

PANORAMIC

# PRIVATE CLIENT

Spain



 LEXOLOGY

# Private Client

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**Generated on: January 8, 2024**

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## 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?**

The key legislation for a foreign individual or foreign company moving to or investing in Spain comprises the following:

- An extensive network of more than a hundred double taxation conventions in force, which includes most Latin American countries.
- Royal Legislative Decree 5/2004 of 5 March on Non-Resident Income Tax, which comprises Spanish-sourced income and capital gains obtained by individuals who are not considered as residents in Spain.
- Act 27/2014 of 27 November on Corporate Income Tax, which regulates the taxation of Spanish companies, including the subsidiaries of foreign investors.
- Act 35/2006 of 28 November on Personal Income Tax, which covers the taxation of individuals resident in Spain and foreign individuals moving to Spain.
- Other relevant legislation includes the Value Added Tax Law, the Net Wealth Tax Law and the Inheritance and Gift Tax Law.

The government body in charge of enforcing tax legislation is the Spanish Tax Authority (the STA). Additionally, other regional or local bodies can enforce tax legislation, such as those corresponding to certain autonomous regions.

The main methods for the STA to challenge the amount of tax a taxpayer has paid by way of an initial assessment or self-assessment can be divided into two types of procedures: management procedures, which are limited in the faculties the STA can perform (for instance, with the limited verification procedure the STA is not allowed to request the financial statements of the taxpayer); and the tax audit procedure, which is the widest procedure the STA can use to investigate a taxpayer (as an example, the STA can request any type of documentation with tax significance, including the financial statements of the taxpayer, or enter properties, business premises and any other premises where activities subject to taxation are carried out, provided an administrative endorsement is obtained).

### Real property

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

Generally, there are no specific rules or restrictions applicable to foreign individuals purchasing or investing in real property. However, foreign individuals and foreign companies acquiring more than €3,005,060.52 in real estate in Spain must submit a form to the Ministry of Industry, Trade and Tourism for statistical purposes.

## Establishing a business

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

Generally, there are no specific rules or restrictions applicable to foreign individuals establishing a business. However, foreign individuals and foreign companies investing in Spain must submit a form to the Ministry of Industry, Trade and Tourism for statistical purposes.

## TAX

## Residence and domicile

### How does an individual become taxable in your jurisdiction?

Individuals resident in Spain are liable for income tax in Spain on their worldwide income, whether derived in Spain or abroad. Individuals who are non-resident in Spain are liable to tax on their Spanish-sourced income. Part-year residents do not exist under Spanish law. An individual is either resident or non-resident and is taxed as such for the entire tax year.

#### Residents

Act 35/2006 of 28 November on Personal Income Tax (the PIT Law) sets forth two rules and a presumption to consider an individual as a tax resident in Spain.

The substantial presence test applies when the individual remains more than 183 days per calendar year in Spain. Occasional absences shall be considered to calculate the period of residence, except when individuals prove they have tax residence in another country.

The centre of economic interest test applies when the main or central place of business of the individual is directly or indirectly located in Spain.

Finally, unless there is evidence to the contrary, an individual shall be deemed to be a resident of Spain if, in accordance with the aforementioned criteria, his or her legally non-separated spouse and dependent minor children reside in Spain (presumption applicable).

The main direct taxes on individuals with tax residence in Spain are personal income tax (PIT), net wealth tax (NWT) and inheritance and gift tax (IGT). Following the approval of Law 38/2022 in December 2022, a new wealth tax was approved as the temporary solidarity tax on high net worth individuals.

PIT includes the individual's worldwide income: their employment income (including salary as a director), economic activities income, rental income, interest and dividends and capital gains.

The individual's taxable income is reduced by several deductions and allowances based on personal and familial status.

Individuals who become Spanish tax residents may, under certain circumstances, be taxed as non-resident (according to the non-residents income tax (NRIT) flat rate) despite

becoming Spanish tax residents, according to the impatriate regime (also known as Beckham Law).

Under this regime, the tax rate applicable to earned income is 24 per cent for the first €600,000 and 47 per cent on the excess.

