

PRIVATE CLIENT

Andorra



Private Client

Consulting editors

Anita Shah, Ludovica Rabitti, Ziva Robertson, Jennifer Ronz

McDermott Will & Emery

Quick reference guide enabling side-by-side comparison of local insights, including into tax; trusts and foundations; same-sex marriages; civil unions; succession; capacity and power of attorney; immigration; and recent trends.

Generated 21 November 2022

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2022 Law Business Research

Table of contents

LEGAL FRAMEWORK

Key legislation
Real property
Establishing a business

TAX

Residence and domicile
Income
Capital gains
Lifetime gifts
Inheritance
Real property
Non-cash assets
Other taxes
Trusts and other holding vehicles
Charities
Anti-avoidance and anti-abuse provisions

TRUSTS AND FOUNDATIONS

Trusts
Private foundations
Disputes

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships
Heterosexual civil unions

SUCCESSION

Estate constitution
Disposition
Intestacy
Adopted and illegitimate children
Distribution
Formalities

Foreign wills

Administration

Challenge

CAPACITY AND POWER OF ATTORNEY

Minors

Age of majority

Loss of capacity

IMMIGRATION

Visitors' visas

High net worth individuals

UPDATE & TRENDS

Key developments

Contributors

Andorra



Alberto Gil
alberto.gil@caseslacambra.com
Cases & Lacambra

CASES&LACAMBRA



Albert Hinojosa
albert.hinojosa@caseslacambra.com
Cases & Lacambra



Marc Cantavella
marc.cantavella@caseslacambra.com
Cases & Lacambra

LEGAL FRAMEWORK

Key legislation

What key legislation and regulations are relevant to foreign individuals moving to or investing in your jurisdiction? What government bodies are charged with enforcing these laws and what is the extent of their powers?

Foreign investment in Andorra is defined by Law 10/2012, of 21 June, on foreign investment in the Principality of Andorra (FI Law) as the investment by any means in real estate properties or companies located in the Principality of Andorra by (1) non-Andorran persons or non-resident natural persons, (2) legal persons of foreign nationality and (3) Andorran companies with direct or indirect foreign equity participation equal to or greater than 50 per cent in its share capital or its voting rights.

The investor must provide the Ministry of Economy with sufficient information about the applicant or shareholders – in case the applicant is a company – and the proposed venture, including its activity, financing and investments in the foreseeable future.

The government will reject requests of foreign investments from natural or legal persons with residence, domicile or nationality of countries considered as non-cooperative in money laundering and terrorist financing matters by the Financial Action Task Force, as well as foreign investments from natural and legal persons with an adverse report from the international agencies for the prevention of money laundering and terrorist financing.

Law stated - 19 September 2022

Real property

Are there any particular rules or restrictions on foreign individuals purchasing or investing in real property in your jurisdiction?

A foreign investment authorisation is also mandatory for foreign investors to acquire ownership rights and other rights in rem in respect of real estate located in Andorra.

In accordance with FI Law, investments in real estate made by legal persons of foreign nationality engaged commercially in the acquisition or construction of real estate with the aim of commercialising such real estate would not be allowed. Thus, foreign legal persons aiming to carrying out real estate business should incorporate an Andorran company as its branch in this jurisdiction.

Law stated - 19 September 2022

Establishing a business

Are there any particular rules or restrictions on foreign individuals establishing a business in your jurisdiction?

An investor shall obtain a foreign investment authorisation granted by the government of Andorra prior to the incorporation of a new company in Andorra, or prior to holding a percentage of share capital or voting rights greater than 10 per cent.

Once a foreign investment authorisation is granted and the company is duly incorporated, any modifications on its purpose, share capital, percentage of foreign participation or amendments that affect the conditions imposed by the original authorisation require the filing of an application for a new foreign investment authorisation.

TAX**Residence and domicile****How does an individual become taxable in your jurisdiction?**

Act 5/2014 of 24 April on the Personal Income Tax (PIT) Act sets tax liability by personal obligation. Therefore, residence is key in determining the tax liability of an individual and entails the obligation to include all income obtained worldwide.

