



Spain

Contact

Barcelona

EY Abogados SL
Av. Sarrià 102-106
08017 Barcelona
Spain

Antoni Murt Prats
antoni.murtprats@es.ey.com
+34 933 663 700

1. Types of tax

1.1 Inheritance and gift tax

According to the Spanish Inheritance and Gift Tax (IGT) Law, this tax is levied on the acquisition by individuals of assets (whether tangible or intangible) by virtue of inheritance (*mortis causa*), donation (*inter vivos*) or life insurance policies where the payer of the premium and the beneficiary are different persons (subject to certain exceptions).

IGT is a national tax; however, the power to legislate some aspects that have a direct impact on the quota to be paid has been transferred to the regional governments. Indeed, many regions have approved lower tax rates, reductions and other benefits that significantly reduce the tax burden. As a consequence of this, effective inheritance taxation is much higher under national law than under regional regimes.

Additionally, the regions of Navarre and Basque Country have a wide right to self-regulate IGT. Taxation in these regions is significantly different from the mainstream Spanish tax laws.

Historically, regional law was not applicable when nonresidents were involved (when the deceased, heir or donee was a nonresident or when the real estate was located outside of Spain). If so, national law applied in any case, with nonresident individuals being generally subject to a much higher tax burden only because of their nonresident status. However, the Court of Justice of the European Union (CJEU) ruled against Spanish IGT in a 3 September 2014 judgment, concluding that the Spanish IGT rules breached the EU Treaty principle of free movement of persons since only Spanish residents were permitted to apply regional tax benefits. As a result of this judgment, Spain has amended its IGT Law and now EU/European Economic Area (EEA) residents are entitled to apply regional rules.

Please note that the Spanish High Court (Judgment 19.02.2018) concluded that the European free movement of capital principle as established in Article 63 of Treaty of the Functioning of the European Union should apply also to third parties. According to this, the Spanish Government will need to extend the IGT benefits under regional rules to any individual, regardless of whether resident in Spain, the EU/EEA or a third country. Also, the Tax Authorities have recently confirmed this criteria in ruling DGT V13151-18. However, IGT Law has not been modified yet. As a result, there is an opportunity to recover taxes unduly paid under the former and discriminatory IGT Law. A refund can be requested if no more than four years have elapsed since the last available day to submit the succession/donation IGT self-assessment.

1.2 Real estate transfer tax

The transfer of real estate by inheritance or gift is exempt from Spanish real estate transfer tax.

1.3 Endowment tax

No endowment taxes are levied in Spain. Nevertheless, as a general rule, donations made to charitable foundations (meeting certain requirements and pursuing special charitable purposes) would allow the donors to claim a tax credit for income tax purposes, as follows:

- ▶ If the donor is a corporation, then a corporate income tax relief ranging from 35% to 40% on the amount donated could be applied if certain requirements are met, such as the corporation has donated the same amount in the two previous tax years. Nevertheless, the tax base of the deduction cannot exceed 10% of the period's total taxable base. Non-deducted amounts due to an insufficient tax quota can be applied during the next 10 years.
- ▶ If the donor is an individual, then a personal income tax relief ranging from 75% (to apply on the first EUR150) to 30% (amounts exceeding EUR150) on the amount donated is available, with the tax base of the deduction also subject to the limit of 10% of the period's total taxable base. If the donor has contributed to the same charitable organization in the previous tax year, the tax relief ranges from 75% (to apply on the first EUR150) to 35% (amounts exceeding EUR150).

1.4 Transfer duty

Spain levies a stamp duty tax upon signature of a public deed, notarial documents and documents to be registered officially, with rates ranging from 0.1% to 2.5%, depending on the nature and circumstances of the transaction involved. Autonomous regions are empowered to apply different tax rates and exemptions.

However, successions and gifts are exempt from Spanish transfer duty.

1.5 Net wealth tax

Net wealth tax (NWT) is an annual tax levied on the net worth of individuals as at 31 December of each year. Wealth subject to this tax is defined as all the assets and rights that can be economically valued, less all the burdens, encumbrances or debts that the individual may have and that effectively reduce the wealth.

