

Spain

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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).

Spanish IGT is basically regulated at State level. However, the autonomous regions are empowered to introduce modifications to the general (State) IGT regime (e.g., increase the range of reductions, modify the general scale of rates or increase the range of tax credits). All the autonomous regions have exercised these legislative powers, with the practical consequence that the tax burden borne by the taxpayer under regional rules is considerably lower than under general/state legislation (in some regions near to zero for inheritances between spouses and descendants).

Additionally, the autonomous regions of Navarre and Basque Country have a wide right to self-regulate gift and inheritance tax. 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 non-resident or when the real estate was located outside of Spain). If so, State Law applied in any case, with nonresident individuals being generally subject to a much higher tax burden only because of their non-resident status. However, as a reaction to a recent European Court of Justice sentence of 2 September 2014 based on discriminatory grounds, the Spanish government has adapted IGT Law to the European Court of Justice premises, eliminating the discriminatory treatment by reason of residency amongst EU/EEC individuals as of 1 January 2015. It should be noted that there is an opportunity to recover taxes unduly paid under the former and discriminatory IGT Law.

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

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.

If the donor is a corporation, then a tax deduction of 35% of the amount donated could be applied if certain requirements are met. Nevertheless, the tax base of the deduction (this is the amount to which the 35% deduction would be applied) 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 tax deduction of 10% (or 25% if some conditions are met) of the amount donated could be applied, being also the tax base of the deduction subject to the limit of 10% of the period's total taxable base.

1.4 Transfer duty

Inheritance or gifts are exempt from Spanish transfer duty.

1.5 Net wealth tax

Following the publication of Royal Decree 13/2011 on the Official Gazette, Spanish wealth tax was reintroduced for 2011 and 2012, and subsequently extended to 2013, 2014 and 2015. The applicable law will continue to be mainly the same as the one in force prior to its suspension in 2008, with a number of slight changes.

Are there any exempt assets?

The law grants exemptions to certain assets, notably:

- ▶ Habitual dwelling: The Royal Decree introduces an exemption on the first €300,000 (previous exemption amounted to €150,000) of property worth per taxpayer.
- ▶ Family business relief: This continues to apply and exempts from tax business property, including shares in operating companies, provided certain conditions are met.
- ▶ Works of art: Provided certain requirements are met and the National Heritage regulations are complied with.

Is there any other exempt amount?

The Royal Decree has increased the general amount exempt to €700,000 of net worth per taxpayer, now including nonresident individuals as well (unlike prior to 2008). Consequently, taxpayers with net taxable assets below €700,000 will not be subject to tax. The law continues to include an obligation to submit tax returns for taxpayers with gross assets in excess of €2 million, even if there is no tax payable.

What are the rates and when is the tax due?

The rates remain unchanged. They are determined by application of a progressive scale of rates ranging from 0.2% to 2.5%. The current marginal rate of 2.5% applies to taxable net worth (after the €700,000 reduction) in excess of €10.7 million.

Tax filings and payments will be due at the same dates as income tax filings, i.e., May or June 2015 in respect of the year ended 31 December 2014.



Does this apply on the same terms all over Spain?

No. Wealth tax is a tax collected by the autonomous communities. At present there are different general exempt amounts and different scales in a number of communities. In addition, the Madrid autonomous community has a 100% quote relief, therefore exempting their taxpayers from wealth tax.

However, amendments in the regional laws are to be expected, so we recommend checking the position on a regular basis.

Non-Spanish tax residents are also subject to Wealth Tax when owning assets located or exercisable in Spain. Historically, State Law was applicable in those cases. However, as a result of the 2015 Tax Reform, Non-Spanish tax residents would be able to apply the rules corresponding to the autonomous community where most of their wealth is located or exercisable in Spain (most common case would be foreigners owning real estate properties in Spain).

2. Who is liable?

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, according to the following rules.

Unlimited liability

Resident taxpayers are liable to the tax on their share in the estate of the deceased or the assets donated, or the life insurance benefit, regardless of where the assets forming part of the estate, or received by virtue of donation, are located, or where the life insurance policy is contracted.

Limited liability

Nonresident taxpayers are only liable for the tax 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 gift and inheritance tax purposes. However, the Spanish tax authorities have at least twice ruled that shares in foreign companies whose main assets are Spanish *situs* real properties may be deemed Spanish *situs* assets for gift and inheritance tax purposes.

2.1 Residency

A person will generally be a Spanish tax resident if:

- ▶ Presence in Spain exceeds 183 days during the 365-day period preceding the date of the decease or donation.
- ▶ Spain is deemed to be the center of economic interest (direct or indirect) of the donee or heir during such period.
- ▶ A presumption of residence arises if an individual's family lives in Spain.

2.2 Domicile

Inheritance tax

In the case of inheritance, bequest or other type of succession, if the deceased had been a resident in a Member State of the European Union or the European Economic Area, different from Spain, taxpayers (Spanish tax residents) will be allowed to apply the rules approved by the Autonomous Community where the highest value of the assets (and rights) forming part of the estate were located.



In those cases where the deceased had been a resident of a particular Autonomous Community, the non-resident taxpayers in Spain, but residents in another Member State of the European Union or the European Economic Area, will be allowed to apply the rules approved by said Autonomous Community.

