefits of marriage, and later enacted civil unions on 25 December 2014, offering a greater set of rights.

III. Trusts, foundations and other planning structures

Andorran law does not recognise trusts because Andorra has not signed the Hague Convention on the Law Applicable to Trusts and on their Recognition. Nevertheless, there is usually an international or cross-border element that must be carefully analysed for inheritors resident in Andorra.

At the time of the distribution of assets, the beneficiary will receive the trust assets as a gift or inheritance and because there is no gift or inheritance tax in Andorra, the beneficiary will not be taxed on this capital gain.

Collective investment undertakings are used as an estate planning tool because these vehicles are taxed at zero per cent.

IV. Taxation

A. *Domicile and residency*

The basic criteria to determine tax residence in Andorra are set out in Law No 5/2014 of 24 April on Personal Income Tax (the 'PIT Law'). According to the PIT Law, individuals are resident for tax purposes in Andorra if one of the following requirements is fulfilled:

- substantial presence test: the individual remains in Andorra for more than 183 days during a calendar year. Temporary absences from Andorra are counted as days spent in Andorra, unless the individual proves his or her residence in another country by providing a tax certificate issued by the tax authorities of the country of residency; and
- economic interests test: the centre of the individual's business activities or interests is directly or indirectly located in Andorra (most of the individual's income or wealth is obtained or located in Andorra, respectively).

In addition, there is a legal presumption of residence in Andorra for tax purposes if the individual's spouse and dependent children are resident in Andorra. Nonetheless, this presumption may be rebutted (eg, with a tax certificate issued by the authorities of the country of residence).

B. Gift, estate and inheritance taxes

1. INHERITANCE TAX

There is no inheritance tax in Andorra, nor is the deceased taxed for capital gains derived from transfer on death.

2. GIFT TAX

There is no gift tax in Andorra. However, the donor is taxed if the gift would generate a capital gain. Notwithstanding the foregoing, the PIT Law provides exemptions in the case of family gifts up to the third level of kinship.

C. Taxes on income and capital

1. PERSONAL INCOME TAX (PIT)

The Andorran PIT is levied on the worldwide income obtained by resident individuals during a calendar year, dividing income into five groups: employment income, business income, income from capital gains and losses, and passive income.

Once the net income is calculated, the taxable base is divided into two categories, to which different tax rates are applied:

- general taxable base, which encompasses employment income, business income and income from real estate assets (when not characterised as business income); and
- savings taxable base, which encompasses dividends, interest and capital gains and losses, and other income from movable property.

The tax liability is calculated by applying a ten per cent tax rate to the net income.

There is an exempt threshold of €24,000 (and €3,000 for savings income) and reduction of 50 per cent of the tax rate on income ranging from €24,000 to €40,000.

Capital gains resulting from the transfer of units of collective investment undertakings and shares of Andorran or non-Andorran companies are exempt if any of the following requirements is met:

- the individual has not held more than 25 per cent of the company during the last 12 months before the sale; or
- the individual has held more than 25 per cent of the company and the holding period exceeds ten years.

Dividends obtained from an Andorran entity are exempt from taxation, whereas dividends received from non-resident entities are subject to tax.

The Andorran PIT Law regulates a deduction to avoid international double taxation by which the taxpayer can deduct the lower of: (1) the amount paid abroad in taxes of an identical or similar nature to the PIT or the non-resident income tax; or (2) the amount resulting from

applying the Andorran PIT rate to the portion of the taxable base that has been taxed abroad. The taxpayer must prove the taxes paid abroad.

The Andorran PIT Law has recently introduced controlled foreign company (CFC) rules to ensure the taxation of certain categories of income in Andorra and counter certain offshore structures that result in no or an indefinite deferral of taxation.

Andorran CFC rules consist, essentially, of making an Andorran individual or company be taxed in Andorra on income obtained both in Andorra by a collective investment scheme and abroad by a foreign entity.

Andorran CFC rules are applicable depending on both the percentage of the share capital, equity, voting rights or results held by the Andorran taxpayer and the tax (corporate income tax (CIT), PIT or similar) effectively paid by the Andorran collective investment scheme or the non-resident entity.

2. CORPORATE INCOME TAX

CIT is levied on the worldwide income obtained by companies that are resident in Andorra for tax purposes, regardless of where it is generated. A company can be deemed as resident in Andorra if it meets one of the following criteria:

- it is incorporated under Andorran law;
- its corporate address is located in Andorra; and
- its place of effective management, understood as the place where its business activities are managed and supervised, is located in Andorra.

The Andorran CIT base is calculated on the basis of the taxpayer's profit and loss for accounting purposes and is subject to the adjustments required by Law No 95/2010 of 29 December on Corporate Income Tax (the 'CIT Law').

