Spain

International Estate Planning Guide

Individual Tax and Private Client Committee

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I. Wills and disability planning documents

The Spanish legal system is largely decentralised, with the autonomous communities (*comunidades autónomas*) regulating a range of matters, including the law of succession. Succession is governed by different rules in Aragon, the Balearic Islands, the Basque Country, Catalonia, Galicia and Navarre, and the Spanish Civic Code (the 'CC') governs succession in the rest of Spain.

People's residence typically changes throughout their lifetime, and so do the rules applicable to their succession.

For Spanish nationals, choice-of-law rules establish that succession is governed by the law of the place where decedents had their civil citizenship (*vecindad civil*) at the time of their death. Their civil citizenship can change during their lifetime when they move to another location in Spain, either by: (1) residing there for two years while declaring their intent; or (2) residing there for ten years without any declaration to the contrary during that period (section 14 of the CC).

Under Regulation (EU) 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 'European Regulation'), which replaced the Spanish regulation on this matter (Article 9.8 of the CC), the law applicable to succession is the law of the state where the deceased had his or her habitual residence at the time of death. However, if it is evident from the circumstances that, at the time of his or her death, the deceased had a significantly stronger connection with another state, the succession will be governed by the law of that other state. A person can also choose to apply the succession law of his or her state of nationality by expressly stating it in a declaration *causa mortis*.

In line with the principles of unity and universality of the European Regulation, these rules apply regardless of the nature or location of the assets in question. Consequently, the law specified by this regulation will apply regardless of whether it is the law of a Member State, with the exception of Ireland and Denmark, as they have not adopted this regulation. In addition, following Brexit, the United Kingdom is no longer considered a Member State.

A. Will formalities and enforceability of foreign wills

In Spain, only succession by law or through a will and testament is recognised (Article 658 of the CC). Joint wills (Article 669 of the CC) and succession agreements (Articles 816 and 1271.2 of the CC) are prohibited. However, they are permitted in some autonomous communities (eg, succession agreements in Catalonia and joint wills in Navarre).

1. Holographic wills (Article 678 of the CC)

These are handwritten wills drafted and signed by the testator, stating the day, month and year. Any words crossed out, amended or in parentheses should be initialled by the testator. A holographic will may only be signed by a person of legal age, which is 18 years old. To be fully effective and valid, a holographic will must be legally attested within five years from the testator's death and certified by a notary public (Article 689 of the CC). This serves to confirm the author's identity and verify the will's authenticity.

2. Open wills (Article 694 of the CC)

Open wills are the most common type of wills in Spain because they provide greater security and are unique in being fully valid without the need for additional authentication procedures. Open wills are signed in the presence of a notary public, who is responsible for recording the testator's last will and testament, whether it is expressed verbally or in writing. An open will must state: (1) the location, year, month, day and time when the testator grants the will; (2) that the notary public has read the will aloud to the testator; and (3) that the testator understands its content and gives his or her consent to it. Except for specific circumstances, such as the testator being unable to read or being deaf, the presence of witnesses is not required.

The original will is kept in the notary public's files, and while the testator is alive, only he or she may request a copy of it. The notary public must file the will with the Registry of Last Wills and Testaments, a service under the Ministry of Justice. The duty of this registry is to ensure that there is a record of the will's existence, both while the testator is alive and after his or her death.

3. Closed wills (Article 706 of the CC *et seq*)

Closed wills in Spain can be handwritten or typed, either by the testator or a third party. They must state the location, day, month and year, and the testator must sign each page of the will. The testator, without revealing its contents, delivers it to the notary public in a sealed envelope (or seals the envelope in the presence of the notary public), stating that it contains his or her last will and testament. The notary public then 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. However, the will usually stays in the notary public's custody. At the request of the testator or notary public, the sealing of the will can be witnessed by two individuals. The notary public must file the will with the Registry of Last Wills and Testaments.

4. Foreign wills

If the will is in a language the notary public is not proficient in, an interpreter chosen by the testator must be present to translate its provisions. The will must be written in both languages, specifying the language used by the testator (Article 684 of the CC).

The law applicable to foreign wills in Spain is the Hague Convention of 1961 on the Conflicts of Laws relating to the Form of Testamentary Dispositions. This convention provides that: (1) its rules are applicable to everyone (ie, *erga omnes*); (2) Spain is a contracting state, meaning it is bound by it; and (3) Spain is governed by the principle of *favor testamenti*, meaning that when there is a doubt, a will is considered valid and recognised if it complies with the formal requirements outlined in any of the national laws established under the convention.

II. Estate administration

A. Overview of administrative procedures

When someone dies intestate, an *ab intestato* ('by intestacy') declaration procedure must be initiated. The nature of this procedure differs depending on how the heirs are related to the deceased. If the heirs are descendants, ascendants or the spouse of the deceased, the procedure is notarial. For other relatives, such as siblings or aunts and uncles, the procedure is judicial.

A notarial declaration *ab intestato* is obtained through an affidavit certified by a competent notary public. It requires: (1) filing an application attaching the death certificate; (2) a certificate from the Registry of Last Wills and Testaments stating that the deceased did not leave a will; (3) the family record (*Libro de Familia*) of the deceased or certificates from the Registry Office providing proof of any marriage or offspring; and (4) statements by two witnesses with no direct interest in the will that the facts in the heirs' statements are true.

The affidavit by the *ab intestato* heirs is processed under Article 980 *et seq* of the Civil Procedure Act 1881 before the court of the deceased's last place of residence.

Spanish succession law gives the heir the legal position of the deceased. Consequently, the heir is responsible for administering and settling the inheritance, as well as rendering the testamentary provisions, unless the testator instructed otherwise in the will. The testator may also appoint one or more people to execute the inheritance. Spanish law recognises: (1) the court-appointed accountant (*contador-partidor*), who is responsible for distributing the inheritance; (2) the inheritance administrator, who is entrusted with preserving and managing hereditary succession; and (3) individual or universal executors, entrusted with complying with some or all of the testamentary provisions.

The universal executor position is a voluntary position that cannot be delegated, waived (except in specific circumstances) or remunerated, unless the testator provides otherwise. However, this may be

different in certain regional (*foral*) legal systems. 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 (Article 894 of the CC). Its powers depend on the wishes of the testator and may be broad enough to border on arbitrariness. These include: (1) taking possession of and administering the inheritance, such as paying debts and inheritance charges, leasing and fulfilling ordinary obligations; (2) disposing of assets, but only when expressly authorised by the testator; and (3) taking care of anything else required to fulfil the will, such as inventorying and evaluating the estate; paying parts of the estate and giving bequests; and distributing the inheritance to the co-heirs. Universal executors must execute the will within one year of the testator's death, unless the testator instructed otherwise in the will.

If the testator has not appointed a universal executor, and if the heirs cannot agree on how to distribute the inheritance, any of the heirs can start a special legal action to divide the inheritance under Article 782 *et seq* of the Civil Procedure Act 1/2000. The purpose of this legal action is for the heirs to obtain an inventory of the assets, obtain an expert valuation of the assets and have a court-appointed accountant divide the assets among the heirs.

Any co-heir or legatee of a share can request judicial action to divide the inheritance.

