

Private Client 2020

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Private Client 2020

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Lexology Getting The Deal Through is delighted to publish the eighth edition of *Private Client*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Guernsey and Jersey.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Anthony Thompson and Nicole Aubin-Parvu of Forsters LLP, for their continued assistance with this volume.



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Andorra

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Cases & Lacambra

TAX

Residence and domicile

1 | How does an individual become taxable in your jurisdiction?

The tax liability of an individual will be determined by his or her tax residence. It entails the obligation to include the worldwide income obtained or what the Personal Income Tax Act (Law 5/2014 of 24 April 2014 (PIT)) defines as tax liability by personal obligation.

Regarding the individual's tax residence, the PIT establishes that an individual is considered as a tax resident in Andorra if:

- he or she stays in Andorra for more than 183 days per calendar year, taking into consideration occasional absences to calculate the period of residence, unless the individual provides a certificate of tax residence in another country (permanence test); or
- his or her main or central place of business is directly or indirectly located in Andorra (centre of economic interest test).

Finally, the law includes a rebuttable presumption that if an individual's husband or spouse and his or her dependent minor children reside in Andorra, he or she will be considered as resident in such jurisdiction.

Income

2 | What, if any, taxes apply to an individual's income?

Taxpayers in Andorra must include their worldwide income, including capital gains, in their declaration. Moreover, capital gains derived from the sale of real estate located in Andorra are subject to a specific tax and, consequently, are not subject to PIT.

Capital gains

3 | What, if any, taxes apply to an individual's capital gains?

The most important exemptions to an individual's capital gains are:

- capital gains derived from the sale of local or foreign companies if:
 - 1 the individual held a percentage share of less than 25 per cent of the company during the year prior to the sale; or
 - 2 the individual held a percentage share of more than 25 per cent uninterruptedly for at least the previous 10 years before the sale;
- capital gains derived from the sale of collective investments undertaking participations if the requirements in (1) or (2) are met; and
- capital gains derived from the sale of real estate properties located in Andorra if the individual held the ownership for the past 10 years. In the case of capital gains arising from a sale of real estate that had been held for less than 10 years, there is a special tax with degressive tax rates from 15 per cent to 1 per cent.

Lifetime gifts

4 | What, if any, taxes apply if an individual makes lifetime gifts?

In Andorra, there is no gift tax for individual residents; thus, any gift made in Andorra would not entail a tax levy.

The donor will be subject to tax if the gift generates a capital gain. However, the PIT provides exemptions in the case of family transactions up to the third degree of kinship.

Inheritance

5 | What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

There is no inheritance tax for individuals resident in Andorra. Consequently, if an individual resident in Andorra receives an inheritance, that inheritance would not entail any tax levy.

The deceased is not subject to taxes for capital gains derived from the mortis causa transfer.

Real property

6 | What, if any, taxes apply to an individual's real property?

Andorra has a local property tax that taxes real estate property located in Andorra. The tax is between zero and €0.75 per square metre of surface area of the property per year. It is not a relevant tax in terms of tax burden.

Non-cash assets

7 | What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

Imported goods are subject to indirect taxation (value added tax (VAT)) in Andorra, and the standard tax rate applicable is 4.5 per cent, governed by Law 11/2012 of 21 June 2012.

However, goods imported for personal use and enjoyment are exempt if the importation is linked to a change of tax residency.

Other taxes

8 | What, if any, other taxes may be particularly relevant to an individual?

The general tax rate for value added tax (VAT) is 4.5 per cent; however, special tax rates apply depending on the kind of good or service, as follows:

- zero per cent: public medical services, housing leases and public education;
- 1 per cent: private education services, food, books and newspapers;

- 2.5 per cent: transport and its commercialisation (except cableway transport), objects or art and private libraries, theatres, exhibitions and other cultural and social activities; and
- 9.5 per cent: financial services.

Reinsurance operations activities attract a special tax at a rate of 4 per cent and are not subject to VAT.

Trusts and other holding vehicles

9 | What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

As Andorra has not signed the Hague Convention on the Law Applicable to Trusts and on their Recognition and is a civil law country, trusts are not recognised.