In general terms, the application of the impatriate regime requires the taxpayer to meet the following conditions:

- they must not have been tax resident in Spain during the five tax periods immediately prior to their relocation to Spain;
- they must have acquired the status of tax resident in Spain; and
- the relocation to Spain must be carried out as a consequence of:
  - a. an employment contract;
  - b. becoming a director of an entity resident in Spain in which, in the case of entities that do not carry out an economic activity, the taxpayer does not own, directly or indirectly, 25 per cent or more of the share capital;
  - c. relocating to a Spanish entity though maintaining the original employment relationship;
  - d. becoming a new Spanish employee of a Spanish entity duly registered with the Spanish tax authorities;
  - e. becoming a remote worker in Spain for a foreign company;
  - f. starting an entrepreneurial activity, as defined under Law 14/2013;
  - g. qualifying as a highly qualified self-employed professional providing services to emerging companies in the field of innovation, as defined under Law 28/2022; or
  - h. becoming a self-employed individual carrying out training, research, development and innovation activities that represent at least 40 per cent of the total business, professional or employment income that they derive.

This tax regime is effective from the tax period in which the individual acquires Spanish tax residency and for the following five tax years.

On 23 January 2023, Law 28/2022 of 21 December 2023 on the promotion of the startup ecosystem came into force (the Startup Law) incorporating new situations in which the special regime may be applied, such as carrying out entrepreneurial activity, highly qualified professionals hired by startups, or being appointed as a director of a company that is not considered an asset-holding entity, regardless of the shareholding held in such entity.

This option is applicable when some criteria are met, and it is effective for the period in which the change of residence takes place and the following five tax years.

In Spain, NWT subjects to taxation the individual's worldwide net assets (assets minus liabilities) held as of 31 December. The Net Wealth Tax Act foresees an exemption of €300,000 for permanent domicile, and €700,000 on net assets. However, NWT is partially transferred to the autonomous regions of Spain, which have the right to regulate exemptions



and tax rates (eg, exemption for family businesses). Therefore, the final amount of wealth tax may vary depending on the autonomous region where the individual is a tax resident.

In December 2022, the new temporary solidarity tax on high net worth individuals was introduced for fiscal years 2022 and 2023. This tax is a direct tax of a personal nature and complementary to NWT, and is levied on the net wealth of individuals in excess of €3,000,000. It must be noted that there are many doubts about the constitutionality of this tax.

However, the Spanish legal system contains alternatives for reducing the tax burden linked to investments carried out by individuals, which are mainly related to family-owned businesses (family business reduction).

IGT is levied on goods and rights acquired by Spanish tax residents by inheritance, legacy or other types of succession or donation. The tax is levied on the assets' acquisition value (which is equal to the market value). The tax liability will depend on different matters, such as the relation between the taxpayer and the donor or deceased, the taxpayer's previous wealth or the autonomous region of residency. The autonomous regions have extensive power to pass their tax reliefs and tax rates, so the tax liability can significantly differ from one region to another.

### Non-residents

The taxable event of non-resident income tax (NRIT) comprises Spanish-sourced income and capital gains obtained by individuals who are not considered as residents in Spain according to the above criteria. Spanish-sourced income and capital gains include:

- income obtained through permanent establishments (PEs);
- income obtained without a PE derived from economic activities, services or other activities carried out in Spain;
- labour income that derives, directly or indirectly, from a personal activity carried out in Spain;
- interests, royalties and others (eg, other income from debt-claims of every kind, whether or not they carry a right to participate in the debtor's profits);
- dividends;
- income derived from real estate located in Spain; and
- capital gains.

Besides NRIT, non-residents in Spain are subject to NWT on their assets and rights that are located, can be exercised or must be complied with in Spain, considering a €700,000 exemption. However, from 2022 onwards, a new taxable event has been included for non-residents, being subject to NWT participation in entities not listed in regulated stock markets whose assets consist of at least 50 per cent, directly or indirectly, in real estate located in Spain. The reason behind this modification was to equalise the taxation of non-residents who owned real estate directly to those who owned it indirectly, because, as mentioned, the latter was (in principle) not a taxable event for wealth tax purposes.

Due to the broad wording of this amendment, several queries have been raised. Briefly, it refers to real estate in general without differentiating between dwellings and properties

used for economic activity. Additionally, it does not consider the purpose of the acquisition (economic investment versus personal use) nor the percentage of ownership of the entity acquiring the real estate. Hence, the impact in practice will be very wide, affecting very different situations. This will require a case-by-case analysis, as further features will need to be taken into account, such as (but not limited to) applicable double tax treaties (not all treaties include a wealth clause), the total value of the non-resident's wealth in Spain, etc.