Law No 5/2023 of 19 January, published in the Andorran Official State Gazette on 8 February (the 'CIT Reform Law'), introduced significant changes to the CIT Law. The entry into force of these measures is complex, as some amendments came into effect as from 1 January 2023 and others as from 1 January 2024.

In general, accounting expenses related to business activity are considered tax deductible if they are duly registered in the booking of the company according to the invoices addressed to the company. Notwithstanding the aforementioned, some expenses are considered non-deductible and must be adjusted to the CIT taxable base. Such expenses include: (1) the remuneration on equity (dividends); (2) tax payments made for certain taxes; (3) criminal or administrative fines and sanctions; (4) gambling losses; (5) donations, with some exceptions; and (6) expenses for operations performed, directly or indirectly, with related persons or entities.

Additionally, the CIT Reform Law entails that, as from 1 January 2024, financing expenses incurred by CIT taxpayers exceeding 30 per cent of their operating profit of a given tax year will not be deductible for CIT purposes; however, net financing expenses not exceeding €500,000 will be deductible for CIT purposes in any case. Therefore, the limit of deductibility

of net financing expenses will be the higher amount between: (1) 30 per cent of the operating profit of the tax year; and (2) €500,000.

Additionally, the CIT Reform Law sets out that the amount of net financing expenses that are not deductible in a given tax year because they exceed the maximum deductible limit for such a tax year may be carried forward and deducted in the following 17 years, subject to the limit applicable in each of these years.

However, this limitation shall not apply to the following taxpayers: (1) credit and insurance entities; (2) entities that are not part of an accounting group; and (3) entities that are part of a group if the parent company is located in Andorra.

The CIT standard rate applicable to resident companies, including Andorran permanent establishments, is ten per cent. Additionally, negative taxable income (tax losses) may be carried forward and offset against taxable profits for a period of ten years.

The CIT Law also regulates a deduction to avoid international double taxation by which the taxpayer can deduct the lower of: (1) the amount paid abroad for taxes of an identical or similar nature to the CIT or the non-resident income tax; or (2) the amount resulting from applying the Andorran CIT rate to the portion of the taxable base which has been taxed abroad.

Additionally, certain tax credits are granted to resident CIT taxpayers who make certain investments. Specifically, CIT taxpayers may apply a deduction of: (1) five per cent on investments in fixed assets related to the activity of the company; and (2) €3,000 for each increase in the average number of permanent employees.

From the 2024 financial year, CIT taxpayers will be entitled to apply new deductions introduced to promote digitisation, patronage, sponsorship and participation in projects declared to be of national interest.

Finally, a tax credit is granted for the total amount of the tax payments made by the company for the following Andorran taxes:

- leasehold tax; and
- tax on the settlement of commercial, professional and business activities.

3. TAXATION OF THE ASSETS OF A TRUST OR FOUNDATION

Trusts and foundations are disregarded for tax purposes and, therefore, their assets are taxed according to the governing provisions of the arrangement. Thus, the technical communiqué of the Andorran tax authorities issued on 2 December 2015 sets out the tax treatment of the income obtained by foreign trusts and foundations. The text in Catalan can be found at the following link: www.bopa.ad/bopa/027081/Pagines/GCO20151126_09_11_43.aspx

The most important consideration is whether the assets have changed their possession. If the beneficiary does not have possession and control of the assets, Andorran law considers that the settler is still the owner and the receiver of the income and capital gains. On the contrary, if the beneficiary has possession and control of the assets, and it is an irrevocable

trust, Andorran law considers that the beneficiary is the owner of the assets and the receiver of the income and capital gains.

4. NON-RESIDENTS

Andorra does not withhold taxes on dividend payments by an Andorran company to its non-resident shareholders (individuals or corporations). Consequently, benefit repatriation from an Andorran entity to its parent company will not be taxed in Andorra.

No withholding tax is triggered on interest payments made to foreign lenders either. Withholding taxes may apply to royalty payments made to non-resident entities.

5. TEMPORARY RESIDENTS

Andorran tax legislation does not contain any provision on temporary residents.

6. TAX ASSESSMENT

The Andorran tax authorities (ATA) have the following methods to challenge the amount of tax a taxpayer has paid by way of an initial assessment/self-assessment:

- tax management procedures:
 - procedure to verify values (*procediment de comprovació de valors*): this procedure can be used by the ATA to verify the value of income, products, goods and any other element used to appraise the tax liability; and
 - verification procedure (*procediment de comprovació de gestió*): this procedure can be used by the ATA to verify facts, events, elements, activities, operations and any other circumstances related to the tax liability;
- tax audit procedure:
 - this procedure is the widest procedure the ATA can use to investigate a taxpayer; and
 - the ATA can also access properties, business premises and any other premises where activities subject to taxation are carried out, provided that an administrative warrant is obtained. However, court authorisation is required to access the taxpayer's constitutionally protected domicile, unless he or she waives this requirement.