There is no inheritance or gift tax. Consequently, tax planning regarding local assets will be not necessary.

Although there is no inheritance and gift tax in Andorra, there is always an international element that must be analysed for inheritors resident in Andorra. It is common for an Andorran tax resident to use an Andorran company to hold his or her assets in other jurisdictions. Andorran company shares will be the subject of the inheritance instead of the resident's foreign assets. This fact could reduce the tax burden in some cases.

Charities

10 | How are charities taxed in your jurisdiction?

Andorran tax residents do not have any tax incentive to donate money to charities.

Charitable institutions are not subject to – and thus not exempt from – corporate income tax. Consequently, they would not entail any tax levy.

Anti-avoidance and anti-abuse provisions

11 | What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

Andorra has implemented certain anti-avoidance rules but others have not been incorporated yet. As a consequence of BEPS projects, dividends paid by foreign companies to Andorran companies can only benefit from the protection against double taxation if the foreign subsidiary is subject to corporate income tax in their country of residence at a minimum tax rate of 4 per cent.

Moreover, transactions carried out solely for tax reasons that do not correspond to commercial reality and the real intentions of the parties may be subject to the General Tax Law.

TRUSTS AND FOUNDATIONS

Trusts

12 | Does your jurisdiction recognise trusts?

Regarding the recognition of trusts, see question 9. The taxation of foreign trust income is subject to the following rules (Technical Communication 25-11-15). The settlor remains the owner of the trust assets under Andorran law if possession and control of the assets do not pass to the beneficiary. However, in the case of an irrevocable trust, possession and control passes to the beneficiary, with the result that the beneficiary is the owner of the assets. As there is transmission of ownership in the creation of an irrevocable trust, a capital gain is incurred, with an exception for beneficiaries who are relatives of the

settlor up to a third degree of kinship. Income and capital gains linked to the trust will be allocated to the beneficiary or the settlor depending on who has the possession and control of the assets. A distribution of the assets is a gift to the beneficiary under Andorran law, either inter vivos or mortis causa, and is not subject to tax, since there is no inheritance and gift tax in Andorra.

Private foundations

13 | Does your jurisdiction recognise private foundations?

Private and public foundations that are focused on general interests and activities that benefit society are recognised by Andorran law (Law 11/2008, of 12 June, on foundations). Such foundations have separate legal personality from the founders and beneficiaries. Any income received from the foundation is treated as a gift and not subject to tax, as inheritance or gift tax does not exist in Andorra. However, private interest foundations that are used as wealth vehicles are not recognised in Andorran law, although Andorran residents can still be beneficiaries or founders of foreign private foundations of this nature.

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

14 | Does your jurisdiction have any form of legally recognised same-sex relationship?

Andorra recognises and permits same-sex civil partnerships. However, same-sex marriages are not permitted or recognised. Same-sex civil partnerships and opposite-sex marriages have the same status. In recent years, Andorra has intended to adapt its law to neighbouring jurisdictions.

Heterosexual civil unions

15 | Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

The Qualified Law of Stable Union of Couples (Law 4/2005 of 21 February 2005) recognises the legal implications of a stable union. The stable union has the same effect as marriage for tax and succession purposes.

SUCCESSION

Estate constitution

16 | What property constitutes an individual's estate for succession purposes?

The estate for succession purposes will be the total net wealth of the deceased, calculated as the difference between assets and liabilities. In the case of co-ownership affecting an estate, participation in undivided co-ownership will be included in the net wealth.

Disposition

17 | To what extent do individuals have freedom of disposition over their estate during their lifetime?

Spouses can choose their matrimonial property regime. If they have not entered into a prenuptial agreement, the general regime recognised by Andorran laws is the separation of goods. If they want to enter into a different system, it must be requested and granted before a local public notary.

Additionally, Andorran law provides a specific rule relating to claw-back of gifts on death to enforce the forced heirship rules.

18 | To what extent do individuals have freedom of disposition over their estate on death?

Act 46/2014 establishes that there are two important compulsory restrictions on testamentary freedom:

- one-quarter of the deceased's estate must be transferred to his or her children or if none, his or her ascendants; and
- one-quarter of the estate must be transferred to the surviving spouse if the spouse does not have sufficient economic resources to maintain his or her economic standard of living.