IGT is also applicable to non-residents in Spain for the acquisition of goods and rights that are located, can be exercised or must be complied with in Spain, and the receipt of amounts derived from life insurance contracts when the contract has been formalised with Spanish insurance companies or has been formalised in Spain with foreign insurance companies, with some particularities.

## Income

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

#### Residents

Spanish PIT distinguishes two types of taxable income: general taxable income and savings taxable income. The main difference stems from the applicable tax rates. Savings taxable income is taxed at the following rates:

- 19 per cent up to €6,000;
- 21 per cent from €6,000 to €50,000;
- 23 per cent from €50,000 to €200,000;
- 27 per cent from €200,000 to €300,000; and
- 28 per cent for amounts exceeding €300,000.

For general taxable income, progressive rates range from 18 per cent to 54 per cent, depending on the autonomous region in which the individual has his or her residence.

Savings taxable income comprises the sum of dividends, interests and capital gains derived from the transfer of assets. General taxable income includes all income that is not considered savings income, such as employment income, business activities as an individual, rental income and deemed income.

#### Non-residents

Generally, NRIT applies to dividends, interest and capital gains at a 19 per cent tax rate and a 24 per cent tax rate on any other sort of income (employment income, deemed income, rental income, etc). This rate is reduced to 19 per cent if the non-resident resides in an EU or EEA country.

## Capital gains

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

Tax-resident individuals will be subject to PIT on capital gains at:

- 19 per cent up to €6,000;
- 21 per cent from €6,000 to €50,000;
- 23 per cent from €50,000 to €200,000;
- 27 per cent from €200,000 to €300,000; and
- 28 per cent for amounts exceeding €300,000.

Non-resident individuals will be subject to NRIT at a 19 per cent tax rate. Additionally, under certain specific circumstances, capital gains can be taxed as general tax income subject to progressive rates.

For both resident and non-resident individuals, capital gains will be assessed on the difference between the market value of the asset transferred and its acquisition cost. Depending on the asset being transferred, the market value and the acquisition cost will be adjusted for taxes and expenses incurred by the transferor.

## | Lifetime gifts

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

Lifetime gifts will be subject to IGT and, under certain circumstances, to PIT at the donor's level for the difference between the market value of the gift and its acquisition cost.

The beneficiary of a lifetime gift will be subject to IGT by the tax applied in the autonomous region of his or her residence (which generally rises to approximately 34 per cent for lifetime gifts equal to or greater than approximately €797,555). However, such tax rates can be reduced depending on the Spanish autonomous region at stake. For instance, in Catalonia, gifts could be taxed at a rate of 5, 7 or 9 per cent if the lifetime gift is formalised in a public deed to descendants. In other regions, gifts could be effectively exempt (eg, in the autonomous region of Madrid).

If the beneficiary of the lifetime gift is not an individual resident in Spain, the taxpayer will be entitled to apply the state or autonomic legislation, regardless of whether they are resident in a member state of the EU, the EEA or a third country.

Notwithstanding the above, if the lifetime gift consists of real estate, the legislation of the autonomous region where the asset is located will apply. Under certain circumstances, if such property is donated to constitute the permanent domicile of the beneficiary, exemptions could apply.

The donor will include in his or her PIT any capital gains derived from the difference between the market value of the gift and its acquisition cost (cash donations are not subject to PIT for the donor).

## | Inheritance

## What, if any, taxes apply to an individual's transfers on death and to their estate following death?

As a rule, inheritances will be subject to IGT. The taxable event of IGT is regulated by state legislation. However, autonomous regions have the right to legislate in terms of exemptions, allowances and tax rates. Consequently, IGT may substantially differ depending on the autonomous region.

### Residents

The legislation of the autonomous region in which the deceased resided applies. In the autonomous regions in which no regional regulation has been passed, tax rates range from 7.65 per cent to 34 per cent for inheritances equal to or greater than €797,555. If the deceased was tax resident in Spain but the beneficiaries are tax resident in another country, they would have the right to choose between state legislation or the autonomous region's legislation.

Certain exemptions and allowances will apply on succession provided that some requirements are met.

## Real property

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

Individuals owning real estate other than their main residence and land plots will be taxed under PIT or NRIT on the rental or the deemed income obtained from such real estate.

