Chambers AND PARTNERS

SPAIN: An Introduction

Spanish Tax Planning for International Private Clients: Outlook for 2025–26

The current Spanish government, constituting a coalition of the left, has taken a high-tax approach to the affluent. Spanish tax residents are taxed on a worldwide basis. The marginal income tax rates for regular and investment income and gains are set at around 50% (depending on the region of residence) and 30%, respectively (a 2% increase from the investment income rate applicable in 2024).

An individual's exposure to Spanish personal taxes depends on their tax residence status, as determined by Spanish domestic law and the provisions of any relevant double tax treaty. Tax residence tests under Spanish law consider the following:

- presence in Spain;
- Existence of direct or indirect economic ties to Spain; and/or
- close family ties to Spain.

Tie-breaker tests under double tax treaties largely adopt the OECD model.

Individuals who are tax resident in Spain in any given calendar year are generally taxed on a worldwide basis with respect to income, wealth, inheritance and gifts. Individuals who are not tax resident in Spain in any given calendar year are taxed 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 is consistently among the areas targeted by Spanish tax inspections. The Spanish tax administration is actively using big data, AI, and automatic exchange of information resources, often resulting in large-scale tax assessments and lengthy court cases – including ones involving criminal charges for tax fraud.

Settlors – as well as grantors or beneficiaries of trusts or foundations – declaring themselves non-tax resident in Spain but spending time in the country (even if for less than 183 days per year), or who have a substantial Spanish asset base or relevant direct or indirect activities, are "tax nomads". They can declare themselves as tax resident in certain favourable jurisdictions, including under the Common Reporting Standard (CRS) or Foreign Account Tax Compliance Act (FATCA), but it is strongly recommended that they examine their tax residence status.

In this context, non-compliant taxpayers, those who are the vested beneficiary of a trust and those 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, which can be criminal in nature.

Potentially qualifying individuals relocating to Spain usually follow the Spanish impatriation tax regime. This six-year regime is available to employees and directors of Spanish companies. Qualifying individuals can limit their Spanish personal income tax liability to Spanish source income and gains, plus any worldwide employment/entrepreneurial income. Spanish wealth and solidarity taxes are limited to net Spanish situs assets, and there is no obligation to file Form 720 (informative tax return).

Under current provisions, the impatriation tax 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, albeit with certain strict requirements. Spouses and children under 25 years of age 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 provide for substantial personal income tax reductions for new impatriates in Madrid, albeit with the requirement for certain passive portfolio investments (not necessarily connected to Madrid or Spain). The practical effect of these provisions in the best case scenario is that the marginal rate of income tax on regular income is capped at 24.5%.

However, the impatriation regime has become one of the main targets for review by the Spanish tax inspectors. The Spanish tax authorities often probe overall arrangements, the reality and substance of the underlying business, and the roles of directors. Failure to qualify for the regime necessitates personal taxation on a worldwide basis; assessments are substantial and are increasingly resulting in criminal charges for tax fraud. However, the aggressive inspection practices have led to increasing public and legal scrutiny of Spanish tax audit policies – the outcome of which remains to be seen. Currently, taxpayers are strongly advised to review their arrangements for legitimacy vis-a-vis current inspection practices.

Wealth tax continues to apply in 2025. Under general rules, the marginal rate remains 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 applies to all Spanish regions, albeit that it may be reduced significantly with planning.

The solidarity tax, introduced in 2022, continues to apply to Spanish tax residents with taxable net worth in excess of EUR3.7 million. This tax coexists with the existing regional wealth tax, which is paid in the region of tax residence and is creditable against the national solidarity tax. The interaction between these taxes is complex, so careful planning is required for an efficient overall strategy.

Potential strategies with regard to wealth and solidarity tax include maximising the application of existing capping rules, taking advantage of business property relief and shifting wealth via intergenerational gifts.

Regarding the taxation of Spanish situs real estate having non-Spanish tax resident ultimate beneficial owners, foreign wrappers remain taxable for Spanish wealth and solidarity tax purposes. Shares in private foreign entities owning Spanish real estate having a direct or indirect value of 50% or more of the total asset base are deemed Spanish situs, and are thus liable for tax (thereby bringing non-Spanish assets into the structure).

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

As for inheritance and gift tax, regional benefits for spousal and close-family-member transfers continue to apply to both EU and non-EU estates and gifts. However, in the mid-term, these may be substantially curtailed with the reintroduction of full inheritance and gift tax – potentially at rates in the region of 34%.

In this scenario, taxpayers with interests in or ties to Spain are strongly advised to perform a review of inheritance and gift tax and make use of current exemptions. Tax planning possibilities include the transfer of asset ownership, retaining the legal right of use while shifting a significant portion of the family's wealth to the next generation.
Planning for the allocation and management of rights post-transfer is of critical importance, and international private clients should review their Spanish personal tax situation in view of the current areas of concern for the tax authorities.

Javier Estella Lana
Patricia García Mediero
Gabriel Pérez de Cárdenas

Partners
Avantia Asesoramiento Fiscal y Legal