The PIT Act sets forth two rules and a presumption to consider an individual as tax resident in Andorra:

- The substantial presence test: when the individual stays more than 183 days per calendar year in Andorra except when individuals prove that they have their tax residence in another country. Occasional absences shall be included to calculate the staying period.
- The centre of economic interest test: when the main place of business or income of the individual is directly or indirectly located in Andorra.

Finally, unless there is clear evidence by the individual demonstrating otherwise, the PIT Act presumes that if the non-legally separated spouse and underage children are tax residents in Andorra, the individual will also be considered a tax resident.

Law stated - 19 September 2022

Income**What, if any, taxes apply to an individual's income?**

All worldwide income, including the capital gains of an individual considered as a tax resident in Andorra, is subject to PIT at a nominal tax rate of 10 per cent.

Labour, business and real estate income benefits from a reduction of €24,000 and an additional bonus of 50 per cent on the nominal tax rate for the income between €24,000 and €40,000.

Savings income and non-real estate capital gains benefit from a reduction of €3,000.

Law stated - 19 September 2022

Capital gains**What, if any, taxes apply to an individual's capital gains?**

Capital gains are taxable in Andorra pursuant to Act 21/2006 of 14 December on the Real Estate Capital Gains Tax (the Real Estate Capital Gains Act) and the PIT Act.

Capital gains from real estate

Capital gains derived from the transfer of real estate located in Andorra are considered as real obligations applying to both tax residents and non-tax residents in Andorra.

These capital gains are subject by the Real Estate Capital Gains Act to a digressive tax rate from 15 per cent to 1 percent per cent depending on the years of ownership, which range from zero to nine years, while the transfer of real estate owned for at least 10 years is subject to a zero per cent tax rate.

Other capital gains

All non-real estate capital gains are subject to PIT at a tax rate of 10 per cent.

Capital gains obtained by Andorran tax-residents derived from the transfer of local or foreign companies or collective investment undertakings are exempt if any of the following conditions are met:

- if the individual has held a stake of less than 25 per cent of the share capital of a company or the participation in a collective investment undertaking during the previous year before the transfer; or
- if the individual has maintained the ownership of a stake in the share capital of a company or the participation in a collective investment undertaking for at least the previous 10 years before the transfer.

Non-real estate capital gains and savings income benefit from a reduction of €3,000.

Law stated - 19 September 2022

Lifetime gifts

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

There is no gift tax in Andorra. However, the donor is taxed if the gift would generate a capital gain. Notwithstanding the foregoing, both the PIT Act and the Real Estate Capital Gains Tax Act provide exemptions in the case of family gifts up to the third level of kinship.

Law stated - 19 September 2022

Inheritance

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 in Andorra, nor is the deceased taxed for capital gains derived from transfer on death.

Law stated - 19 September 2022

Real property

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

The acquisition of real estate in Andorra by an individual is taxed pursuant to Act 11/2012 of 21 June on the General Indirect Tax (IGI) Act at a tax rate of 4.5 per cent if the seller is a company or a professional regularly carrying out real estate transactions. Otherwise, if the seller is an individual the purchaser is taxed by the Transfer Tax Act of 15 December 2000 at a tax rate of 4 per cent.

The ownership of real property in Andorra is taxed by the relevant parish (local authority) where the real property is located. Since each parish has its own regulation, the real property can be taxed between zero and €0.75 per square

metre of surface area per year, depending on where it is located.

Law stated - 19 September 2022

Non-cash assets

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?

The import of assets other than cash to Andorra is taxed by the IGI Act at the standard tax rate of 4.5 per cent. However, assets imported for personal use and enjoyment are exempt if linked to the acquisition of the residence in Andorra.

The export of assets other than cash from Andorra is exempted pursuant to the IGI Act.

Law stated - 19 September 2022

Other taxes

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

There is no wealth tax in Andorra.