The estate is calculated by the difference between the assets and the liabilities of the deceased. In conclusion, no more than half of the total estate is restricted.

Intestacy

19 | If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

The legislation on succession follows the constitutional principles that recognise the right of citizens to private property and inheritance. They determine that the death of an individual does not extinguish the set of rights and duties that were part of his or her heritage, nor are they directly attributed to the state.

At the moment of an intestate death, intestate succession is opened, as follows:

- the children of the deceased inherit in their own right, and their descendants by right of representation;
- if there are no children or other descendants of the deceased, the widowed spouse inherits – in this case, the parents of the deceased have the legitimate right, but the rest of the descendants will not have this right;
- if there are no children, descendants or spouse, the parents inherit equally; and
- if the previous assumptions are not fulfilled, the collateral relatives of the deceased inherit.

The Andorran tax-resident relatives listed above do not have any tax incentive to donate money to charities.

The state will accept the inheritance for the benefit of inventory. In this case, the state must allocate the goods or their value to an establishment of social assistance or a cultural institution in the region where the deceased had his or her last residence.

Adopted and illegitimate children

20 | In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

Adopted children are treated as equal to natural legitimate children. In accordance with Andorran regulations, adoption results in kinship between the adopting family and the adoptee. According to the inheritance law, adoptees have the same rights as legitimate children in the adoptive family, both in intestate succession and in relation to the status of the legitimate children. On the other hand, a comparison between adoptive and biological filiation cannot be applied in testamentary succession because there may be discrimination against adopted children with respect to biological children in cases where the will of the deceased is manifested in a private will.

Distribution

21 | What law governs the distribution of an individual's estate and does this depend on the type of property within it?

The distribution of assets after the death of the deceased is regulated by Law 46/2014 of 18 December 2014 on succession following a death. This law applies regardless of the type of asset as the estate of the deceased is transferred as a *res universitas* (ie, a single patrimonial set).

Formalities

22 | What formalities are required for an individual to make a valid will in your jurisdiction?

The main requirement to grant a will is to be over 14 years old and have full capacity to act at the time of the event. Andorran inheritance law allows a will to be made before a notary, both open and closed. It also allows for a holographic testament.

Foreign wills

23 | Are foreign wills recognised in your jurisdiction and how is this achieved?

Andorran international law recognises foreign wills when:

- the law applicable at the time of death is Andorran law;
- the deceased had his or her domicile and residence in Andorra at the time of death; and
- the deceased held property or rights located in Andorra.

Administration

24 | Who has the right to administer an estate?

The deceased may appoint any person with legal capacity to administer an estate. The interested parties, heirs, legatees and others favoured by the inheritance have the right to administer the estate.

25 | How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

To transfer the assets and rights of the deceased to the heirs, the heirs must have previously accepted the inheritance (either expressly or implicitly). Before acceptance of the inheritance, heirs may only perform acts of conservation, defence and ordinary administration.

All the heirs are individually legitimised by the acts of conservation and defence of the goods; however, for other acts of ordinary administration, the agreement of the majority is necessary. These acts do not imply acceptance.

Challenge

26 | Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

In the hypothetical case of debts, contingency or conflict in the distribution of the inheritance, the parties can mutually agree to submit to mediation or go to the civil jurisdiction.

CAPACITY AND POWER OF ATTORNEY

Minors

27 | What are the rules for holding and managing the property of a minor in your jurisdiction?

Age is an important consideration when conducting legal business with full legal efficiency. A minor must obtain more qualified protection from the legal system, which translates into consideration of a minor and a limited (rather than full) ability to act. The term 'minor' is defined by the subject not having full capacity to act, nor sufficient mental maturity to carry out legal business with full responsibility. The Andorran legal system has developed some institutions aimed at helping children who cannot take care of themselves. The first and most important institution is parental authority, which is usually exercised by the father and mother. The protection of the child can also be carried out by state institutions and by the justice system. The second institution is guardianship, which takes place when the parents have died or have been deprived of parental authority.

