



## 1. Types of tax

### 1.1 Inheritance and gift tax

According to the Spanish Gift and Inheritance Tax 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).

Gift and inheritance tax are similar across the different Spanish regions. However, the autonomous regions may introduce limited modifications to the general gift and inheritance tax regime as follows:

- ▶ They may increase or expand the range of reductions to the taxable base.
- ▶ They may modify the general scale of rates and the special personal rates.
- ▶ They may increase or expand the range of tax credits available.

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.

The legislation of an autonomous region applies where the heir or donee is a Spanish resident and the deceased or donee has been a resident for a greater number of days in that particular autonomous region during the five-year period prior to the decease or donation.

Donations of Spanish real estate to Spanish resident donees are taxed by application of the legislation of the autonomous region where the property is located.

### 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 has been reintroduced for 2011 and 2012. 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.
- ▶ Business property relief: this continues to apply, and exempts from tax business property, including shares in operating companies, provided certain conditions are met.

### 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 non-resident 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 2012 in respect of the year ended 31 December 2011.

### 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 in a number of communities. In addition, the Madrid autonomous community has a 100% quote relief, therefore exempting Madrid taxpayers from wealth tax.

However, given that the reintroduction of wealth tax has only taken place recently, amendments in the regional laws are to be expected, so we recommend checking the position on a regular basis.



## 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.
- ▶ 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.

### Limited liability

Non-resident 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 Spanish.

### 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.

### 2.2 Domicile

#### Inheritance tax

Inheritance tax shall be levied by the tax office having jurisdiction over the place of the domicile of the deceased. In cases where the place of the commencement of succession is overseas, inheritance tax shall be levied by the tax office of Madrid (subject to certain exceptions).

#### Gift tax

Gift tax shall be levied by the tax office having jurisdiction over the place of the domicile of the donee (except in gift of real estate assets in which the tax office having jurisdiction would be the one where the property is located). In a case where the donee is a non-resident, gift tax shall be levied by the tax office of Madrid.



### 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
€159,634.83	€23,063.25	€79,754.30	21.25
€239,389.13	€40,011.04	€159,388.41	25.50
€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<sup>1</sup>, as well as his/her relationship with the donor/deceased (as per the groups mentioned in section 4.5):

Donee's pre-existing wealth (EUR 000)	Group (family relationship)		
	I and II	III	IV
0-403	1.0000	1.5882	2.0000
404-2,007	1.0500	1.6676	2.1000
2,007-4,020	1.1000	1.7471	2.2000
4,020+	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.

<sup>1</sup> The net wealth prior to the acquisition is calculated accordingly to Spanish Net Wealth Tax provisions (see point 1.5).



### Additional relevant issues

1. 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.
2. 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).
3. There are special rules governing life and temporary usufructs created by reason of inheritance or donation.
4. 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).
5. 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.
6. 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.
7. Since 1 January 2004, many of the autonomous regions have established some modifications in the gift and inheritance tax, including the following:
  - a. Balearic Islands, Asturias and Galicia have almost eliminated taxation in cases of inheritance by Group I acquirers (descendants under 21 years old).
  - b. La Rioja, Cataluña, Valencia, Castilla La Mancha, Castilla y León, Madrid, Murcia and Canarias have almost eliminated taxation in cases of inheritance by Group I and II acquirers (ascendants, descendants and spouse).
  - c. Valencia (with certain limits), Castilla La Mancha, Castilla y León (except for ascendants), Madrid and Canarias have almost eliminated taxation in cases of donation to Group I and II acquirers (under certain formal conditions).
  - d. Aragón has established an exemption up to €3,000,000 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 on this whether the taxpayer is a Spanish tax resident or non-resident.



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:

1. Reductions on inheritance, depending on the family relationship between the heir and the deceased, as follows:
  - a. 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.
  - b. Group II: descendants older than 21, spouse and ascendants: €15,956.
  - c. Group III: ascendants and descendants by affinity. Second and third degree collaterals (brothers and sisters, uncles and aunts, nieces and nephews): €7,993.
  - d. Group IV: others: 0
    - I. Disabled acquirers: €47,858 or €150,253. Disability is determined according to Spanish social security regulations.
    - II. Acquisition of the principal private residence by close relatives: 95% of the real estate value, up to an amount of €122,606.
    - III. 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.
    - IV. There are a number of transitional measures applicable to life insurance policies contracted before 19 January 1987.
    - V. 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.

## 5. Filing procedures

Although autonomous regions may modify the date for payment, as a general rule, tax returns must be submitted within the following periods:

- ▶ 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.

### Filing procedure

Filing forms for this tax are as follows: form 650 for inheritance and form 651 for donations. Additionally, form 652 is used for certain simplified inheritances. These forms are used for both resident and non-resident taxpayers.

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.



## 6. Assessments and valuations

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

## 7. Trusts, foundations and private purpose funds

Trusts are institutions alien to the 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 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 €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.





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- ▶ 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. 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 their assets or part thereof after their death will be 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 the following countries: France, Greece and Sweden.

## Contact

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