Deemed income will be calculated at 1.1 per cent or 2 per cent of the real estate cadastral value depending on the date on which the cadastral value was reviewed by the authorities. The cadastral value is the property value assigned by the public administration.

NWT and solidarity tax on high net worth individuals is also levied on real estate, as previously explained, including indirect holding of real estate.

Furthermore, some local taxes are levied, such as property tax (yearly) or tax on the increase of urban land value (when transferred).

## 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?

Import value added tax (VAT) and, if applicable, customs duties, apply to the import, for personal use and enjoyment, of assets other than cash. Exports are usually tax exempt.

## Other taxes

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

For an individual who plans to invest in Spain, the most relevant taxes would be related to real estate investments. For example, if an individual acquires a residential property, VAT (at 10 per cent) would apply if the property is brand new, and transfer tax if the asset is not brand new. In this regard, transfer tax is partially regulated by autonomous regions (tax rates range from 6 to 11.5 per cent).

### **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?**

Trusts are not recognised under Spanish law, and Spanish holding companies are used to invest in different companies, real estate or other kinds of business. In this regard, investing or holding assets through a holding company allows the applicability of two different tax allowances when certain requirements are met:

- The Spanish holding tax regime: if certain requirements are met (minimum stake of 5 per cent of the subsidiary and one-year holding period, among others), dividends and capital gains are 95 per cent exempt from tax. Hence, the effective tax rate on such income would be 1.25 per cent.
- Family business allowance: if certain requirements are met, the mere ownership and transfer of shares of a holding company (or any Spanish company) will benefit from a 95 per cent tax allowance on IGT and 100 per cent exemption on wealth tax.

### **Charities**

#### **How are charities taxed in your jurisdiction?**

In Spain, charities can be organised under different legal forms, the most common being associations and foundations.

Both types of charities pursue general interests and are based on non-profit principles. These entities will be subject to a 10 per cent corporate income tax (CIT) rate, but income derived from their donors or from assets will be tax-exempt if certain requirements are met.

### **Anti-avoidance and anti-abuse provisions**

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

The Spanish General Tax Act contains a general anti-abuse rule that applies to all Spanish taxes whenever the taxable event is totally or partially avoided or the tax due is reduced because of either the taxpayer carrying out a notoriously artificial or unsuitable act or business to achieve this result or implementing an act or business that does not result in significant legal or economic effects other than tax savings.

Additionally, the Spanish PIT Act and CIT Act establish the controlling foreign corporation rules, which apply to non-resident subsidiaries of Spanish taxpayers that do not have human and material resources and:

- hold more than 50 per cent of the capital of the foreign company;
- where the personal or corporate income tax borne is less than 75 per cent of the tax that would have been due in accordance with Spanish regulations; and
- where only certain income is considered for this purpose, such as insurance activities or real estate not considered as business activity.

The Spanish PIT Act foresees an exit tax on unrealised capital gains from Spanish tax residents under a change in their tax residence if the individual has been a Spanish tax resident for at least 10 of the 15 years preceding the change of residence and when the market value of the shares exceeds €4 million or €1 million if such stake is equal to or greater than 25 per cent of the shares. If the individual moves to an EU country or a country with an effective exchange of tax information, the exit tax will only be required if, within 10 years, the individual transfers their shares, changes their tax residency out of the EU or does not comply with their information obligations.

Lastly, Spanish legislation provides anti-avoidance rules applicable to tax haven jurisdictions.

## TRUSTS AND FOUNDATIONS

### Trusts

#### Does your jurisdiction recognise trusts?

No. Trusts are not recognised in the Spanish legal system and are disregarded for tax purposes.

### Private foundations

#### Does your jurisdiction recognise private foundations?

The Spanish legal system recognises different legal forms equivalent to foreign private foundations (such as foundations, associations or federations, among others).

In this regard, a special tax regime is foreseen applicable to non-profit entities that carry out public interest activities. This tax regime allows these entities to benefit from a full exemption on income or gains derived from their assets or donations from third parties. Any other income will be taxed at 10 per cent corporate income tax.

### 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?)

Trusts are not recognised in the Spanish legal system and Spain is not a part of the Convention of 1 July 1985 on the law applicable to trusts and on their recognition. Indeed, the Spanish legal system does not allow for a double property regime (ie, formal and legal) over any rights or assets, as it would be in the case of a trust. This situation gives rise to disputes on the recognition and application of trusts.