B. Intestate succession and forced heirship

Except for Navarre, forced heirship rules apply in all Spanish autonomous communities governed by regional civil law on succession or by the CC. Limitations to testamentary freedom apply to movable and immovable property located in Spain or abroad. Under these limitations, those closely related to the testator must receive a part of the estate called the *legítima*. As to the extent of forced heirship, for simplicity, we focus on the regulation under the CC and examine the three most common scenarios.

1. The testator is survived by a spouse and children: (i) One-third of the estate must be equally distributed among the children (*tercio de legítima estricta*); and (ii) another third must go to the children and grandchildren of the deceased. The testator can decide whether to distribute this third in equal or unequal parts, give it to some heirs or only to one of them (*tercio de mejora*). The testator's widow or widower is entitled to at least the usufruct of this one-third portion of the estate. The testator can freely dispose of the (iii) last third (*tercio de libre disposición*).

2. The testator is survived by a spouse; one or both parents or grandparents; and has no children: (i) One-third of the estate must be distributed in equal parts among the testator's parents (*tercio de legítima*); (ii) the widow or widower is entitled to at least the usufruct of half of the estate; and (iii) the testator can freely dispose of the rest of the estate.

3. The testator is survived by a spouse, and has no children and no surviving parents or grandparents: The widow or widower is entitled to at least the usufruct of two-thirds of the estate, and the testator can freely dispose of the rest of the estate.

If there are no testamentary heirs, the intestate succession order under the CC is as follows: (1) matrimonial or extra-matrimonial descendants or those through adoption in totally equal terms; (2) relatives in the ascending line; (3) surviving spouse; (4) siblings, 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.

Regional civil laws have specific regulations that differ from the CC. The main differences are in the recognised shares, the nature of the forced heirship and how the forced heirs are determined (eg, in Catalonia, forced heirship amounts to a quarter of the estate).

C. Marital property

Different regional laws on marital property, in addition to the CC, coexist in Spain, offering a wide range of solutions, all recognising the principle of freedom of choice. Under Article 1325 of the CC, spouses have the right to grant a public deed before a notary public, adding any clauses, amendments or replacements to the financial arrangement governing a marriage.

If there is no marital agreement, nationality must be considered to determine the supplementary marital law between spouses, and for Spanish citizens, their place of residence. In addition, if the marriage date was before 29 December 1978 (the date the Spanish Constitution came into force), any property relations will be governed by the law applicable to the husband, based on his residence, at the time the marriage took place. If the marriage took place after this date, it will be governed by Article 9.2 of the CC under the wording of Act 11/1990 of 15 October (through reference to Article 16.3 of the CC). Specifically, the law applicable will be the following:

1. the common law governing both spouses;
2. if the spouses are not governed by a common law, the law governing either of them, based on his or her residence, chosen by both in a certified document granted before the marriage;
3. if there is no certificate, the law of the common habitual residence immediately after the marriage; and
4. if there is no common habitual residence, the law of the place where the marriage took place.

It is important to note that there is a European Union regulation on matrimonial property regimes (Regulation EU 2016/1106 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes), which is applicable to marriages with cross-border implications (ie, when the spouses have different nationalities).

The CC establishes a supplementary legal system of joint ownership of property (*Sociedad de Gananciales*, Article 1315 of the CC), governed by Article 1344 of the CC *et seq*. This is the most common system applicable to married couples in Spain. The CC also establishes 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: (1) separate assets that the spouses hold individually; (2) separate assets held under ordinary co-ownership; and (3) community property. Most authors consider the system of joint ownership of property a Germanic type of community property, that is, separate, common autonomous property, of which both spouses hold an abstract share of the assets, only ordering the disposal of specific assets and rights upon dissolution of the community property.

Under this system, the following is considered community property (Article 1347 of the CC): (1) the spouses' income; (2) rent or interest arising from any property the spouses hold separately or jointly; (3) any property purchased using the spouses' common funds; (4) any property acquired through a right of first refusal over a jointly held property, even if it was acquired with separate funds; and (5) 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 of the CC) are presumed to be community property.

The following is considered separate property (Article 1346 of the CC): (1) any assets or rights belonging to each spouse at the time they got married; (2) any assets or rights acquired by each spouse after they got married through inheritance, bequest or gift; (3) any asset or right acquired by each spouse by selling or replacing separate property; (4) any asset or right acquired through only one spouse's right of first refusal; (5) inherited financial assets and rights; (6) any property or assets required to exercise the spouse's profession, except when these are an essential part of or belong to a common business or establishment from which both spouses benefit.

The system of administration and disposal of joint ownership of property is the co-administration or co-disposal of community property, which requires the consent of both spouses. Each spouse can, through a will, dispose of half of any community property, but this testamentary disposal will only render all effects if it is assigned to the inheritance of the testator; otherwise, the value of the asset will be considered to have been bequeathed. An important exception to the co-administration and co-disposal rule applies to any cash and securities. Any administration of assets or disposal of cash and securities carried out by the spouse in whose name or possession they are, will be considered valid (Article 1384 of the CC).

The consent of both spouses or judicial leave, as the case may be, will be required to dispose of rights over the marital dwelling and the furniture ordinarily used by the family, even if these rights belonged to a single spouse.

Community charges and debts, which always burden the common estate, are separate from financial liability on community property, with third-party creditors collecting an individual credit in certain circumstances (eg, in the exercise of a profession or trade).

Under other regional civil laws, the financial-matrimonial regime is community estate (*comunidad de bienes*). In Galicia, there is a general reference to the common law system of the joint ownership of property (*compañía familiar gallega*). In Navarre, the supplementary legal system is the 'conjugal conquest society' (*sociedad conyugal de conquistas*), and in Aragon, it is the system of legal community (*consorcio conyugal*). Both are 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. However, the province of Vizcaya uses both 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 the 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, there is no national regulation for de facto couples, although there are different regional laws on the matter[1] operating that are virtually identical to legislation on married couples, although no financial arrangement is established because the separation of assets is upheld, unless otherwise agreed (ie, Catalonia).

III. Trusts, foundations and other planning structures

A. Trusts

Trusts are not recognised by the Spanish legal system. The only guidelines on the treatment of foreign trusts under Spanish law are found in academic writing, and a few rulings from the Spanish courts and the Spanish tax authorities (STA). Spain has not signed the International Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition.

The STA has issued several rulings on what it understands the tax treatment of trusts should be,[2] but its interpretation is, in most cases, quite simplistic and should not be considered comprehensive. Hence, there is room for interpretation both for the taxpayer and tax authorities.[3]

Under the current interpretation of the Spanish Directorate-General for Taxation ('DGT'), trusts are disregarded for Spanish personal income tax (PIT), wealth tax (WT), and inheritance and gift tax ('IGT') purposes. To put it simply, trusts are non-existent for tax purposes, meaning all transactions under the trust arrangement should be considered to be carried out directly by the settler and the beneficiaries among themselves.

In their tax rulings, the STA does not make a distinction between revocable and irrevocable trusts, or whether trusts are discretionary or non-discretionary.

The traditional interpretation has been that the assets held in a trust do not cease to be the settler's property for Spanish tax purposes when the trust is settled, and the property is contributed to the trust. Generally speaking, for Spanish tax purposes, income from the assets held in a trust will be considered income obtained by the grantor.