If the individual is resident in Spain, NWT is levied on a worldwide basis, whereas nonresident individuals are only subject to NWT on their Spanish-located assets.

Spanish NWT was abolished in Spain, but the Spanish Government decided to reinstate the tax initially for years 2011 and 2012, and then extended it through to 2020 and beyond.

Spanish autonomous regions are authorized to set their own tax rates and allowances within certain limits, leading to different wealth tax liabilities. For instance, NWT is not due in Madrid since the region offers a 100% relief.

2. Who is liable?

2.1 Inheritance and gift tax

IGT legislation in force in Spain imposes gift and inheritance tax on donees, heirs or insurance beneficiaries regardless of the tax residence of the donor, deceased or payer of the policy premiums.

Taxpayers are the heir, the donee or the beneficiary. Tax liability will depend on whether the IGT taxpayer is Spanish resident or not, as follows.

Worldwide taxation

Spanish-resident taxpayers are liable to IGT on their share in the estate of the deceased or the assets donated or the life insurance benefit, regardless of where the assets or rights received were located/exercisable (worldwide principle).

IGT on Spanish-located assets

Nonresident taxpayers are only liable for IGT on the Spanish-located assets acquired by virtue of inheritance or donation, or where the insurance policy is entered into with a Spanish insurance company or concluded in Spain with a non-Spanish insurance company.

Shares in foreign companies are deemed foreign *situs* assets for Spanish IGT purposes. However, the Spanish tax authorities have ruled at least twice that shares in foreign companies whose main assets are Spanish *situs* real properties may be deemed Spanish *situs* assets for IGT purposes (DGT V3047-17).

2.2 Net wealth tax

Spanish tax residents are liable for NWT on their worldwide assets and rights (worldwide principle) as at 31 December of each year.

Non-Spanish tax residents are subject to NWT on their assets located or exercisable in Spain. Historically, national law (instead of regional law) was applicable in those cases. However, as a result of the 2015 Tax Reform, EU residents are now able to apply the rules of the region where most of their wealth is located or exercisable in Spain (the most common case is nonresidents holding properties in Spain).

2.3 Residency

An individual is generally deemed to be Spanish resident if either of the below conditions are met:

- (a) The individual is physically present in Spanish territory for more than 183 days per year. Sporadic absences are considered as days spent in Spain for computing this period, unless the individual evidences the tax residence in another country for more than 183 days during a calendar year. This evidence must be in the form of a certificate from the foreign tax authorities confirming such circumstance.
- (b) The main center of the individual's activities or economic interests is located in Spain, either directly or indirectly. Unless evidenced otherwise, an individual will be deemed tax resident in Spain if their legal wife or husband and minor dependent children are tax resident in Spain.

2.4 Spanish territoriality rules applicable to IGT

As a result of the 3 September 2014 judgment of the CJEU, Spanish IGT rules were amended and new connection points were introduced to enable EU nonresident taxpayers to apply regional rules, as follows.

Inheritance tax

In the case of inheritance, bequest or other type of successions, if the deceased had been a resident in a Member State of the EU or EEA other than Spain, a beneficiary who is either a Spanish tax resident or a tax resident in an EU or EEA member country will be allowed to apply the rules approved by the region where the highest value of the assets (and rights) forming part of the estate were located.

In those cases where the deceased was resident in a Spanish region, non-Spanish tax residents who reside in another Member State of the EU or EEA will be allowed to apply the rules of the region in which the deceased was resident. Regarding the amounts received by the beneficiaries derived from life insurance contracts, when such amounts should not be added to the taxable base for inheritance tax purposes, non-Spanish tax residents who reside in a Member State of the EU or EEA will be allowed to apply the rules approved by (i) the region where the registered office of the Spanish life insurance company was situated, or (ii) the region in which the foreign life insurance company had concluded the relevant contract.

