

STEP CROSS-BORDER ESTATE GROUP
POST-DEATH TAX PLANNING SEMINAR – SPAIN

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1.1. Taxes involved

- Mortis causa: Inheritance Tax. No capital gains tax or indirect taxes. Municipal tax on transfers of non-rustic land (*Impuesto sobre el Incremento de Valor de los Terrenos de Naturaleza Urbana*)
- Donations: Inheritance Tax. Capital gains tax (except business property relief). Municipal tax on transfers of non-rustic land

1.2. General computation

- Resident heirs/donees: worldwide acquisitions. Non-resident heirs/donees: Spanish situs assets acquired
 - No concept of domicile
 - Tax residence: by reference to the 365 day period prior to demise

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1.2. General computation

- Regional exemptions: applicable ONLY where both transferor and transferee consolidate a 5 year residence period in the relevant Region
- Valuation: net value of assets received (general rule: market value). Cumulation principle on inheritances. Deemed value for chattels
 - Business property relief: 95% exemption. Ownership must be retained for 10 years
 - Habitual dwelling relief: € 122,606,47 exempted amount per heir. Ownership must be retained for 10 years
- Tax on a progressive scale. 34% marginal rate for assets > € 797,555.08; maybe indexed up by kinship and pre-existing wealth of heir/donee

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1.3. Responsibility for payment of tax

- Heir/donee. Subsidiarily responsible: banks and financial institutions acting as depositaries, insurance companies, stockbrokers and other intermediaries

1.4 Due date for payment (self-assessment procedure)

- Mortis causa transfers: six months from the date of the demise. May be extended for a further six months subject to prior formal request. Interest on overdue tax will apply on extension
- Donations: thirty working days from the date of the donation

1.5. Forms and documentation (self-assessment procedure)

- Form 650 on mortis causa transfers
- Form 651 on donations
- Statute of limitations: 4 years as a general rule

2. Tax on death - possible mitigation: Spain

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2.1. Using domestic rules

- **Non-resident heirs/donees**
 - Properties held directly: mortgage-base schemes
 - Properties held through corporate structures: non-Spanish situs? Need to examine impact of offshore holding vehicles in view of anti-avoidance legislation and stricter controls
- **Resident heirs/donees**
 - Reductions in value: consider use of Revenue property valuations. Use of valuations as per wealth tax legislation for unquoted shares
 - Maximise use of business property relief provisions
 - Consider the effect of 'generation skipping' total renunciations

2. Tax on death - possible mitigation: Spain

2.2. Using cross-border rules - double tax treaties

- Spain has only signed three DTTs on Inheritance Tax: France, Sweden and Greece
- Need to study the interaction of rules for resident & non-resident heirs
 - Consider modification to existing wills: all Spanish assets to (resident) spouse, non-Spanish assets to non-residents
- Use of trusts - Spanish implications

Queries?

Patricia Garcia Mediero
Partner
Avantia Tax and Legal Services
Tel: 00 34 94 423 2156
email: patricia.garcia@avantia-fo.com

www.avantiaasesoramientofiscalylegal.com