OPINION

Spanish Tax Reform to affect property investments

Allan Holmes and Patricia García

The Spanish Government has recently approved two draft Bills, which will affect expats with Spanish property investments.

Non-residents holding Spanish property direct will, in general terms, be better off–the Spanish tax charge on the eventual capital gain will fall from the current 35% to 18%. On the downside, they will still be exposed to an annual Spanish income and wealth tax charge and to inheritance tax.

Non-residents holding Spanish investments through a Spanish corporate vehicle will also be affected by the draft bills, particularly where the company is a Passive Investment entity ("Sociedad Patrimonial"). Passive Investment companies will no longer benefit from the reduced 15% corporation tax rate on long-term capital gains; they will be taxed under standard Spanish corporation tax rules and rate, currently at 35%.

The draft bills will also have important implications for non-residents who own Spanish properties through offshore corporate vehicles, in single, double or triple tier arrangements. Proposals in the bills include bringing into the Spanish corporate tax net all vehicles domiciled in tax havens and zero tax jurisdictions, where the underlying assets mostly consist of Spanish real estate and property rights.

The proposals also include an obligation for non-resident individuals and companies with direct or indirect investments in Spain to appoint a tax representative in Spain.

One of the aims of the reform is to bring in to Spanish tax offshore "envelope" schemes. There is likely to be an increase in future Spanish tax audits on offshore structures with material Spanish investments so expats should plan ahead and ensure their tax arrangements in Spain are in good order within the new framework.

As far as UK individuals are concerned, the general advice has been to avoid Spanish holding companies and companies located in tax havens when buying Spanish property. However, property holding companies have still been bought as the price payable was less and some Spanish taxes were avoided. The proposed rules will come into effect on 1 January 2007 and there may be scope to plan.

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