7. DOUBLE TAXATION TREATIES

Andorra is committed to the creation of an extensive network of double tax treaties in order to enhance international trade and investment in its territory.

The first double tax treaty was signed with France in 2013. Since then, the Principality of Andorra has concluded agreements with other countries (Spain, Luxembourg, Liechtenstein, Portugal, the United Arab Emirates, Malta, Cyprus, San Marino, Hungary, Croatia, the Czech Republic, the Principality of Monaco, Iceland and the Netherlands) to avoid double taxation in income tax matters and to prevent tax evasion. Additionally, Andorra has signed the

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the 'MLI'), which now covers around 1,800 bilateral treaties.

8. FINAL CONSIDERATIONS: THE ASSOCIATION AGREEMENT WITH THE EUROPEAN UNION

On 16 December 2014, the General Affairs Council authorised the opening of negotiations for an Association Agreement with the Principality of Andorra, Monaco and San Marino.

Following years of negotiation, on 12 December 2023, the European Commission welcomed the end of the negotiations for an Association Agreement with the Principality of Andorra and San Marino. The Executive Vice-President for the European Green Deal, Interinstitutional Relations and Foresight, Maroš Šefčovič, informed the Member States that an agreement had been reached at the level of negotiators.

The Association Agreement (the 'AA') between the EU, Andorra and San Marino is an agreement that regulates the participation of a third state in a part of the activities of an international organisation. Although the third state does not become a member of the EU, the AA is a complete game changer in the Andorran legal landscape.

Its objective is to gradually integrate Andorra and San Marino into the European single market, where the free movement of goods, people, services and capital is promoted. Achieving this agreement would not only grant them the coveted status of an associated state, but would also establish a robust framework for economic diversification.

The AA is divided into the following sections:

- institutional framework, common for both associated states: the institutional framework sets the foundation for the collaboration with the EU, and establishes common provisions for Andorra and San Marino. These foundational provisions serve as the guiding principles for future negotiations, outlining the rules that will govern the relationship between the parties;
- country protocols: there is one per state on aspects related to the specificities of each country; and
- twenty-five annexes: these contain the EU's *acquis* to be implemented by the associated states within a negotiated timeframe and structured by different economic sectors or subjects. For each annex, an implementation process will be required, the scope of which will depend on the subject or sector. Associated states will carry out the necessary legal reforms and align their legislation to the EU *acquis* according to the four fundamental freedoms: free movement of goods, persons, services and capital. The 25 annexes are as follows:
 - Annex I: Food safety, veterinary, phytosanitary policy;
 - Annex II: Technical regulations, standards, testing and certification;
 - Annex III: Product liability;
 - Annex IV: Energy;

- Annex V: Free movement of workers;
- Annex VI: Social security;
- Annex VII: Professional qualifications;
- Annex VIII: Establishment;
- Annex IX: Financial services;
- Annex X: Services in general;
- Annex XI: Electronic communications, audiovisual services, information society;
- Annex XII: Free movement of capital;
- Annex XIII: Transport;
- Annex XIV: Competition;
- Annex XV: State Aid;
- Annex XVI: Procurement;
- Annex XVII: Intellectual property;
- Annex XVIII: Health and safety at work, labour law and equal treatment for men and women for people with disabilities, for [lesbian, gay, bisexual, transgender, intersex, or questioning] LGBTIQ persons and between persons irrespective of racial or ethnic origin, religion and age;
- Annex XIX: Consumer protection;
- Annex XX: Environment and climate;
- Annex XXI: Statistics;
- Annex XXII: Company law;
- Annex XXIII: Customs;
- Annex XXIV: Agriculture; and
- Annex XXV: Trade.

The AA represents a paradigm shift both for the country's economic sectors, and for the functioning of the public administration and the legal system as a whole, with a view to participating in the internal market within the EU's territory and for cooperation in other policy areas. This milestone also represents a significant achievement for the EU, in accordance with the objective to develop a special relationship with neighbouring countries pursuant to Article 8 of the Treaty on the EU (TEU).

The primary objective is to develop homogenous participation in the EU's internal market, which will be progressive and depend on a successful audit of the robustness of the associated states' regulatory and supervisory frameworks. In addition, this achievement will contribute to promoting dialogue and cooperation in areas of common interest, and to building a coherent institutional framework.