Trusts are disregarded for tax purposes. For the purposes of the Spanish legal system, the relations between the contributor of assets and rights to a trust (ie, the settlor) and the recipients or beneficiaries of the trust, are deemed to be carried out directly between them as if the trust did not exist.

That is, for Spanish tax and legal purposes, the general approach to trusts is that the trust is made transparent for all purposes and is understood to be unincorporated.

Notwithstanding the foregoing, the only way that the Spanish Directorate General for Taxation has considered recognising the effects derived from the constitution of a trust is limited to those cases where the beneficiary of a trust is designated also as trustee of said trust, and therefore it may be deemed under Spanish civil law that the beneficiary has acquired the assets contributed to the trust, hence having the settlor convey the right of ownership over the assets contributed to the trust to the beneficiary.

From a legal perspective, since trusts are not recognised as independent estates, the allocation of assets to the trust may clash with forced heirship rules (ie, the rights of the descendants as legitimated beneficiaries) and give rise to problems on the transfer of ownership of goods and rights from the trust to the beneficiary.

Due to the above-mentioned inconveniences, trusts are rarely used by Spanish taxpayers.

## SAME-SEX MARRIAGES AND CIVIL UNIONS

### Same-sex relationships

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

The Spanish legal system confers upon same-sex marriages the same legal status as opposite-sex marriages. Civil unions are also recognised as a form of legal union.

Although civil unions confer similar rights to marriage, they have a specific legal status in certain areas such as succession and tax (eg, the possibility to be taxed jointly, alimony or widowhood pension). These aspects are often regulated by each autonomous region in Spain.

### Heterosexual civil unions

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

There are no forms of legal relationship for heterosexual and homosexual couples other than marriage or a civil union.

## SUCCESSION

### Estate constitution

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

All assets and rights under an individual's legal ownership.

### Disposition

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

Individuals have full freedom of disposition of their estate during their lifetime if the 'right of food' is respected. This right consists of the obligation that any individual has towards his or her relatives in certain circumstances (health, survival, scholarship in case of underage descendants, etc).

Spain has a restrictive provision for inheritance, with its forced share provisions for children and descendants. The forced share amount sets the descendants' share at two-thirds of the hereditary portion if there is at least one descendant. The right to receive a forced share is not subject to waiver.

The forced share may be satisfied with lifetime gifts or by will. If gifts are made and the amounts extend beyond one-third to one-half share of the hereditary assets, they are subject to clawback. The clawback provisions are necessary to prevent decedents avoiding the requirement by gifting the property before death.

Exceptions to the forced heirship rules include disinheritance for cause of unworthiness (ie, abandonment, attempted murder, false accusations of crimes and acts of violence).

### Disposition

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

Individuals have full freedom of disposition of their estate during their lifetime if the 'right of food' is respected. This right consists of the obligation that any individual has towards his or her relatives in certain circumstances (health, survival, scholarship in case of underage descendants, etc).

Spain has a restrictive provision for inheritance, with its forced share provisions for children and descendants. The forced share amount sets the descendants' share at two-thirds of the hereditary portion if there is at least one descendant. The right to receive a forced share is not subject to waiver.



The forced share may be satisfied with lifetime gifts or by will. If gifts are made and the amounts extend beyond one-third to one-half share of the hereditary assets, they are subject to clawback. The clawback provisions are necessary to prevent decedents avoiding the requirement by gifting the property before death.

Exceptions to the forced heirship rules include disinheritance for cause of unworthiness (ie, abandonment, attempted murder, false accusations of crimes and acts of violence).

### **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?**

In Spain, if an individual dies without leaving valid instructions for the disposition of the estate, the legislation foreseen in the autonomous region of his or her residence will apply. The applicable legislation usually allocates the estate to the descendants of the deceased. If the deceased does not have any descendants, the estate is allocated to his or her parents, spouse, brothers or sisters, nephews or nieces.

It is also very common that the estate is allocated to the descendants of the deceased with the right of use (usufruct) in favour of the spouse.

### **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?**

Yes. They are considered as natural legitimate children with the same rights.

### **Distribution**

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

Since the entering into force of Regulation (EU) No. 650/2012, the applicable legislation in terms of distributing an individual's estate will be determined by the habitual residence of the deceased.

### **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 Spain are to be over 14 years old and have full capacity to act at that time, while the formal requirements are to be granted before a public notary or as a holographic will.