At the death of the settler, generally, there is an acquisition *causa mortis* (inheritance) from the settler to the beneficiaries of the trust.

These are general principles based on the STA's rulings. However, the specifics of each trust arrangement must be analysed carefully. In recent tax rulings, they mention that it is necessary to carry out a case-by-case analysis to determine which party to the arrangement should be considered the owner of the assets, which depends, inter alia, on the terms of the trust deed and the powers of disposal over the assets granted to each of the trust's subjective elements (settler, trustee and beneficiary). Therefore, to determine the owner of the assets, particular attention must be paid to the clauses of the trust deed and the actual actions of the settlers, trustees and beneficiaries.

B. Foundations

1. Overview

The Spanish Foundations Act 49/2002 of 23 December ('Act 49/2022') establishes a special tax regime applicable only to registered Spanish non-profit entities.[4] To apply for this regime, a notification must be filed with the STA and the requirements discussed below must be fulfilled.

A foreign foundation will be entitled to the same tax benefits as those of a Spanish foundation if it formally establishes a branch in Spain registered with the relevant public authorities and meets the legal requirements. However, if the foundation pursues private objectives, it is not eligible to apply for the special tax regime.

2. Requirements to apply the special tax regime

To apply the special tax regime, foundations must pursue general interest objectives, such as social services, education, culture, science or health; therefore, their main purpose cannot be to devote their services to their founders, the founders' relatives or members of the board of directors. In particular, at least 70 per cent of their net income must be used for carrying out activities related to their main non-profit objective within five years of obtaining that income, including the year the income is used.

The foundation's purpose may include carrying out commercial activities that do not qualify for tax exemption, but the income obtained through commercial activities cannot exceed 40 per cent of the foundation's total income, provided that these commercial activities do not breach the market competition regulations. In any case, the foundation's assets must not revert to being the founder's property.

The foundation's governing body cannot be remunerated. However, its members can be paid for any other professional services they provide to the foundation, unless the founder has expressly forbidden it, and provided the Protectorate (a public body that monitors foundations) authorises it. The foundation submits its annual accounts to the Protectorate, which reviews, approves and deposits them with the Register of Foundations after verifying that the annual action plans have been fulfilled. In addition, to comply with information requirements, a financial report regarding the foundation's activity must be submitted annually to the tax authorities.

If the foundation is dissolved, all the foundation's assets must be committed to another non-profit entity that also qualifies to apply 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 (ie, capital gains, interest, rental income from immovable property and

income from qualifying business activities) is exempt from corporate income tax (CIT). However, expenses related to exempt income and depreciation of assets linked to exempt activities are not deductible. Qualifying Spanish foundations are also exempt from other taxes, including business tax, immovable property tax, capital duty and urban land appreciation tax, provided they are related to the foundation's non-profit objectives and activities.

The CIT rate applicable to a foundation's business activity that does not qualify for tax exemption is reduced to ten per cent. Spanish foundations not eligible for the special regime will be subject to a 25 per cent tax rate.

b. Donor's taxation

Individuals are entitled to a tax credit up to ten per cent of their taxable base, determined by the monetary value of the gift:

Deduction basis	Deduction rate (%)
Up to €250	80
Remaining deduction base	40

The deduction rate increases to 45 per cent when donations, gifts and contributions to the same entity in the two immediately preceding tax periods are higher than those of the previous year. The same tax credits may be applied by non-residents up to 15 per cent of their taxable base.

Tax credits cannot be carried forward. In addition, the donor will be exempt from taxation on the capital gains arising from the donated asset (other than cash).

Contributions made by legal entities and non-residents with permanent establishments (PEs) benefit from a 40 per cent tax credit on all gifts, up to 15 per cent of their taxable base. Amounts exceeding this limit can be used in the tax periods ending in the next ten years.

IV. Taxation

A. Personal income tax

PIT is governed by the Spanish Personal Income Tax Act 35/2006 of 28 November (the 'PITA'). PIT is one of the pillars of the Spanish tax system, embodying 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. The tax period coincides with the calendar year, and tax accrues on 31 December.

PIT is levied throughout the Spanish territory, although the Basque Country and Navarre region have their own tax regimes, albeit similar to the rest of the Spanish territory. Under the PITA, only individuals whose habitual residence is in Spain pay PIT. They are considered to have their habitual residence in Spain when:

- they spend more than 183 days in a calendar year in Spain; or
- the main centre or base of their business activities or interest 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 countries or territories legally classified as tax havens are involved, the tax authorities may require individuals to prove they have been present in those jurisdictions for 183 days in the calendar year.

Spanish tax residents that change their residence to tax havens are still considered Spanish tax residents the year they move and the following four years.

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; and

- savings income: speculative earnings, mainly including investment income and capital gains.

These categories are taxed at different rates.

B. General income

1. Employment income

Under the PITA, this income includes all earnings and utilities, regardless of their name or nature, arising directly or indirectly from personal work or employment and not considered business earnings. Employment income includes salaries, unemployment benefits, and salaries for managers and members of boards of directors.

2. Income from immovable property

Income from immovable property includes all income from real estate, mainly rental income. Rental income that property owners receive (excluding VAT) must be included in their taxable income. They can deduct expenses directly related to obtaining this income, plus property amortisation provided these deductions do not create a negative taxable base. Tax on income earned from renting residential property is generally reduced by 60 per cent, and this reduction increases to 70 per cent when the property is rented to people between the ages of 18 and 35 living on a minimum annual income.

Under the PITA, taxpayers must include in their tax returns income from urban real estate that is not used for business activities or is not rented, excluding permanent dwellings and land with no buildings. This deemed income results from applying a percentage of 1.1 per cent to the cadastral value or two per cent if the cadastral value has not been reviewed in the last ten years and in proportion to the number of days the property has been owned during the year, even if this amount is lower than the market rental income.

The 2023 Budget Act established, with effect from 1 January 2023, that the deemed income from real estate whose cadastral values have been revised, modified or determined through a collective valuation procedure with effect from 1 January 2012, will also be able to benefit from the reduced rate of 1.1 per cent, instead of two per cent. This is the case of the municipality of Madrid, for example.

3. Business income

Business income includes income from entrepreneurial and professional activities and is generally calculated according to corporate tax rules (see the section on CIT). Rental income is considered business income if a taxpayer has premises used exclusively to manage the rental properties and at least one employee.

4. Capital gains

Capital gains that do not arise from the transfer of assets, for example, prizes and indemnities, are considered general income.

5. ROYALTIES, IMAGE RIGHTS AND RENTAL OF MOVABLE PROPERTY

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

C. Savings income

1. INVESTMENT INCOME

Investment income includes: (1) income from participating in a company's capital, such as dividends; (2) income from assigning one's own capital to third parties, such as interest; and (3) income from fixed income assets.

2. CAPITAL GAINS

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

a. Tax rates

Because the general income base and savings income base are taxed differently, after calculating each one, taxpayers can apply some deductions, including a minimum tax-exempt amount based on personal and family circumstances, a deduction for buying the main home and certain deductions for contributions to pension schemes. Below is the general tax rate applicable to the general income base.