Gift tax

In the case of acquisition of movable property situated in Spain by gift or any other inter vivos gratuitous transfer, non-Spanish tax residents who reside in another Member State of the EU or EEA will be allowed to apply the rules approved by the region where the referred movable assets had been situated for a greater number of days during the five-year period prior to the taxable event.

In the case of acquisition of real estate property located in Spain, non-Spanish tax residents who reside in another Member State of the EU or EEA will be allowed to apply the rules approved by the region where the real estate property was situated.

In cases where real estate is located outside Spain but in a Member State of the EU or EEA, Spanish tax residents will be allowed to apply the rules approved by the region in which they reside. For this purpose, a Spanish tax resident will be considered a resident of any region provided that such individual had been a resident in that particular region for a greater number of days during the five-year period prior to the taxable event.

3. Rates

3.1 Inheritance and gift tax

The taxable base is taxed (both for gift and inheritance tax purposes) by application of the following progressive scale:

Up to (EUR)	EUR	Remaining (EUR)	%
0.00	0.00	7,993.46	7.65
7,993.46	611.50	7,987.45	8.50
15,980.91	1,290.43	7,987.45	9.35
23,968.36	2,037.26	7,987.45	10.20
31,955.81	2,851.98	7,987.45	11.05
39,943.26	3,734.59	7,987.46	11.90
47,930.72	4,685.10	7,987.45	12.75
55,918.17	5,703.50	7,987.45	13.60
63,905.62	6,789.79	7,987.45	14.45
71,893.07	7,943.98	7,987.45	15.30
79,880.52	9,166.06	39,877.15	16.15
119,757.67	15,606.22	39,877.16	18.70
159,634.83	23,063.25	79,754.30	21.25
239,389.13	40,011.04	159,388.41	25.50

Up to (EUR)	EUR	Remaining (EUR)	%
398,777.54	80,655.08	398,777.54	29.75
797,555.08	199,291.40	Excess	34.00

The resulting gross tax should be further increased by application of certain additional coefficients, which take into account the acquirer's net wealth prior to the acquisition,¹ as well as his or her relationship with the donor/deceased (as per the groups described in Section 4.1).

Deceased/donee's pre-existing wealth (EUR)	Group (family relationship)		
	I and II	III	IV
From 0 up to 402,678.11	1.0000	1.5882	2.0000
Over 402,678.11 up to 2,007,380.43	1.0500	1.6676	2.1000
Over 2,007,380.43 up to 4,020,770.98	1.1000	1.7471	2.2000
Over 4,020,770.98	1.2000	1.9059	2.4000

Therefore, the effective maximum rate may reach 81.60% (i.e., maximum general rate: 34% x maximum personal rate: 2.4 = 81.60%).

These rates have been slightly modified in certain autonomous regions.

Other key aspects

- ▶ Gifts to the same donee within a three-year period are treated as single gifts; gifts to heirs within a four-year period are added to the taxable basis for inheritance tax purposes.
- ▶ There are special rules governing life and temporary usufructs created by reason of inheritance or donation.
- ▶ Significant reductions may apply to family business transfers and/or art collections within families.
- ▶ Foreign tax relief is available in order to avoid double taxation.
- ▶ With certain exceptions, gifts trigger capital gains in the hands of the donor for personal income tax purposes, computed as the difference between the acquisition cost and the market value of the assets donated.
- ▶ No income or capital gains are deemed to arise in the hands of the deceased for personal income tax purposes on the difference between the acquisition cost and the market value of the assets comprised in the estate.
- ▶ Some of the main characteristics of regional IGT rules are as follows:
 1. Balearic Islands and Murcia have almost eliminated taxation in cases of inheritance by Group I acquirers (descendants under 21 years of age).
 2. La Rioja, Castilla La Mancha, Castilla y León, Andalucía and Madrid have almost eliminated taxation in cases of inheritance by Group I and II acquirers (ascendants, descendants and spouse).
 3. Catalonia only maintains the 99% tax relief in the case of inheritance by the spouse. For all other heirs, the relief is reduced progressively as the taxable base increases.
 4. Castilla La Mancha, Castilla y León, Andalucía and Madrid have almost eliminated taxation in cases of donation to Group I and II acquirers (subject to formal requirements).