## Foreign wills

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

The beneficiary of a foreign will must have the will legalised for it to be valid for Spanish legal purposes. It will normally be necessary to obtain a sworn translation of the will to execute it before a Spanish notary.

## Administration

### Who has the right to administer an estate?

The deceased has the right to appoint an executor of the estate to distribute it in accordance with the deceased's will and to fulfil the remaining duties and obligations. If the deceased has not appointed an executor, the said beneficiaries of the will should commonly agree to distribute it or, in the absence of agreement, appoint an executor. If the beneficiaries do not reach an agreement to appoint such executor, they are entitled to request a judiciary executor.

## Administration

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

In most inheritances, the notary executes the deceased's will and the beneficiaries sign the deed of acceptance of the inheritance in accordance with the provisions set out in the will. Later, the beneficiaries submit the deed of acceptance of the inheritance to register before banks, property registry and corporate registry their ownership of the assets.

## Challenge

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

Yes. Disappointed heirs or beneficiaries may file a claim against an estate to exercise the rights they are entitled to (ie, regarding the payment of the non-disposed estate to certain beneficiaries or disagreement with the reasons argued by the deceased to disappoint heirs or to challenge the testator's disability).

## CAPACITY AND POWER OF ATTORNEY

## Minors

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

As a rule, the management of the property of a minor is entrusted to his or her parents or legal representatives, who are bound by the general rules of guard and custody.

### **Age of majority**

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

Legal capacity for patrimonial purposes is granted when individuals reach legal age (18 years old in Spain). However, if the underage person is 16 and undergoing professional training, he or she will be able to hold assets and rights derived from such activity.

### **Loss of capacity**

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

After the loss of legal capacity, the custody and protection of the incapacitated person may be guaranteed through the appointment of a guardian, curator or custodian. The appointment procedure requires a judge to approve the custody, usually involving a hearing with the closest relatives of the concerned individual. Once appointed, management must be carried out in the best interest of the incapacitated person, and except for some specific powers that would require a judge's authorisation, it would be performed under the criteria of the guardian, curator or custodian.

## **IMMIGRATION**

### **Visitors' visas**

**Do foreign nationals require a visa to visit your jurisdiction?**

Spain does not require visas from EU and EEA jurisdictions, most Latin American countries and Israel, Singapore, the United States or South Korea, among others.

### **High net worth individuals**

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

In 2013, Spain passed its own Golden Visa programme, which allows qualified investors to reside in Spain for a one-year period, renewable for two more years and, ultimately, for five years.

For this Golden Visa programme to apply, a qualifying investment in Spain must be carried out in the following terms:

- a €500,000 investment in Spanish real estate (this can be one or more properties of any kind);
- a €1 million investment in bank deposits in Spanish financial entities;
- a €1 million investment in shares of Spanish companies;
- a €2 million investment in Spanish public debts; or

- starting a business project in Spain of general interest, which creates employment, contributes to technological or scientific innovation, or both, or has a socio-economic impact on the local environment.

## 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 23 January 2023, Law 28/2022 of 21 December 2023 on the promotion of the startup ecosystem came into force. This law approved certain tax incentives for entities that fall within the scope of start-ups, together with relevant amendments to the Spanish impatriate regime.

The 'white book on Spanish tax reform' was published in March 2022. This was drafted by a panel of tax experts consulted by the Spanish government, and, among other items, it drafted the main blueprints for a potential reform of wealth tax and IGT.

Only wealth tax has been impacted by means of the new solidarity wealth tax for high net worth individuals, resulting in a higher wealth tax (in broad terms) burden for taxpayers residing in certain autonomous regions (mainly Andalucía, Madrid and Galicia).

No amendments are expected to be implemented by the government in respect of IGT.

With regard to personal income tax, the existing 60 per cent reduction applicable to net income from real estate derived from the lease of property intended for dwelling is modified. With effect from 1 January 2024 and for housing tenancy contracts concluded as from 26 May 2023, the positive net income will be reduced by:

- 90 per cent when a new lease is entered into on a dwelling located in a stressed residential market area and the rent is reduced by more than five per cent with respect to the previous lease;
- 70 per cent when the dwelling located in a stressed market is leased for the first time and is rented to a tenant between 18 and 35 years of age, or is rented to a public or non-profit organisation;
- 60 per cent when the dwelling has been subject to a rehabilitation project; or
- 50 per cent in any other case.