Until his or her emancipation or until he or she is 18 years old, the minor's legal representatives are the parents or guardian, who will manage the assets and the property of the goods under judicial control.

Age of majority

28 | At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

The age at which an individual attains legal capacity for the purposes of holding and managing property is 18. Regarding the effectiveness of the minor's actions, without the intervention of his or her legal representative, the following clarifications should be established: The Andorran legal system has always taken into account that carrying out an act with patrimonial transcendence on the part of a minor is not the same as that act performed by a minor close to 18 years. The faculties of perception and understanding are very different in both cases, although neither has full capacity to act. Therefore, in Andorra, contracts awarded by a minor without the consent of his or her legal representative are void, whether they were for his or her benefit or against his or her interests. In this sense, the rule of injury has no applicability.

As for the effects of acts performed by minors, if an act is carried out by a minor who does not have sufficient natural capacity to understand, the absolute nullity of the act shall be declared. If the minor has the capacity to understand, the solution must be nullity. The validity and effectiveness of the act will be contingent on the successful challenge by the minor or his or her legal representative.

Loss of capacity

29 | If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

The affairs of someone who has lost capacity are managed through an incapacity procedure, which results in an agreement to appoint a guardian or a curator. The guardian or curator must be registered in the corresponding Civil Registry, in the margin of the birth certificate of the individual who is incapacitated.

The ruling declaring the incapacity of an individual expresses the extent of the individual's incapacity. The appointment of a guardian or curator is made by a judge, who chooses the person he or she considers to be the most suitable. The guardian holds the legal representation of the incapacitated individual and administers the assets under judicial control. In addition, the guardian must care for the incapacitated

individual and, in particular, must ensure his or her moral and material well-being, and do whatever it takes for him or her to recover capacity and achieve social reintegration.

IMMIGRATION

Visitors' visas

30 | Do foreign nationals require a visa to visit your jurisdiction?

Andorra does not provide any visas to visitors. According to immigration law, foreign nationals do not need a visa to visit Andorra if they stay fewer than 90 days in the country in a one-year period. EU citizens only need a valid passport or ID card.

If visitors wish to stay in Andorra for more than 90 days in a year, immigration law specifies that they need an immigration permit.

31 | How long can a foreign national spend in your jurisdiction on a visitors' visa?

See question 30.

High net worth individuals

32 | Is there a visa programme targeted specifically at high net worth individuals?

There are different kinds of administrative authorisations with various requirements in Andorran immigration law. Broadly speaking, there are two kinds of permits: the 'residence and work permit' and the 'residence without work permit'. The applicant must:

- be over 18 years old or an emancipated minor;
- have enough economical resources for him or herself and his or her dependants in Andorra;
- contract health insurance (covering illness, incapacity and old age) for him or herself and for his or her dependants;
- have a dwelling in Andorra (ownership or rental);
- have an effective residence in Andorra for at least 90 days per year (he or she cannot work in Andorra; however, he or she can perform the necessary operations for the managements of his or her wealth);
- invest €400,000 in real estate located in Andorra, equity of resident companies, Andorran debt or financial instruments or non-remunerated deposits in the Andorran National Institute of Finance; and
- make a non-refundable deposit of €50,000, plus €10,000 for each dependant residing in Andorra.

33 | If so, does this programme entitle individuals to bring their family members with them? Give details.

Yes. Non-lucrative residents can bring their family members as dependant residents if they meet the requirements listed in question 32.

These family members will have the same rights to reside in Andorra as the non-lucrative resident, but their authorisation depends on the authorisation of the permit holder.

34 | Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

A non-lucrative resident has a right to reside in Andorra during the time allowed according to the residency permit. However, non-lucrative residents can renew their residency if they meet all the requirements. The first authorisation and renewal will be for a period of two years. From then on, every renewal will be for three years.

- 35 | Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

To obtain Andorran nationality, a person must have lived in Andorra for the past 20 years, prove his or her integration into Andorra and submit the necessary documentation to the government. A person who marries an Andorran national will also acquire nationality if he or she has permanently resided in Andorra for the three years before or after the marriage and has proof of his or her integration into Andorra.

UPDATE AND TRENDS

New legislation and current developments

- 36 | Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

No updates at this time.

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