¹ The net wealth prior to the acquisition is calculated according to Spanish net wealth tax provisions (see Section 1.5).

5. In 2017, Valencia has reduced the applicable discount from 75% to 50% in cases of inheritance regarding Group II acquirers. Additionally, Valencia has removed the tax relief in cases of donation.
6. Aragon offers a reduction up to EUR3 million in cases of heirs under legal age (18 years) and for spouses a EUR500,000 reduction.
7. As of January 2020 Galicia provides a EUR1 million exemption in the case of inheritance by the spouse, ascendants or descendants.
8. In 2008, Inheritance and Gift Tax were eliminated in Canary Islands, but as of January 2020 they have come into force again providing only a 99% reduction of estates below EUR300,000.

With regard to Basque Country and Navarre, transfers between families are generally advantageous due to reduced rates.

3.2 Net wealth tax

Net wealth tax rates under national law are as follows (note that some regions have higher rates up to 3.75%):

Up to (EUR)	EUR	Remaining (EUR)	%
0.00	0.00	167,129.45	0.2
167,129.45	334.26	167,123.43	0.3
334,252.88	835.63	334,246.87	0.5
668,499.75	2,506.86	668,499.76	0.9
1,336,999.51	8,523.36	1,336,999.50	1.3
2,673,999.01	25,904.35	2,673,999.02	1.7
5,347,998.03	71,362.33	5,347,998.03	2.1
10,695,996.06	183,670.29	Excess	2.5

Please be aware that because of the new Government in Spain it is feasible that the above tax rate of 2.5% for EUR10,695,996.06 will be increased to 3.5%.

4. Exemptions and reliefs

4.1 Inheritance and gift tax

The taxable value of the acquisition by the taxpayer is determined by taking into account the fair market value (FMV) of the assets forming part of the estate or donation, or the benefit from the life insurance policy.

Encumbrances and liens attached to the assets of the estate or donation, along with the liabilities transferred by the deceased or donor and certain debts and expenses related to the deceased, may be deducted.

The resulting amount is further reduced, regardless of the residence status of the acquirer, by application of certain allowances in cases of inheritance or life insurance benefits, as follows:

- ▶ Reductions on inheritance, depending on the family relationship between the heir and the deceased, as follows:
 - ▶ Group I: descendants under 21: EUR15,956, plus EUR3,990 for each year the descendant is under 21 years – total reduction may not exceed EUR47,858
 - ▶ Group II: descendants older than 21, spouse and ascendants: EUR15,956
 - ▶ Group III: ascendants and descendants by affinity (second- and third-degree collaterals (brothers and sisters, uncles and aunts, nieces and nephews)): EUR7,993
 - ▶ Group IV: others: no reduction

- ▶ Disabled acquirers: EUR47,858 or EUR150,253 – disability is determined according to Spanish social security regulations
- ▶ Acquisition of the principal private residence by close relatives: 95% of the real estate value, up to an amount of EUR122,606
- ▶ Benefits deriving from life insurance policies may be reduced by 100% up to a maximum amount of EUR9,195 where the beneficiary is the spouse, ascendant or descendant of the payer of the premiums²
- ▶ Acquisition of qualified shareholdings in family-owned operating companies by certain relatives (including the spouse of the deceased or donor): this reduction is applicable, up to 95% of the shares' value, provided that a number of requirements are met, including that the conditions required for wealth tax exemption are met as of the date of death. This reduction also applies to donations, subject to the fulfillment of additional requirements. The reduction is conditioned to the beneficiary not transmitting the shares in a 10-year period

In case of gifts, the exemptions are generally reduced to the acquisition of qualified shareholdings in family-owned operating companies by certain relatives and to the acquisition of Historical Heritage assets, giving more legislative power to the autonomous regions.

