

# Spain

## Contact

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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).

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/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 IHT benefits under regional rules to any individual, regardless of whether resident in Spain, the EU/EEA or a third country. However, IHT Law has not been modified yet. As a result of the above it should be noted that 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 €150) to 30% (amounts exceeding €150) 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 €150) to 35% (amounts exceeding €150).

## 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 rule 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 2018. It is likely that NWT will also be extended in future years.

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.





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 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

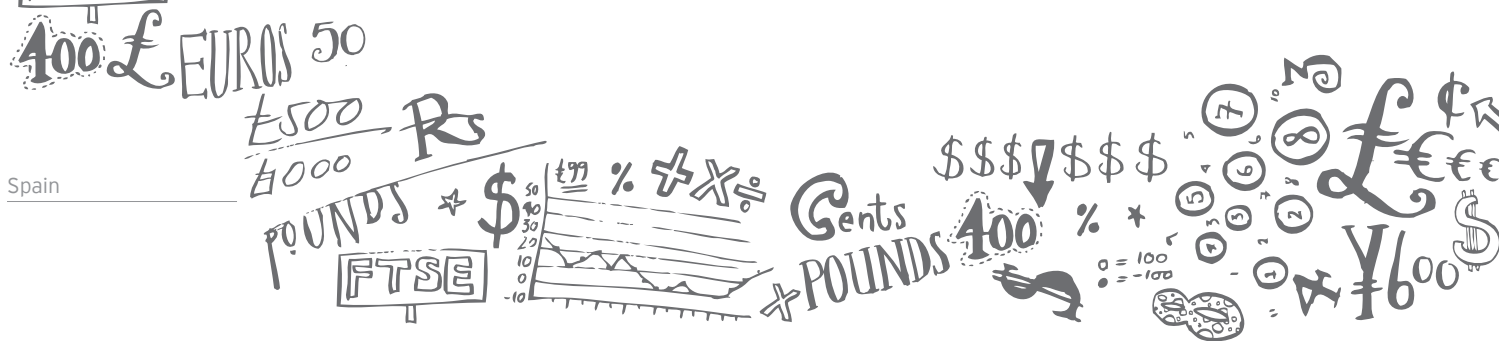
Therefore, the effective maximum rate may reach 81.60% (i.e., maximum general rate: 34% x maximum personal rate: 2.4 = 81.60%).

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, Galicia 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 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 and Madrid have almost eliminated taxation in cases of donation to Group I and II acquirers (subject to formal requirements).
  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 €3 million in cases of heirs under legal age (18 years).
  7. Andalusia have ruled a €1 million allowance in cases of inheritance by Group I and II (ascendants, descendants and spouse). As explained above, these regional rules apply only when certain conditions related to the residence of the deceased, heir or donee are met.

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



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	Remaining	%
€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

## 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: €15,956, plus €3,990 for each year the descendant is under 21 years. Total reduction may not exceed €47,858.
  - Group II: descendants older than 21, spouse and ascendants: €15,956.
  - Group III: ascendants and descendants by affinity (second- and third-degree collaterals (brothers and sisters, uncles and aunts, nieces and nephews)): €7,993.
  - Group IV: others: there is no reduction.
- Disabled acquirers: €47,858 or €150,253. 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 €122,606.
- 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.<sup>2</sup>
- 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

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





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.

There is a general threshold of €700,000 (lower in some regions) available for each taxpayer, either resident or not resident in Spain. As a result, taxpayers with taxable assets below €700,000 will not be subject to NWT. Nevertheless, NWT rules provide that individuals whose assets and rights' values are above €2 million are obliged to file the NWT return even though the resulting tax liability is zero.

- ▶ Habitual dwelling: Each taxpayer has an exemption on the first €300,000 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 are exempt under certain requirements.
- ▶ Works of art are exempt provided that certain requirements are met and the National Heritage regulations are complied with.
- ▶ Household items (with some exceptions, such as jewelry or certain type of leather) are exempt.
- ▶ The amounts saved through a retirement or pension plan are exempt.

## 5.1 Inheritance and gift tax

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

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

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## 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.<sup>3</sup> 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:

- ▶ 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)

<sup>3</sup> I.e., spouses who marry without a marriage contract have a joint estate by law.



- ▶ 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 the forced heirship rules stated before (one-third of the state).

## 11. Estate tax treaties

### 11.1 Unilateral rules

This is not applicable in Spain.

### 11.2 Double-taxation treaties

For the purpose of inheritance and gift tax, Spain has concluded estate tax treaties with France, Greece and Sweden.

On the other hand, regarding net wealth tax, Spain has a large network of international treaties to avoid double taxation on income. Most of these treaties include net wealth tax provisions.