General tax base (€)	Gross tax base (€)	Remaining general tax base (€)	Tax rate (%)
0	0	12,450	9.5
12,450	1,182.75	7,750	12
20,200	2,112.75	15,000	15
35,200	4,362.75	24,800	18
60,000	8,950.75	240,000	22.5
300,000	62,950.75	Above	24.5

The scale for determining taxation will require adding the tax rate for the autonomous region where the taxpayer resides. For example, the consolidated rate resulting from adding the above rates and the rate in force in Catalonia in 2023 would be as follows:

General tax base (€)	Gross tax base (€)	Remaining general tax base (€)	Tax rate (%)
0	0	12,450	20
12,450	2,490	5,257.20	24
17,707.20	3,751.73	2,492.80	26
20,200	4,399.86	800	29

21,000	4,631.86	12,007.20	30
33,007.20	8,234.02	2,192.80	33.80
35,200	8,975.18	18,207	37.30
53,407.20	15,766.39	6,593	40
60,000	18,403.59	30,000	44
90,000	31,603.59	30,000	46
120,000	45,403.59	55,000	47
175,000	71,253.59	125,000	48
300,000	131,253.59	Above	50

On the other hand, applying the current regulations of the autonomous region of Madrid would result in the following consolidated rates:

General tax base (€)	Gross tax base (€)	Remaining general tax base (€)	Tax rate (%)
0	0	12,450	18
12,450	2,241	510	20.50
12,960	2,345.55	5,473.20	22.70
18,433.20	3,587.97	1,766.80	24.90
20,200	4,026.13	14,160.50	27.80
34,360.50	7,962.75	839.50	32.40
35,200	8,234.75	20,396.90	35.90
55,596.90	15,557.24	4,403.10	39
60,000	17,274.45	240,000	43
300,000	120,474.45	Above	45.00

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

Savings tax base (€)	Gross tax base (€)	Remaining savings tax base (€)	Tax rate (%)
0	0	6,000	19

6,000	1,140	44,000	21
50,000	10,380	150,000	23
200,000	44,880	100,000	27
300,000	71,880	Above	28

PITA establishes a tax credit method to mitigate the double taxation of foreign-sourced income and capital gains by which a resident taxpayer with foreign-sourced income can credit against Spanish tax liability on worldwide income the lower of: (1) the tax paid abroad on the foreign-sourced income or capital gains; or (2) the Spanish income tax attributable to the foreign-sourced income or capital gains.

D. Special carried interest regime

Effective 1 January 2023, the tax treatment in PIT of the so-called 'carried interest' is newly regulated. Act 28/2022 of 21 December on the promotion of the startup ecosystem (the 'Startups Act') characterises the carried interest as employment income, but it benefits from a 50 per cent reduction of the taxable base provided certain conditions are met.

E. Delivery of shares to workers of emerging companies

The Startups Act introduced a new valuation method for shares delivered to workers of emerging companies, which consists of using the value established by an independent third party of the last capital increase carried out in the year before that in which the shares are delivered (if there is no capital increase, they will be valued at market value at the time of delivery to the employee).

Second, the amount of the exemption for the delivery of shares has increased from €12,000 per year to €50,000 when the shares are granted to the employees of an emerging company regulated by the Startups Act.

Finally, the tax on income in kind from the delivery of shares exceeding €50,000 is deferred to the tax period in which any of the following circumstances occur: (1) the company is admitted to trading on the stock exchange or in any multilateral trading system; (2) the shares are transferred by the taxpayer; or (3) ten years have elapsed since the delivery of the shares and none of the above circumstances have occurred.

F. Controlled foreign corporation (international tax transparency)

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

- the taxpayer alone or together with a related party holds at least a 50 per cent 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 per cent of the Spanish CIT rate of 25 per cent (ie,18.75 per cent).

Income is attributed to the resident company at the prorated rate, provided the income is classified as 'passive' income. The following items are considered passive income:

- income from immovable property, unless used in a business activity or by non-resident companies in the same group;

- income from equity (dividends and profit distributions) and interest from finance activities, unless obtained in the course of a business activity;

- income from credit, financial, insurance and service activities, except those directly related to export activities, performed directly or indirectly with individuals or companies resident in Spain; this rule does not apply if more than 50 per cent of the income is obtained from non-related parties; and

- capital gains or losses arising from transferring real estate or rights to it or from disposing of financial assets (ie, securities).

The list of passive income has recently been expanded to include: (1) income from financial activities not generated in the exercise of economic activities; and (2) transactions in which the non-resident entity or PE adds little or no economic value. The threshold for transactions carried out with non-related parties was also raised from 50 per cent to 75 per cent.

The exclusion of dividends and capital gains from qualifying shareholdings, which become passive income for all purposes under the CFC regime, no longer applies.

The special treatment of dividends and capital gains from qualifying holdings has also been eliminated. Thus, they will be seen as passive income for all purposes under the CFC regime.

Because dividends and capital gains are now generally 95 per cent tax exempt (full exemption does not apply), dividends and capital gains obtained by a CFC that benefits from full exemption will have to be reported by the Spanish shareholder in its income or corporate tax return.

The CFC regime does not apply to resident companies in the EU, unless they are resident in a tax haven jurisdiction (exceptions apply to tax havens in the EU).

G. Inbound expatriates (so-called 'impatriate regime')

The PITA establishes a special tax regime for individuals who become tax resident 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 certain requirements. These requirements have been eased by the Startups Act (effective from 1 January 2023) and can be summarised as follows:

- they must not have been resident in Spain in the five years prior to moving to Spain (before 2023, ten years of non-residency was required);

- they are moving to Spain for work reasons:

    - due to an employment contract with a Spanish entity or in the case of a foreign employer, when the employee is transferred to Spain; as of 2023, the regime also applies to remote workers, that is, employees working for a foreign company remotely from Spain provided they work exclusively with telematic means;

    - due to being appointed a director of a Spanish entity if the entity is considered a passive entity (50 per cent or more of its assets are not engaged in business activities); the director may not be a related party (generally, shareholding equal to or greater than 25 per cent);

    - to carry out entrepreneurial activity in Spain, meaning any activity that is innovative or of special economic interest and obtains a favourable report issued by Empresa Nacional de Innovación SA ('ENISA'), the national innovation state-owned company;

- the regime also applies to professionals moving to Spain to carry out economic activity that involves providing services to qualifying startups, or to carry out training, research, development and innovation activities, for which they receive remuneration that makes up over 40 per cent of their income from work and economic activities; and

- they do not obtain income that could be characterised as obtained through a PE in Spain.

The regime may also apply to inbound expatriates' spouses and children up to the age of 25 years or disabled children of any age, provided certain additional requirements are met.