4.2 Net wealth tax

There is a general threshold of EUR700,000 (lower in some regions) available for each taxpayer, either resident or not resident in Spain. As a result, taxpayers with taxable assets below EUR700,000 will not be subject to NWT. Nevertheless, NWT rules provide that individuals whose assets and rights' values are above EUR2 million are obliged to file the NWT return, even though the resulting tax liability is zero.

In addition, the law exempts from NWT certain assets and rights, among others:

- ▶ Habitual dwelling: each taxpayer has an exemption on the first EUR300,000 of the value of property (lower in some regions)
- ▶ Family business relief: there is a total exemption for family businesses under certain requirements, and as a result, owners of qualifying family businesses might not be taxed under wealth tax on their shares
- ▶ Business assets and property needed for the exercise of a profession or an activity, under certain requirements
- ▶ Works of art: provided that certain requirements are met and the National Heritage regulations are complied with
- ▶ Household items (with some exceptions, such as jewelry or certain types of leather)
- ▶ The amounts saved through a retirement or pension plan

5. Filing procedures

5.1 Inheritance and gift tax

Generally, IGT returns must be filed by the legal deadlines as follows:

- ▶ In cases of inheritance or life insurance policies: six months from the date of death
- ▶ Donations: 30 days from the date of the gift

However, some of the regions have established a self-assessment procedure. Where this procedure is applicable, tax must be paid upon filing.

² There are a number of transitional measures applicable to life insurance policies contracted before 19 January 1987.

Autonomous regions have their own tax forms for gift and inheritance tax purposes. These must be used whenever the region is entitled to collect the tax.

5.2 Net wealth tax

NWT taxpayers must file an annual tax return (Form 714) no later than 30 June of each year in connection with the period of the previous calendar year, along with the payment of the amount of tax due.

6. Assessments and valuations

6.1 Inheritance and gift tax

The tax assessment basis for the Spanish inheritance and gift tax is the FMV of the inherited or donated assets.

6.2 Net wealth tax

The valuation of assets and rights must be performed according to specific rules. For instance, a property is valued at the highest of: (i) the acquisition value, (ii) the cadastral value or (iii) the value declared for other taxes.

7. Trusts, foundations and private purpose funds

Trusts are institutions alien to Spanish civil and tax laws. Additionally, Spain is not a signatory to the Hague Convention of 1 July 1985 on the law applicable to trusts and on their recognition. As a consequence of this, inheritances or gifts involving trusts are directly attributed to the individuals involved and must be carefully analyzed, as it is extremely complex to determine their Spanish tax and legal status.

8. Grants

This is not applicable in Spain.

9. Life insurance

Life insurance policies where the payer of the premium and the beneficiary are different persons will be liable for inheritance tax (subject to certain exceptions).

Benefits deriving from life insurance policies may be reduced by 100% up to a maximum amount of EUR9,195 when the beneficiary is the spouse, ascendant or descendant of the payer of the premiums.

10. Civil law on succession

10.1 Estate planning

Relevant international private law issues

Several regions in Spain have their own civil law system, which is applicable to individuals whose residence, according to Civil Code rules, is in the region. However, we shall refer below to mainstream Spanish legislation only.

International private rules are applicable in the whole of Spain, regardless of the region where the individuals have their residence.

Inheritance

As a general rule, the national law of the deceased governs his or her succession, regardless of whether there is a will or not and regardless of the place of domicile or residence of the deceased. Only in the case of married individuals are forced heirship rights of the surviving spouse ruled by the law governing the marriage (see below), but always observing the forced heirship rights of the descendants.

Dual citizenship status is not recognized by Spanish legislation, with the sole exception of South American countries, Andorra, Portugal, the Philippines and Equatorial Guinea. Consequently, an individual who holds dual Spanish and another citizenship (other than the above) will be deemed Spanish for the purposes of determining the law governing his or her succession.

The fact that several jurisdictions (e.g., England and Wales) remit to Spanish succession laws with regard to Spanish property of its citizens has given rise to complex lawsuits in Spain, where the plaintiff has claimed the application of Spanish forced heirship rules to the inheritance of Spanish-located real estate held by a foreign deceased person.

