

## SPAIN

# Spain – the Florida of Europe?



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Much has been written about recent Spanish history – the transition to democracy, the effects of its integration within the European Union, its economic growth, the unprecedented surge in its property market and, more recently, its struggles with a recession that has particularly hit both the property and financial markets.

While certainly much of that history has solely been written by Spaniards, it is also undeniably true that overseas factors have had a significant effect in marking the course of social and economic affairs in this country. For the past two decades Spain has enjoyed a privileged status as one jurisdiction with an enviable combination – that of economic stability under the umbrella of the European Union, lack of social or religious unrest, reasonably priced properties overall and a ceaseless amount of sun and sea.

This has been considered a winning ticket by an increasing number of people across Europe, who, in the wake of a property boom, and benefitting from cheap and accessible loans, entered the Spanish property ladder, buying holiday homes which in many instances have, over time, become semi-habitual dwellings (autumn-winter homes) or even permanent.

As a result, Spain has evolved from its traditional insularity into a country of peaceful cohabitation – the natives and the various expatriate populations with its varying degrees of presence in this country, which has materially changed the social landscape, particularly in certain geographical locations – the Southern Mediterranean coast, Andalusia, the Balearics and the Canary Islands.

As trusts and estate practitioners, our profession has also been substantially altered by the new multicultural, multi-domicile, cross-border framework – we now need to cater for the differing needs, cultures and practices that now co-exist in Spain and accommodate them into the Spanish tax and legal framework. This is no easy feat and requires a great amount of flexibility, considering also that Spanish civil and tax laws on succession substantially differ by region. Traditional Spanish clients will still plan their estates according to deep-set rules and principles. However, there is a growing number of Spanish clients who are also keen to adapt their testamentary arrangements to the new realities and challenges facing their families, with an increasingly mobile population, a growth in dual citizenship status and cross-border marriages and a surge in second and third marriages, among other situations. Foreign individuals are in turn seeking to reconcile their trust and estate arrangements in their country of citizenship with the Spanish tax and legal legislation.

Reality in the trust and estate world has proved quicker than legislation. In our opinion, it is fair to say that Spain's efforts to adapt its trust and estates legislation to the underlying situation of its cross-border population have proved poor to say the least. Trusts are, still today, alien to the Spanish tax and legal system – Spain is not even signatory to the Convention of The Hague of July 1 1985 on the law applicable to trusts and on their recognition. Furthermore, there is scarce guidance, rulings and no case law on their Spanish tax implications, which has led to growing concerns among expatriates from Anglo-Saxon countries as to

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potential uncontrolled exposures to high levels of Spanish tax on their bona-fide succession arrangements.

The current Spanish mainstream Inheritance Tax law dates back to 1987 – its last partial amendment of some relevance dating as far back as 1996. While successive governments have suggested an impending overhaul in the wake of new regional funding arrangements, nothing has been produced so far. The cross-border legislation fares even worse – the Spanish Double Tax Treaty list on Inheritance comes down to three rather lonely members: France, Sweden and Greece, all of them pre-1964, which speaks very eloquently about where the Spanish government priorities lay on this end.

As a result, Spanish legal and tax planning in cases of cross-border trusts and estates is a complex matter that in practice needs to be dealt with taking into account the legal framework in the other jurisdictions involved, the sensibilities of the client, the substance of the current and/or proposed arrangements, the existing Spanish legislation and the sensibilities of the Spanish tax authorities, the Spanish courts, Spanish notaries and even the Public Registrars. In most instances, the objective of the resulting advice will be to provide a reasonable interpretation of the law together with practical recommendations, in a situation of lack of definitive answers arising from vacuums in the Spanish legislation.

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As for purely domestic situations, these face challenges of their own. While vacuums in the law are not as dramatic, the current outlook

inheritance tax-wise is confusing to say the least, with an extremely complex, and some claim unfair, system transferring the right to legislate over to the Autonomous Communities, which has led to a multiplicity of rates and charges depending on the Community where a taxpayer is resident – and which the Government has hinted may be reviewing in the not too distant future with a view to introducing a *de-minimis* rate to be applied by all Communities.

Is Spain the Florida of Europe? The sun and the sea are there. The population shift seems to be very much there too. It remains to be seen whether Spain lives up to the challenges posed as a result – including our ability to accommodate realities in such a sensitive area as personal wealth and succession matters of individuals who reside here.