There is IGI in Andorra similar to VAT with a general tax rate at 4.5 per cent and other special tax rates depending on the kind of goods delivered or service provided, respectively. A summary of these tax rates is as follows:

- a super reduced rate of zero per cent for public medical services, public education and housing leases;
- a reduced rate of 1 per cent for private education services, books, newspapers and food;
- a special rate of 2.5 per cent for transport and its commercialisation (except cableway transport), objects or art and private libraries, theatres, exhibitions and other cultural and social activities; and
- an increased rate of 9.5 per cent for financial services.

Law stated - 19 September 2022

Trusts and other holding vehicles

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

Andorran law does not recognise trusts because Andorra has not signed the Hague Convention of Recognition of Trusts.

Nevertheless, there is usually an international or cross-border element that must be carefully analysed for inheritors resident in Andorra.

The tax treatment of foreign trust income has been specifically clarified by the Andorran tax authorities. The most important consideration is whether the assets have changed their possession. If the beneficiary does not have possession and control of the assets, Andorran law considers that the settlor is still the owner and the receiver of the income and capital gains. On the contrary, if the beneficiary has possession and control of the assets and it is an irrevocable trust, Andorran law considers that the beneficiary is the owner of the assets and the receiver of the income and capital gains.

At the time of distribution of the assets, the beneficiary will receive the trust assets as a gift or inheritance and since

there is no gift or inheritance tax in Andorra, the beneficiary will not be taxed on this capital gain.

Collective investment undertakings are used as an estate planning tool since these vehicles are taxed at zero per cent.

Andorran holding companies are also used for estate planning purposes.

Law stated - 19 September 2022

Charities

How are charities taxed in your jurisdiction?

Charitable activities carried out by charitable institutions are subject to but exempt from corporate income tax.

Law stated - 19 September 2022

Anti-avoidance and anti-abuse provisions

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

The implementation of the BEPS project in Andorra impacts Andorran companies that can only exempt the foreign dividends received if the subsidiary has been subject to a corporate income tax in its country of residence at a minimum tax rate of 40 per cent of the Andorran corporate income tax rate, which is currently 10 per cent (ie, 4 per cent).

In addition, Act 21/2014 of 16 October on General Taxation contains a general anti-abuse rule for wholly artificial arrangements put into place for the main purpose (or one of the main purposes) of obtaining a tax advantage that defeats the object or purpose of the applicable tax law.

Law stated - 19 September 2022

TRUSTS AND FOUNDATIONS

Trusts

Does your jurisdiction recognise trusts?

Andorran law does not recognise trusts because Andorra has not signed the Hague Convention of Recognition of Trusts.

Law stated - 19 September 2022

Private foundations

Does your jurisdiction recognise private foundations?

Act 11/2008 of 12 June on Foundations recognises private foundations and public foundations. These legal entities must be focused on legal objectives of general interest and activities that benefit society.

Private interest foundations, as wealth planning vehicles, are not regulated in Andorra. However, Andorran residents can create or be beneficiaries of foreign private foundations.

Law stated - 19 September 2022

Disputes

What issues typically give rise to disputes relating to trusts and foundations? How are these disputes resolved? (What are the most common causes of action? Which courts are used? Is alternative dispute resolution (ADR) available and commonly used? What remedies are commonly awarded?)

Andorran law does not recognise trusts because Andorra has not signed the Hague Convention of Recognition of Trusts.

Law stated - 19 September 2022

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

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

Same-sex civil partnerships are permitted and recognised in Andorra as a stable union by the Couple on Stable Union Qualified Act 4/2005 of 21 February. These relationships have the same tax and succession treatment as marriage.

It is worth mentioning that on 17 February 2023 the Qualified Law 30/2022 of individuals and families will enter into force, allowing same-sex civil marriages and civil partnerships. This law will replace the Couple on Stable Union Qualified Act 4/2005 of 21 February.

Law stated - 19 September 2022

Heterosexual civil unions

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

The Couple on Stable Union Qualified Act 4/2005 of 21 February recognises the legal relationships of heterosexual couples other than marriage, which has the same effect and treatment for tax and succession purposes.

It is worth mentioning that on 17 February 2023 the Qualified Law 30/2022 of individuals and families will enter into force, replacing the Couple on Stable Union Qualified Act 4/2005 of 21 February.

Law stated - 19 September 2022

SUCCESSION

Estate constitution

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.