Taxpayers that choose to be taxed as non-residents (impatriates) are subject to tax in Spain on their Spanish-sourced income and worldwide employment income and income from economic activities at the following general flat rates:

General tax base (€)	Tax rate (%)
Up to 600,000	24
Above 600,000	47

For savings income (interest, dividends and capital gains), a scale identical to that for other taxpayers will be applied, but only on Spanish-sourced savings income:

Savings tax base (€)	Gross tax base (€)	Rest of savings tax base (€)	Tax rate (%)
0	0	6,000	19
6,000	1,140	44,000	21
50,0000	10,380	150,000	23
200,000	44,880	100,000	27
300,000	71,880	Above	28

H. Allowance for investment in new or recently established companies

The 2023 Budget Act amended the allowance provided in the PITA for investment in new or recently incorporated companies as follows:

- the allowance increases from 30 per cent of the amounts invested up to €60,000, to 50 per cent up to a maximum of €100,000;

- in relation to the requirements for the entity in which the investment is made, the regulation establishes the following: not being admitted to trading on any organised market affecting both regulated markets and multilateral trading systems;

- in relation to the period in which shares may be acquired to qualify for the allowance, this is extended from three years from incorporation to five years in general, or even seven years for

startup companies in biotechnology, energy, industrial and other strategic sectors, or those that have developed their own technology; and

- finally, with respect to the restriction on the percentage of participation in the entity, which must not exceed 40 per cent of the capital or voting rights, the novelty introduced consists of establishing that this limitation will not apply to the founding partners of a startup company.

I. Non-resident income tax (NRIT)

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

1. Taxpayers

Individuals are considered Spanish tax residents when they meet either of the following requirements:

- spending more than 183 days during a calendar year in Spain, including sporadic absences, unless a tax residence certificate is issued by another country; the STA can require taxpayers residing in tax havens to prove that they spend 183 days in a calendar year in that jurisdiction; and

- having their main base or centre of activities or economic interests located, 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 Spanish territory. The STA may consider a company located in a tax haven or low-tax territory to be resident in Spain if its main assets are immovable property in Spain or rights to that property, unless there are valid economic reasons for it other than the mere management of securities.

PEs in Spain of non-resident companies are subject to the same tax rules as those of resident companies. This means, inter alia, that: (1) PEs are taxed on their worldwide income; (2) their income and expenses must be calculated at arm’s length; and (3) their tax liability is calculated under Spanish CIT rules. Non-resident companies that do not have PEs in Spain are subject to NRIT on their Spanish-sourced income and capital gains.

2. Withholding taxes

Spanish-sourced income obtained by non-residents without a PE in Spain is subject to final withholding tax on the gross amount. If the non-resident taxpayer is a resident in the EU, taxation will be on net income. The current standard non-resident tax rate is 24 per cent. For interest, capital gains and dividends, the applicable standard tax rate is 19 per cent, although several exemptions are available based on the recipient’s residency. In addition, the transfer by a non-resident of real estate in Spain is subject to three per cent tax on the sale price. If the buyer does not withhold this tax, the tax authorities can place a lien on the property to collect the tax due. Certain exceptions apply to this rule.

3. Tax treaties

Spain has entered into over 103 tax treaties with other countries based on the Organisation for Economic Co-operation and Development (OECD) Income and Capital Model, and is constantly expanding its treaty network. These tax treaties provide reduced withholding tax rates or exemptions for certain types of income, such as dividends, interest and royalties.

J. Spanish corporate income tax

The main rules for Spanish CIT are outlined in Act 27/2014 of 27 November (the 'CITA'). Under section 1 of the CITA, CIT is a personal and direct tax applicable to Spanish legal entities and similar entities, such as investment funds. Companies subject to CIT are taxed on their total worldwide income,[5] regardless of whether it is from Spanish sources.

Generally, the tax period coincides with the company's financial year. However, in practice, it usually coincides with the calendar year, with tax accruing on 31 December. The CITA follows the Spanish Accounting Plan, enacted through Spanish Royal Decree 1514/2007 of 16 November, which entered into force on 1 January 2008.[6] Unless the CITA states otherwise, the company's income is calculated according to these accounting rules. When there is a difference, this income must be adjusted for tax purposes. These tax adjustments to the accounting profit refer, inter alia, to the following items:

- amortisation and depreciation of assets (sections 12 and 13 of the CITA);
- provisions or write-offs (section 14 of the CITA);
- non-deductible expenses (section of the 15 CITA);
- thin-capitalisation rules (section of the 16 CITA);
- general and specific valuation rules for certain transactions without consideration and corporate restructurings (section of the 17 CITA);
- transfer pricing rules between related parties at arm's length (section 18 of the CITA);
- special valuation rules for change of residence, closing PEs and transactions carried out with residents in a tax haven jurisdiction (section 19 of the CITA);
- accounting valuation different from tax valuation (section 20 of the CITA);
- participation exemption regime (sections 21 and 22 of the CITA); and
- income from intangible assets (patent box regime) (section 23 of the CITA).

After calculating the income based on the accounting rules and, if necessary, adjusting it for tax purposes as outlined in the above sections, the resulting tax base can be offset against tax credits generated in the current year or previous years.

Under section 26 of the CITA, tax credits can be carried forward without any time limit. The resulting tax base is then multiplied by the standard 25 per cent tax rate. The 2023 Budget Act, effective from 1 January 2023, introduced a lower tax rate of 23 per cent for entities with a net turnover in the previous tax period of less than €1m. Newly established entities that carry out economic activities during their first year of profit and the subsequent one continue to benefit from the 15 per cent rate. In addition, under Article 7 of the Startups Act, since 23 December 2022, the 15 per cent tax rate has applied to the first tax period in which the startup has a positive tax base and in the following three tax periods, provided it maintains its status as a startup and its annual turnover does not exceed €10m.

The amount resulting from multiplying the tax base by the tax rate is the gross tax payable, which may be reduced by applying any of the deductions outlined in sections 31 to 39 of the 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 can be offset against positive income in subsequent tax years, up to 70 per cent of taxable income before applying the capitalisation reserve established in section 25 of the CITA and its offset.

Through the 2022 Budget Act, a new minimum taxation of 15 per cent was introduced, which affects the following taxpayers:

- those whose net turnover is at least €20m during the 12 months preceding the date the tax period begins; and
- those taxed under the tax consolidation regime, regardless of their net taxable income.

In addition, the 2023 Budget Act introduced a temporary measure in the CIT consolidation regime. This measure, applicable from the start of fiscal year 2023 and in subsequent years, widens the tax base of tax groups.

The approved measure, applicable to tax periods starting in 2023, introduces a limitation to this automatic compensation, which is characteristic of the tax consolidation regime, where the tax group is considered a single taxpayer. Specifically, when calculating the total of the entities' individual tax bases, 100 per cent of the positive tax bases will be considered, while only 50 per cent of tax losses will be taken into account. This limitation aims to restrict the use of tax losses.

The approved regulation also introduces a regime for incorporating unused tax losses in the 2023 tax year. These tax losses must be incorporated into the group's taxable income in equal portions over the next ten tax periods.

1. TAX CREDIT TO AVOID DOUBLE TAXATION

Dividends and capital gains are included in taxable income, but 95 per cent will be considered exempt if certain requirements are met; otherwise, the Spanish corporate taxpayer will be able to apply a tax credit for the following:

- the tax amount paid abroad for an identical or similar tax; tax exemptions, rebates or any other tax benefits cannot be deducted; and if a double taxation treaty (DTT) applies, the deduction cannot exceed the tax payable under that DTT; and
- the amount of gross tax payable in Spain on the above income, if obtained in Spanish territory.

