

SPAIN: An Introduction

SPANISH TAX PLANNING FOR INTERNATIONAL PRIVATE WEALTH CLIENTS: A 2024/25 OUTLOOK

Following the 2023 regional and national election cycle, with the coalition of the left continuing to run the national government, the approach of high taxes for the affluent is expected to persist during the current parliamentary term. Potential attempts to counteract at national level any regional policies reducing personal taxes by the opposing conservative parties (holding office at most regional parliaments) may also be expected.

In terms of the basics of Spanish personal tax for 2024, Spanish tax resident individuals remain taxed on a worldwide basis. The marginal income tax rate for regular and investment income and gains is set at around 50% (depending on the region of residence) and 28% respectively.

An individual's exposure to Spanish personal taxes depends on their tax residence status, as determined by the Spanish domestic law and the provisions of any relevant Double Tax Treaty. Tax residence tests under Spanish law consider (i) presence in Spain, (ii) economic ties to Spain and/or (iii) close family ties to Spain. Tie break tests under Double Tax Treaties largely adopt the OECD model.

Individuals who are tax resident in Spain in any given calendar year will generally be taxed on a worldwide basis for income, wealth and inheritance and gift tax purposes. Individuals who are non-tax resident in Spain in any given calendar year will only be taxable on a Spanish situs/source basis.

Given the large number of foreign individuals with second homes in Spain and a stable presence in the country, tax residence has been specifically highlighted as one of the target areas in the Spanish Public Tax Compliance Control Plan for 2024; the Spanish tax inspection is actively using Big Data and Automatic Exchange of Information resources in its investigations, which often result in large tax assessment and lengthy court cases – including under tax fraud charges.

Individuals, including settlors, grantors or beneficiaries of trusts or foundations, declaring themselves non-tax resident in Spain but spending time in the country, even for less than 183 days, or having a substantial Spanish asset base or activities (directly or indirectly), are “tax nomads”, declare themselves as tax resident in certain favourable jurisdictions or have been reported as tax resident under CRS, FATCA or other, are strongly recommended to examine their tax residence status.

In this context, non-compliant taxpayers or those applying untenable technical positions (either as regards their tax residence status or in other situations – eg, vested beneficiaries of trusts who fail to disclose their interests in their Spanish returns) are strongly encouraged to consider filing remedial returns to avoid potential Spanish tax fraud charges.

Qualifying individuals relocating to Spain are at present benefiting from the improvements in the Spanish Special Impatriation Regime of 2023. A material upsurge in relocations to Spain under this regime is taking place in 2024 following the termination of the long-standing personal tax regimes for those non-domiciled in the UK and Portugal. This is a six-year regime available to employees or directors of a Spanish company. Qualifying individuals limit their Spanish personal income tax liability to Spanish source income and gains, plus employment/entrepreneurial income worldwide. Spanish wealth tax and solidarity tax is limited to net Spanish situs assets and there is no obligation to file 720 Information returns.

Under current provisions, availability of the regime is extended to remote workers, certain entrepreneurs and highly skilled professionals. Individuals appointed as directors of Spanish companies carrying on a trade or business may now qualify for the regime even if they are full owners of these companies. Spouses and children under 25 may now also benefit from the regime as part of a family group, subject to a number of requirements and limits.

As a further incentive, the Madrid regional income tax regulations are expected to be amended shortly to introduce substantial personal income tax reductions to new “impatriates”, essentially requiring certain passive portfolio investments (not necessarily geographically connected to Madrid or Spain). The practical effect of these provisions on a best-case scenario would be to cap the marginal rate of income tax on regular income to 24.5%.

Wealth tax continued to apply in 2023. Under general rules, the marginal rate continued at 3.5% for individuals with a net asset value in excess of EUR10.7 million (with a EUR700,000 tax-free allowance). This tax is fully transferred to the Spanish regions, so situations vary significantly. Exposure to this tax may be reduced significantly with tax planning.

On 29 December 2022, a national Solidarity Tax was enacted into law. This is a national tax which the Spanish regions cannot reduce or abate and applies to both Spanish tax resident and non-tax resident individuals. In practice, this tax applies to Spanish tax resident individuals with taxable net worth in excess of EUR3.7 million. This tax co-exists with the existing regional Wealth Tax – Wealth Tax paid in the region of tax residence is creditable against the national Solidarity Tax. The interaction between both taxes is complex, particularly following amendments to regional Wealth Tax legislation by a number of regions (notably Madrid and Andalusia) in order to avoid losing tax collections to the Spanish central government, so careful planning is required for an efficient overall strategy.

Potential tax planning mechanisms as regards Wealth Tax and Solidarity Tax include income limitation strategies to maximise the application of existing capping rules, the application of Business Property relief as well as shifting wealth via intergenerational gifts.

As regards taxation of Spanish situs real estate with non-Spanish tax resident ultimate beneficial owners, foreign wrappers of Spanish situs properties continue to be taxable for Spanish Wealth Tax/Solidarity Tax purposes. Shares in private foreign entities with Spanish real estate with a direct or indirect value amounting to 50% or more of their total asset base are deemed Spanish situs and brought into the tax (therefore including any non-Spanish asset in the structure).

Potential tax planning strategies include broadening the asset base of the foreign entity to dilute the overall value of Spanish assets in the structure or certain debt restructuring actions.

As for inheritance and gift tax, regional benefits on spousal and close family free transfers continue to apply to cross-border estates and gifts, both EU and non-EU. In the mid-term, these may be substantially curtailed, reintroducing a full inheritance and gift tax, potentially with rates which might be in the region of 34%.

In this scenario, taxpayers with interests in, or ties to, Spain are strongly advised to perform an inheritance and gift tax review to make use of current exemptions which may potentially be phased out or curtailed. Tax planning possibilities include free transfers of bare ownership of assets, retaining a legal right of use, shifting a significant portion of the family's wealth to the next generation. Planning for the best legal way to allocate and manage rights post-transfer is of critical importance.

International private clients should therefore undertake a review of their Spanish personal tax situation in view of the current areas of concern and potential personal tax planning strategies and consider shifting wealth over to the next generation in an orderly, flexible and overall tax effective manner.

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