Law stated - 19 September 2022

Disposition

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

Individuals in Andorra have freedom of disposition over their estate during their lifetime. However, if there are insufficient assets in the estate to pay for its reserved portion, legacies or gifts made to non-relatives and legatees could be reduced or revoked.

Law stated - 19 September 2022

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

Act 46/2014 of 18 December on Andorran Decease Succession establishes the restrictions to the testamentary freedom knowledge as reserved portions of the estate, which are:

- a quarter of the estate must be transmitted to first-degree relatives. The descendants of the deceased or, failing these, their ascendants, will have equal rights to this portion of the estate; and
- a maximum of one quarter of the estate is unavailable. The surviving spouse without sufficient economic resources to maintain his or her economic standard of living has a right to this portion of the estate.

Law stated - 19 September 2022

Intestacy

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?

If Act 46/2014 of 18 December on Andorran Decease Succession is applicable, when an individual dies in Andorra without leaving valid instructions for the disposition of the estate, the law calls as heirs of the deceased his or her relatives, the widowed spouse or the legal partner under a couple stable union. In the absence of heirs, the Andorran government will be appointed as the heir.

Once the heirs are determined, they must irrevocably accept or reject the inheritance (there is no time limit on the decision) although they may only accept the inheritance for the benefit of the inventory within six months from when they were called to accept or reject the inheritance.

The acceptance or rejection is pure and simple and cannot be partial. The acceptance can be express or tacit, while the rejection to the estate must be made expressly before an Andorran Public Notary or before the Andorran courts.

Law stated - 19 September 2022

Adopted and illegitimate children

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?

According to Andorran law, biological children have the same rights regardless of whether they were born in or out of wedlock.

Moreover, adopted children are treated as equal to biological children. In accordance with Andorran regulations, the

adoption causes kinship between the adopting family and the adoptee. According to the inheritance law, adoptees have the same rights as biological children in the adoptive family, both in intestate succession and in relation to the offspring.

However, a comparison between adoptive and biological filiation cannot be applied in the case of testamentary succession because discrimination between adopted and biological children is possible if it derives from the private will manifested in the disposition of the last will.

Law stated - 19 September 2022

Distribution

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 will be determined by their nationality or exceptionally by the law of the closer link country.

Law stated - 19 September 2022

Formalities

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

The subjective requirements to grant a valid will in Andorra are to be over 14 years old and have full capacity to act at that time. The formal requirements are to be granted before a public notary or as a holographic will.

Law stated - 19 September 2022

Foreign wills

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

Andorran law recognises foreign wills, which must be apostilled.

Law stated - 19 September 2022

Administration

Who has the right to administer an estate?

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

Law stated - 19 September 2022

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

The assets of the deceased pass to the heirs and successors by granting an acceptance and awarding deed before an

Andorran public notary.

Law stated - 19 September 2022

Challenge

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

There is no specific procedure to make a claim against an estate. The heirs or the beneficiaries can file a claim before the Andorran courts.

Law stated - 19 September 2022

CAPACITY AND POWER OF ATTORNEY

Minors

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

Under Andorran law an individual acquires the full capacity to manage his or her estate when he or she turns 18 old.

Minors have their capacity to act limited by law. Therefore, their legal representatives, are usually their parents or an appointed legal guardian, must act on their behalf.

Notwithstanding the foregoing, there is a specific legal status of emancipation that allows minors of between 16 and 18 years old to extend their limited capacity to act as if they are of legal age. Thus, even as minors, they can hold and manage their own estate under the assistance of a legal guardian.

Law stated - 19 September 2022

Age of majority

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

Under Andorran law, an individual acquires the full capacity to manage his or her estate when they turn 18 years old.

Law stated - 19 September 2022

Loss of capacity

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

When an individual loses capacity to manage his or her affairs, they can become incapacitated following a specific judicial procedure. This procedure must be brought by his or her relatives or, in their absence, by the Public Prosecutor and the Ministry of Social Affairs.

The purpose of that procedure is to limit his or her capacity to act and to provide him or her with duly protection measures.