2. SPANISH HOLDING COMPANIES (ENTIDADES DE TENENCIA DE VALORES EXTRANJEROS OR ETVE)

Sections 107 and 108 CITA govern the ETVE regime. Spanish companies can opt for it by notifying the STA (applicable in the tax year when the notification is made), provided:

- their corporate purpose, as stated in their by-laws, includes (not exclusively) managing shareholding in foreign entities;
- they organise their material and human resources appropriately to carry out this activity; and
- their shares are nominative.

Under this regime, dividends and capital gains obtained by the ETVE will be 95 per cent exempt from taxation, provided they meet certain requirements. When distributed out of the ETVE, these dividends and gains will be fully exempt from taxation, except when the shareholder is a resident in a tax haven jurisdiction. The transfer of the ETVE will also be exempt, subject to meeting certain requirements.

3. PRIVATE EQUITY REGIME

Under section 50 of the CITA, private equity companies regulated under Act 22/2014 of 12 November on private equity companies and their managing companies are eligible to apply this regime. Circular

11/2008 of 30 December of the National Securities Market Commission (*Comisión Nacional del Mercado de Valores* or 'CNMV') also provides specific accounting rules.

Private equity companies are taxed under general CIT rules. However, under section 50 of the CITA, these companies can benefit from a 99 per cent exemption on income derived from transferring non-listed securities. However, this exemption is applicable only if the transfer occurs between the second and 15th year (or exceptionally, until the 20th) from the acquisition of the shares. If the target company has immovable property constituting over 50 per cent of its total assets, the exemption is applicable only when at least 85 per cent of that immovable property is used for business activities.

Dividends benefit from a 100 per cent exemption, irrespective of the percentage or holding period.

Private equity companies may be exempt of WT in certain cases.

4. COLLECTIVE INVESTMENT REGIME

Sections 29 and 52 *et seq* of the CITA provide for a special regime for collective investment schemes incorporated under Act 35/2003 of 4 November on collective investment schemes, subject to the CNMV's supervision. These collective investment schemes can be divided into financial schemes (investment funds and investment companies with variable capital (Société d'Investissement à Capital Variable or 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 11 September.

The tax rate applicable to financial collective investment schemes is one per cent, provided they have at least 100 shareholders.

Under the Draft Bill on Measures to Prevent and Combat Tax Fraud, for a SICAV to maintain the current one per cent CIT rate, the required 100 shareholders must hold shares amounting to at least €2,500, determined based on the net asset value on the date the shares were acquired.

Non-financial schemes (real estate) must exclusively invest in urban real estate for leasing. In addition, their by-laws must not include any provisions granting shareholders a right to dividends. Collective investment funds or companies, while unable to claim any tax credits, can recover domestic withholding taxes.

5. CFC (INTERNATIONAL TAX TRANSPARENCY REGIME)

The CFC regime applies to resident individuals and companies and was described in detail in the PIT section. Regarding corporations, the CFC regime potentially applies to all non-resident companies, including EU resident companies, except those that were not created for valid economic reasons and do not carry out business activities.

6. TAX ON INDIVIDUALS' WEALTH

In Spain, two main taxes are levied on individuals' wealth: (1) net WT; and (2) IGT, levied on lucrative wealth transfers, and the acquisition of property and rights. In addition to the WT and IGT, Act 38/2022 of 27 December on the establishment of temporary energy taxes and taxes on credit institutions and financial credit establishments and on the creation of the temporary solidarity tax on high net-worth individuals ('Act 38/2022') introduced the so-called solidarity tax on high-net-worth individuals ('HNWT') (*impuesto temporal de solidaridad de las grandes fortunas*) and the taxation of real estate ownership through non-resident entities.

Below is an overview of the state regime for WT and IGT, which is generally applicable to residents and non-residents. A summary is also provided for HNWT and taxation relating to real estate ownership through non-resident entities.

a. Wealth tax

WT is levied on individuals' net wealth, with the taxable event being the ownership of net wealth on the tax accrual date, which is 31 December. This tax applies to the worldwide assets and rights of residents in Spain. For non-residents, it only applies to any wealth that is located in Spain. The residency criterion is the same as that of PIT.

The WT Act provides for several exemptions, although autonomous communities can add others, including exceptions for: (1) family businesses, provided certain requirements are met; (2) habitual abodes (valued at up to €300,000); (3) some works of art and antiques; and (4) pension plans. There is also a general €700,000 exemption, which autonomous communities can either increase or reduce.

For non-residents in Spain, WT is levied on the net value of assets and rights located or 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 or right. Certain exemptions apply to Spanish financial assets.

Immovable property is valued according to the higher of: (1) the cadastral value; (2) the value determined by the tax authorities for the purposes of other taxes; or (3) the price, consideration or acquisition value.

The method used to calculate the value of shares depends on whether they are traded on an organised market and based on the average traded value in the last quarter of the year. For 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 higher of: (1) the face value; (2) the net book value of the last approved balance sheet; and (3) the value resulting from capitalising, at a 20 per cent rate, the average profit of the last three financial years.

The top marginal tax rate, applicable to the net tax base over €10,695,996.06, is 3.5 per cent. The tax scale is as follows:

Tax base (€)	Gross tax base (€)	Remaining tax base (€)	Tax rate (%)
0	0	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.
10,695,996.06	183,670.29	Above	3.5

WT applies to Spanish tax residents and non-resident taxpayers holding assets or rights located, exercised or performed in Spanish territory. Non-resident taxpayers must file an annual tax return on their Spanish situs assets.

Individuals who obtain tax residence in Spain by moving to Spanish territory and who opt to pay non-resident income tax (ie, the impatriate regime, see section F) are only subject to WT on their Spanish situs assets.

The autonomous communities have regulatory powers over WT, including tax rates, reductions and allowances, so the above rates may differ from one autonomous community to another.

Starting 1 January 2015, non-resident taxpayers residing in a Member State of the EU or the European Economic Area (EEA) have the right to apply the regulations of the autonomous community where the highest value of their assets and rights is located. This applies when a tax liability arises due to their location, use or fulfilment in Spanish territory.[7]

Under the STA's recent rulings, non-resident taxpayers not residing in a Member State or the EEA should apply the state regulations.

The sum of PIT and WT due is limited to 60 per cent of the total taxable income (not including long-term gains). If it exceeds that amount, the net WT liability may be reduced by the excess amount. However, a minimum tax of 20 per cent of the net WT liability must be paid. A number of exemptions may also apply, such as business assets, shareholdings of at least five per cent in a company engaged in business activities, pension plans and qualifying art works.

Several Spanish tax treaties include WT provisions.

b. Inheritance and gift tax

For IGT, the taxable event is the acquisition of property and rights through: (1) inheritance, bequest or other title; (2) gift or *inter vivos* transfer; or (3) proceeds from 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; that is: (1) heirs; (2) legatees; and (3) beneficiaries. The tax liability arises on the date of death or, in the case of *inter vivos* gifts, the date the assets or rights are given, or when the legatee accepts the gift.

Under the IGT Act, several deductions and tax rebates are applicable, which may differ significantly from one autonomous community to another; for example: (1) for family businesses, if certain requirements are met; and (2) for the habitual residence transferred through inheritance. As with WT, the tax residence of the deceased in a transfer *causa mortis* or of the beneficiaries in an *inter vivos* transfer also plays a key role when determining the applicable law.