Although this is still a debatable issue, the mainstream position of the Spanish courts may be summarized as follows.

- ▶ The Spanish Civil Code only accepts remissions made by foreign law where the foreign conflict rule remits back to the Spanish law. Spanish courts will never accept remissions to third countries' laws.
- ▶ The Spanish Supreme Court has issued several case law decisions regarding remissions to Spanish law in cases of inheritance of Spanish-located properties where the deceased was a non-Spanish citizen. In general, remission to Spanish succession law is acceptable provided that the whole succession is governed by the law of only one country (Spain). Consequently, and generally, the Spanish courts would not accept that the succession by reason of death is governed both by the Spanish law with regard to certain items of the estate (Spanish properties, for instance) and foreign laws with regard to the remaining assets.

10.2 Succession

The rights to the estate of a person are transmitted from the time of his or her death. The inheritance includes all assets, rights and obligations of a person, not extinguished by his or her death. Succession defers to the will of an individual expressed in a will and, failing that, by law. The first is called probate, and the second legitimate. It may also be conferred in part by the will of an individual, and another by law.

10.3 Forced heirship

According to the Spanish Civil Code, forced heirship rules are as follows:

- ▶ Children and other descendants are entitled to two-thirds of the estate. One-third must be split equally among all children and the other one-third may be freely given to any of the descendants (children or grandchildren). When a child has died, leaving his or her own descendants, the portion of the estate attributable to the deceased children passes on to his or her descendants.
- ▶ If there are no descendants, ascendants are entitled to one-half of the estate, provided that there is no surviving spouse. If there is a surviving spouse, the ascendants' compulsory share is one-third of the estate.
- ▶ The surviving spouse's rights over the estate are as follows:
 - ▶ If there are descendants, the surviving spouse has a right of usufruct over one-third of the estate.
 - ▶ If there are no descendants, but there are ascendants, the surviving spouse has a right of usufruct over one-half of the estate.

- If there are neither descendants nor ascendants, the surviving spouse has a right of usufruct over two-thirds of the estate.
- Special rules apply in the case of separated couples.

The balance may be freely disposed of by will.

10.4 Matrimonial regimes and civil partnerships

Marriage

According to the Spanish Civil Code, a marriage is ruled by the following principles:

- The common national law of the spouses
- If there is no common citizenship, by the law of the citizenship or residence of either of the spouses, stated in a public deed before the marriage
- Failing this, by the law of the first common domicile after the marriage
- Finally, failing this, by the law of the place of celebration of the marriage

Additionally, before 1991, other conflict laws were in force (generally the husband's national law ruled the marriage), which has caused complex case law.

According to the Spanish Civil Code, the spouses can freely choose the economic regime of the marriage before the marriage or change it during the marriage.

If they do not make an express selection, a joint ownership (*sociedad de gananciales*) will apply.³ Under this regime, income or gains obtained by any of the spouses during the marriage are made common to both of them.

Both spouses manage common goods jointly. Any asset acquired by any of the spouses under the community regime is deemed to be common to both, unless it is duly proved that it has been acquired using money or goods that only belong to one of the spouses. Each of the spouses will, however, keep sole property, *inter alia*, over the following assets (*bienes privativos*):

- Assets held before the marriage is celebrated or the community regime is established
- Assets received by inheritance or donation
- Assets received in exchange of other *bienes privativos*

Nevertheless, the gain derived from the sale of an individual right is common to both spouses. Additionally, special rules apply to the main family home.

A separate property regime (*separación de bienes*) is selected by a growing number of couples, especially by high-net-worth individuals (HNWIs). In addition, this regime is applicable by default in Catalonia and the Balearic Islands. If this regime is applicable, each spouse has his or her own separate possessions, which are managed individually.

10.5 Intestacy

Testamentary documents and intestacy

A will is a legal document that regulates an individual's estate after death. Spain is a member of the Hague Treaty of 5 October 1961 regarding will formalities, and consequently, will accept the formal validity of a will drawn under:

³ That is, spouses who marry without a marriage contract have a joint estate by law.