Through this procedure, the judge will declare the individual incapable and appoint a legal guardian who will act as

legal representative and who will manage the affairs of the incapacitated individual on his or her behalf.

Law stated - 19 September 2022

IMMIGRATION

Visitors' visas

Do foreign nationals require a visa to visit your jurisdiction?

Andorra does not provide visas to visitors. According to Andorran immigration law, foreign nationals do not need a visa to visit Andorra if they stay for less than 90 days in a one-year period.

If visitors wish to stay in Andorra more than 90 days per year, they need to obtain an immigration authorisation following the relevant procedure according to Andorran immigration law.

Law stated - 19 September 2022

High net worth individuals

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

The Andorran immigration law establishes different types of authorisations to reside in Andorra among which there is a specific authorisation for high net worth individuals that allows them to acquire Andorran residency without working in Andorra.

The requirements to obtain this non-lucrative residency authorisation are the following:

- being of legal age;
- having sufficient financial resources;
- having illness, incapacity and old-age insurance;
- having a dwelling in Andorra (ownership or rental);
- establishing a main effective residence in Andorra for at least 90 days per year; or
- investing a sum of at least €350,000 in real estate located in Andorra, in equity of Andorran companies, in financial instruments issued by Andorran public entities or in a non-remunerated deposit before the Andorran law. Additionally, a non-refundable deposit of €47,500 for the applicant and €9,500 for each dependent family member should be deposited to the Andorran Financial Authorities (AFA).

Law stated - 19 September 2022

UPDATE & TRENDS

Key developments

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?

On 21 July 2022, the Andorran Parliament passed the Qualified Law 30/2022 of individuals and families, being an orderly compilation of all the regulations in force in the field of civil and family law and representing a step forward in the adaptation process of this law and the evolution of Andorran society. This Qualified Law will enter into force on 17

February 2023.

The Digital Assets Act 24/2022 was approved by the Andorran parliament on 30 June 2022, establishing a comprehensive regulatory framework for digital assets and blockchain technology in the country, including provisions governing the taxation of digital assets or digital currencies.

The Digital Assets Act aims to create an optimal balance between innovation, markets, society's preferences, technological development and the legal framework while allowing participation with certainty and legal security, and thus ensuring strict compliance with the basic pillars of the rules of operation of the capital market in terms of protection of personal data, electronic contracting, investor protection, market abuse, regulations for the prevention and fight against money or securities laundering and the financing of terrorism, among others.

Regarding proposals, the draft Digital Economy, Entrepreneurship and Innovation Law admitted to parliamentary debate on 21 July 2021 is still under the negotiation of the Andorran Parliament. This draft Law provides for new immigration authorisations targeted to digital nomads and start-up workers.

Additionally, on 29 June 2022, the Andorran government approved the draft Law to amend FI Law to be submitted to the Andorran Parliament for further consideration.

This future amend could have a relevant impact on high net worth individuals or foreign investors since it implies the liberalisation of investments for those countries with which Andorra has signed an agreement to avoid double taxation or a partnership agreement on foreign investment.

This will mean that foreign investments made by nationals or residents of countries such as Spain or France, among others, could be undertaken without prior administrative authorisation.

Law stated - 19 September 2022

Jurisdictions

	Andorra	Cases & Lacambra
	Armenia	Concern Dialog Law Firm
	Australia	Kalus Kenny Intalex
	Austria	DORDA
	Belgium	Loyens & Loeff
	Canada	Rogerson Law Corporation
	Colombia	Rimôn
	Cyprus	Patrikios Pavlou & Associates LLC
	Germany	POELLATH
	Hong Kong	Charles Russell Speechlys
	Ireland	Matheson
	Italy	Boies Schiller Flexner LLP
	Japan	Anderson Mōri & Tomotsune
	Liechtenstein	Gasser Partner
	Malta	GVZH Advocates
	Monaco	CMS Pasquier Ciulla Marquet Pastor Svara & Gazo
	Spain	Cases & Lacambra
	Switzerland	Kellerhals Carrard
	United Kingdom - England & Wales	McDermott Will & Emery
	USA	Holland & Knight LLP