Individuals who are tax residents in Spain will be taxed on the worldwide assets and rights acquired either through an inheritance or gift. 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 a non-Spanish entity operating in Spain.

When determining the tax base for inheritance and gifts, the market value is typically used (defined by law as the 'real' value), from which the following are deducted: (1) burdens and encumbrances on the asset; (2) certain debts; and (3) other expenses, such as medical costs and funeral-related expenses. When calculating the tax base of heirs, legatees and 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 *inter vivos* transfers.

Once the tax base has been calculated, the tax due is calculated at progressive rates in accordance with the table below (general rates established in the IGT Act).

Tax base (€)	Gross tax base (€)	Remaining tax base (€)	Tax rate (%)
0	0	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	Above	34

The final tax liability is the amount of tax owed after applying fixed surcharges to the basic tax. These surcharges depend on both the recipient's previous net wealth and their relationship to the deceased or donor, as shown in the table below (general rates established in the IGT Act).[8]

Recipient's net wealth (€)	**Degree of kinship**		
	I and II	**III**	**IV**
Up to 402,678.11	1	1.5882	2
402,678.11 to 2,007,380.43	1.05	1.6676	2.1
2,007,380.43 to 4,020,770.98	1.1	1.7471	2.2
Above 4,020,770.98	1.2	1.9059	2.4

Autonomous communities have legislative authority to approve their respective tax rates and establish reductions.

The European Court of Justice (ECJ), in its judgment of 3 September 2014 on IGT against Spain, declared that when the testator was resident in the EU, taxpayers had the right to apply the regulations of the autonomous community in Spain where the highest-valued assets and rights of the estate are located. Following this judgment, Spain had to amend its IGT regulations to allow non-resident taxpayers to apply the IGT regulations of the autonomous communities. The Spanish Supreme Court,

in its judgments of 19 February, 21 March and 22 March 2018, ruled on the interpretation of the ECJ decision, concluding that it also applied to non-EU non-residents.

The Community of Madrid and Andalucía, among others, has practically eliminated IGT for scenarios in which the heir is included in Group I or II (close family). Heirs belonging to either of these groups are entitled to a 99 per cent reduction in IGT. Consequently, they will only be required to pay one per cent of the total tax amount. Similarly, on 18 July 2023, the Governing Council of the Balearic Islands passed Decree-Law 4/2023 (effective from 19 July 2023), introducing a 99 per cent reduction in IGT when the beneficiaries fall into Groups I and II. However, unlike the reduction in Madrid, this reduction is limited to resident taxpayers in Spain, excluding non-residents. This distinction may violate EU law because preventing non-residents from applying the above 99 per cent reduction could be considered contrary to the free movement of capital as outlined in Article 63 of the Treaty on the Functioning of the EU. Consequently, this legislation could be amended in the near future.

To avoid double taxation, a tax credit is applicable against the Spanish tax due, considering either: (1) the IGT paid abroad; or (2) the Spanish tax on the property, whichever is lower. Spain has entered into treaties with only three counties, France, Sweden and Greece, for the purpose of avoiding double taxation on inheritance.

c. Solidarity tax on HNWT

HNWT was introduced by Act 38/2022 of 27 December. It functions as a supplementary tax to WT,[9] is of a state nature and is not subject to transfer to the autonomous communities. Its purpose is to levy an additional tax on the net wealth of individuals above €3m.

HNWT is a temporary tax imposed for only two years. Therefore, it should only be levied on the wealth of high-net-worth individuals between 31 December 2022 and 31 December 2023. The Spanish government has already announced its willingness to maintain the new tax.

HNWT is a wealth tax, incorporating the same rules applicable to wealth tax: rules on valuation, deductibility of debts, joint limitations with PIT, deduction for taxes paid abroad and exemptions. Depending on the net value of the assets, the tax rates vary as follows:

General tax base (€)	Gross tax base (€)	Remaining general tax base (€)	Tax rate (%)
0	0	3,000,000	0.00
3,000,000	0	2,347,998.03	1.70
5,347,998.03	39,915.97	5,347,998.03	2.10
10,695,996.06	152,223.93	Above 5,347,998.03	3.50

Spanish tax residents enjoy a tax exemption on the initial €700,000 of their net wealth, along with an additional €300,000 exemption for the value of the property considered their main residence. Consequently, considering that the first €3m is subject to a zero per cent tax rate, Spanish taxpayers are generally only taxed on net wealth exceeding €4m.

Inbound expatriates[10] and non-residents are taxed on their rights and assets that are located or can be exercised in Spain.

To prevent situations of double taxation, the taxpayer can offset the amount paid in the WT return against the HNWT liability.

d. Taxation of real estate ownership through non-resident entities

Act 38/2022 has amended the WT Act to establish that non-listed shares in a foreign company, where at least 50 per cent of its assets directly or indirectly consist of real estate located in Spain, are considered to be located in Spanish territory for WT purposes. Consequently, they may become subject to WT.

This same conclusion applies to HNWT.

However, in the case of taxpayers located in countries with which Spain has signed a DTT, whether this new measure results in effective taxation or whether Spain has not retained the right to tax must be analysed.

K. Indirect taxes

Indirect taxes (*impuestos sobre transmisiones patrimoniales y actos jurídicos documentados* or 'ITPAJD') are levied on specific taxable events, such as:

- transfer tax on the transfer of assets and rights between individuals or companies that do not involve business activities;
- capital duty on corporate transactions; and
- stamp duty, which is payable when formalising transactions in notarial deeds, corporate documents and administrative documents.

These three taxes cannot be charged simultaneously. Stamp duty at a fixed rate is always charged on officially documented acts, regardless of whether transfer tax, capital duty or VAT applies, while capital duty and stamp duty can be charged simultaneously with VAT.

Each autonomous community is responsible for ITPAJD and can establish different rules and tax rates.

1. TRANSFER TAX

Transfer tax is only applicable to the transfer of assets located in Spain and rights that can be exercised or have effect in Spain or abroad. However, this tax applies only when the individual exercising those rights is a tax resident in Spain. No transfer tax is imposed on the transfer of immovable assets or rights abroad.

Transfer tax is levied on onerous and *inter vivos* transfers of all assets and rights that belong to individuals and companies but are not part of the transferor's professional or business activity. The tax is not applicable if the transaction is subject to VAT, regardless of whether it is exempt. However, transfer tax can be applied to the transfer or lease of immovable property and the creation or transfer of real estate rights when these are subject to but exempt from VAT. In this context, the taxpayers are the individuals or companies acquiring the assets.

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

a. Transfer of immovable property

Except when VAT applies, all transfers of immovable property and rights over any property[11] are taxed at the standard six per cent rate (or ten per cent or 11 per cent in most autonomous communities).

b. Transfer of movable property

The transfer tax rate is four per cent when rights over movable property are created or transferred, as well as when administrative concessions are granted. However, the rate is one per cent when rights in rem, pensions, deposits and loans are created.

c. Transfer of securities

The transfer of shares and other securities is exempt from transfer tax. However, under section 314 of Royal Legislative Decree 4/2015 of 23 October on the securities market, transfer tax at a six per cent rate (ten per cent or 11 per cent in most autonomous communities) applies to the transfer of securities of a company if its real estate assets in Spain constitute more than 50 per cent of its total assets. This tax also applies if the assets of the company include the securities of another company whose real estate assets in Spain constitute at least 50 per cent of its total assets, provided the buyer obtains control of the real estate company or increases its controlling stake through the transfer.