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, the taxpayers resident in a Member State of the European Union or the European Economic Area, different from Spain, will be allowed to apply the rules approved by (i) the Autonomous Community where the registered office of the Spanish insurer were situated or (ii) the Autonomous Community in which the foreign insurer 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, the non-resident taxpayers in Spain, but residents in another Member State of the European Union or the European Economic Area, will be allowed to apply the rules approved by the Autonomous Community 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 a real estate property located in Spain, the nonresident taxpayers in Spain, but residents in another Member State of the European Union or the European Economic Area, will be allowed to apply the rules approved by the Autonomous Community where the real estate property were situated.

In those cases where the real estate properties were located outside Spain but in a Member State of the European Union or the European Economic Area, the Spanish resident taxpayers will be allowed to apply the rules approved by the Autonomous Community in which they reside. For this purposes, a Spanish tax resident will be considered as a resident of a particular Autonomous Community provided that such individual had been a resident in that particular autonomous region for a greater number of days during the five-year period prior to the taxable event.

3. Rates

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

Up to	EUR	Remaining	%
€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



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 mentioned in Section 4.5).

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

Additional relevant issues

- ▶ 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.
- ▶ The legislation provides for quick succession relief for assets transferred one or more times within a period of 10 years (for transfers to descendants on death only).
- ▶ There are special rules governing life and temporary usufructs created by reason of inheritance or donation.
- ▶ Important reductions may apply to the transfer of family business and/or art collections to certain family members.
- ▶ Foreign tax relief is available by application of the ordinary imputation method (i.e., the lesser of the foreign tax paid and Spanish tax attributable to the foreign asset).
- ▶ 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.

310



- Since 1 January 2004, many of the autonomous regions have established some modifications in the gift and inheritance tax, including the following:
 1. Balearic Islands, Asturias, Galicia and Murcia have almost eliminated taxation in cases of inheritance by Group I acquirers (descendants under 21 years old).
 2. La Rioja, Cataluña, Castilla La Mancha and Madrid, have almost eliminated taxation in cases of inheritance by Group I and II acquirers (ascendants, descendants and spouse). Murcia has recently removed the 99% tax credit for heirs belonging to Group II.
 3. For 2014, Catalonia only maintains the 99% tax credit in the case of inheritance by the spouse. For all other heirs, such tax credit will be reduced progressively as the taxable base increases.
 4. Castilla La Mancha and Madrid have almost eliminated taxation in cases of donation to Group I and II acquirers (under certain formal conditions).
 5. Valencia has recently reduced the applicable discount from 99% to 75% in cases of inheritance and donation regarding Group I and II acquirers.
 6. Aragón has established an exemption up to €3 million in cases of heirs under legal age (18 years).

As explained above, these regional regulations only apply provided certain conditions relating to the residence of the deceased, heir or donee are met.

With regard to Basque Country and Navarre, transfers of assets by residents in these territories to their spouse, ascendants and descendants by inheritance and by certain donations are exempt from gift and inheritance tax or taxed at very reduced rates.

4. Exemptions and reliefs

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

Encumbrances and liens attached to the assets of the estate or donated along with the liabilities transferred by the deceased or donor and certain debts and expenses related to the deceased may be deducted. There are significant variations depending on whether the taxpayer is a Spanish tax resident or nonresident.

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:
 1. Group I: descendants under 21: €15,956, plus €3,990 for each year the descendant is under 21 years. Total reduction may not exceed €47,858.
 2. Group II: descendants older than 21, spouse and ascendants: €15,956.
 3. Group III: ascendants and descendants by affinity. Second- and third-degree collaterals (brothers and sisters, uncles and aunts, nieces and nephews): €7,993.



4. Group IV: others: 0

5. Filing procedures



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 €9,195 where 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, forced heirship rights of the surviving spouse are 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, generally speaking, 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). Where 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 community regime (*sociedad de gananciales*) will apply. Under this regime, income or gains obtained by any of the spouses during the marriage is 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:

- ▶ The laws of the deceased's domicile, nationality, place of residence at the time of execution of the will or at death.
- ▶ The laws of the place where the will has been executed.
- ▶ The laws where real estate is located, but only regarding real estate.

If there is no valid will at death, then the deceased's estate passes under predetermined rules known as intestate succession, in the following order:

- ▶ Children and other descendants (observing forced heirship rules applicable to the surviving spouse).
- ▶ Ascendants (observing forced heirship rules applicable to the surviving spouse).
- ▶ The surviving spouse (special rules apply in the case of separated couples).
- ▶ Other relatives, up to the fourth degree (uncles, aunts, nephews, nieces and cousins).
- ▶ The Spanish state.

10.6 Probate

The act by which a person disposes of assets or part thereof after their death is called a will. The testator may dispose of his or her property by inheritance or legacy. A will is a personal act: its formation cannot be left, in whole or part, at the discretion of a third party or made by commissioner or agent.

An individual that has no forced heirs may dispose by will of all his or her property or part thereof for any person having capacity to acquire them.

An individual having forced heirs may only dispose of property in the manner and within the limitations set out in forced heirship rules stated before.

11. Estate tax treaties

11.1 Unilateral rules

This is not applicable in Spain.

11.2 Double-taxation treaties

Spain has concluded estate tax treaties with France, Greece and Sweden.