2. CAPITAL DUTY

Capital duty is only charged on corporate transactions when the company: (1) has its place of effective management in Spain; (2) has its legal seat in Spain; or (3) carries out business in Spain but does not have a place of effective management in an EU Member State that applies a similar tax.

Capital duty applies to capital redemptions and liquidations at a one per cent rate, calculated based on the value of the net assets distributed to the shareholder, who is the taxpayer. However, since December 2010, the one per cent capital duty no longer applies to the incorporation of Spanish companies, the transfer of the legal seat of a foreign company to Spain, capital increases or contributions made by shareholders.

3. STAMP DUTY

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

Stamp duty's fixed rate is €0.30 per sheet of paper and €0.15 per document page. A variable rate is also charged when the officially documented transaction for an amount or object that can be registered in an official register is not subject to transfer tax or capital duty. This variable rate ranges from 0.5 per cent to 1.8 per cent, depending on the autonomous community.

L. Form 720: declaration of assets and rights abroad

Tax resident individuals must report their assets and rights located or exercised outside Spain by submitting Form 720 every year.

Form 720 must include information on the following assets and rights held abroad:

- accounts of which the tax resident: (1) is the titleholder; (2) is a representative; (3) is an authorised party or beneficiary; or (4) has power of disposal over accounts in financial institutions located abroad;
- securities, rights, bonds, loans and similar financial instruments;
- insurance policies and life-long, fixed-period or temporary annuities; and
- real estate located abroad or rights to it.

The obligation to submit information does not apply to assets or rights with a total value of under €50,000 or real estate and rights to it. Form 720 must be filed by 31 March for the assets and rights of the previous year, and in subsequent years, only if the value of any of the three categories of assets and rights increases by more than €20,000 compared to the last filing.

In the case of non-compliance, the general penalty regime established in the General Tax Act applies, as the specific penalty regime for the form is no longer in force following the ruling of the Court of Justice of the EU (CJEU).[12]

M. Obligation to declare potentially aggressive tax planning schemes (‘DAC 6’)

Act 10/2020 implemented Council Directive (EU) 2018/822 of 25 May 2018, amending Directive 2011/16/EU on the mandatory automatic exchange of information on reportable cross-border arrangements, known as the ‘Intermediaries Directive’ (‘DAC 6’) transposing it into national law.

Act 10/2020 introduces an additional provision, Act 58/2003 of 17 December, that establishes three new obligations for providing tax information:

1. the obligation to report cross-border tax planning mechanisms that involve certain distinctive signs as outlined in the directive.

2. the obligation to update information on cross-border marketable arrangements; that is, those not requiring substantial adaptation for execution by the taxpayer; and

3. the obligation to report the use in Spain of the above cross-border tax planning mechanisms.

These information obligations fall on the intermediaries, and, subsidiarily, interested taxpayers.

Under the directive, there are two types of intermediaries:

- primary intermediaries: persons or entities that design, market, organise, make available or manage a cross-border mechanism subject to information communication; and

- secondary intermediaries: persons or entities that know or may reasonably be presumed to know that they have agreed to provide, directly or through other persons, aid, assistance or advice on the design, marketing, organisation, making available or management of a cross-border mechanism subject to an information disclosure obligation.

As an exception, intermediaries who are subject to the duty of professional secrecy are not obliged to report. This exception applies when the intermediary’s participation consists of providing so-called ‘neutral’ advice on the design, marketing, organisation, provision or management of a reportable cross-border arrangement. In other words, when this advice is solely to assess whether the arrangement complies with the applicable regulations, without seeking or facilitating its implementation.

N. Tax on single-use plastic packaging

Act 7/2022 of 8 April 2022 on waste and contaminated land (‘AWCL’), introduces a new tax on single-use plastic packaging, which entered into force on 1 January 2023.

This new tax is levied on the use, in the territory where the tax is charged, of single-use packaging containing plastic. It is imposed on the manufacture, importation, and intra-community acquisition of the following products:

- single-use packaging containing plastic, regardless of whether it is empty or filled; and

- semi-finished plastic products intended for the manufacture of single-use packaging (eg, preforms and thermoplastics), as well as products containing plastic intended to seal single-use packaging, and for its marketing and presentation.

The tax is to be paid by those responsible for manufacturing, importing and making intra-community acquisitions of the specified products. However, the AWCL does outline several tax exemptions and cases of non-taxability. The tax base is calculated based on the amount of unrecycled plastic (in kilograms) present in the above products, with a fixed rate of €0.45 per kilogram. The tax base is calculated based on the amount of unrecycled plastic (in kilograms) present in the above products, with a fixed rate of €0.45 per kilogram. A deduction and refund system is also established in certain cases.

Notes

[1] The regions that recognise de facto couples are Andalusia, Asturias, Aragon, the Balearic Islands, the Basque Country, the Canary Islands, Cantabria, Castilla-La Mancha, Catalonia, Extremadura, Galicia, Navarre and Valencia.

[2] The administrative doctrines of the STA are summarised in their binding tax rulings V1991-08, V0010-10, V1016-10, V2244-10, V2703-13, V1003-14, V0989-14, V0484-14, V1224-14, V1225-14, V1226-14, V0250-15, V1495-16, V0695-17, V1879-17, V2812-17, V0817-18, V0312-19, V0718-19, V3394-19, V0970-20, V2033-20, V3316-20 and V2467-21.

[3] Taxpayers can request the STA to issue a ruling where they interpret the applicable tax regime or address the tax qualification of a specific situation. The STA's tax rulings are not legislation, nor jurisprudence. They are administrative acts containing the interpretation of the STA in a tax matter. Although STA's tax rulings are not considered legislation, they bind the STA as long as the background, applicable legislation and jurisprudence do not change. For taxpayers (even for the taxpayer that requested the tax ruling), tax rulings are only informative (not binding), ie, they may (or may not) rely on them, provided their facts and circumstances are identical to those included in the tax ruling.

[4] Spanish regulations do not contemplate foundations that are not non-profit (ie, private foundations).

[5] Capital gains are included in the term 'income'.

[6] The Spanish Accounting Plan is based on the global accounting amendment introduced by Spanish Act 16/2007 of 14 July, which incorporated the provisions of EU Regulations 1606/2002/CE and 1126/2008 (which 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 16 November 2007 enacted the Spanish Accounting Plan for small and medium-sized enterprises.

[7] Binding ruling V3054-16.

[8] 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.

[9] As stated in the section on WT, autonomous communities can approve their own tax scales for WT and offer rebates. The fact that the HNWT is supplementary to WT means that, to avoid giving rise to double taxation, the new tax will be deductible for WT purposes.

[10] In the STA's recent tax rulings (V0420-23 and V0424-23), they concluded that HNWT also applies to inbound expatriates.

[11] Except guarantees.

[12] The CJEU ruled in case C-788/19 that the penalty regime concerning model 720 was contrary to EU law.