

Private Client 2021

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Lexology Getting The Deal Through is delighted to publish the ninth 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 Bermuda, Cayman Islands, Cyprus, Guernsey, Switzerland and the United States.

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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

Marc Ambrós and Júlia Pons

Cases & Lacambra

TAX

Residence and domicile

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

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

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

- Permanence 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.
- 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 presumes that if the non-legally separated husband or spouse and minor children are tax resident in Andorra, the individual will be considered also as tax resident in such jurisdiction.

Income

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

All the worldwide income, including capital gains of an individual considered as tax resident in Andorra is subject to the Personal Income Tax Act 5/2014, 24 April at a nominal 10 per cent per cent tax rate.

Labour, business and real estate income benefit 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 incomes plus non-real estate capital gains benefit from a reduction of €3,000).

Capital gains

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

Capital gains are taxable in Andorra by the Real Estate Capital Gains Tax Act 21/2006, 14 December (the Real Estate Gains Act) and the Personal Income Tax Act 5/2014, 24 April (the PIT).

Capital gains from real estate

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

These capital gains are subject by the Real Estate Gains Act at a digressive tax rate from 15 per cent to 1 per cent per cent depending on

the years of ownership, which range from zero to nine years, while the transfer of a 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 10 per cent per cent tax rate.

Capital gains obtained by Andorran tax-residents derived from the transfer of local or foreign companies or collective investment undertakings are exempted if any of the following conditions is 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 plus savings incomes benefit from a reduction of €3,000.

Lifetime gifts

4 | 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 Personal Income Tax Act and the Real Estate Capital Gains Tax Act provide exemptions in case of family gifts up to the third level 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 in Andorra. Nor the deceased is taxed for capital gain derived from transfer on death.

Real property

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

The acquisition of a real property in Andorra by an individual is taxed by the General Indirect Tax Act (IGI) at 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, 15 December 2000 at a 4 per cent tax rate.

The ownership of real property in Andorra is taxed by the relevant parish where the real property is located. Since each parish has its own regulation the real property can be taxed between €0 and €0.75 per square metre of surface area per year depending where it is located.

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?

The import of assets other than cash to Andorra is taxed by the General Indirect Tax Act 11/2012, 21 June 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 by the IGI Act.

Other taxes

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

There is no wealth tax in Andorra.

There is a General Indirect Tax (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 or service. A summary of these tax rates is as follows:

- A super reduced rate of 0 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).
- An increased rate of 9.5 per cent for financial services.

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?

Andorran law does not recognise trusts because Andorra has not signed the Hague Convention of Recognition of Trusts moreover it is a civil law country.

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 the 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 nor inheritance tax in Andorra, the beneficiary will not be taxed on this capital gain.

Finally, Andorran residents usually plan their estate through collective investment undertakings since this vehicles are tax at 0 per cent.

In respect of succession planning Andorran tax residents may use Andorran companies to hold assets in foreign jurisdictions to reduce the tax burden in some cases since the Andorran company shares will be the subject of the inheritance instead of the resident's foreign assets.

Charities

- 10 | How are charities taxed in your jurisdiction?

Charities do not have any tax impact in Andorra. However, charities activities carried out by charitable institutions are subject but exempt from corporate income tax.

Anti-avoidance and anti-abuse provisions

- 11 | 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 affects the Andorran companies that can only exempt the foreign dividends received if the subsidiary has been subjected 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.

On the other hand, the General Tax Act regulates the fraud of law or legal simulation when a contract or business is carried out just for tax reasons and does not respond to the reality of the underlying business.

TRUSTS AND FOUNDATIONS

Trusts

- 12 | Does your jurisdiction recognise trusts?

Andorran law does not recognise trusts because Andorra has not signed the Hague Convention of Recognition of Trusts moreover it is a civil law country.

Private foundations

- 13 | Does your jurisdiction recognise private foundations?

The Foundations Act 11/2008, 12 June, 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 a wealth vehicle for preserving private assets, are not regulated in Andorra although Andorran residents can create or be beneficiaries of foreign private foundations.

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

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

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

Heterosexual civil unions

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

The Couple on Stable Union Qualified Act 4/2005, 21 February recognises the legal relationship of heterosexual couples other than marriage which have the same effect and treatment 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 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?

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

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

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

- A quarter of the estate must be transmitted to illegitimate children. The children of the deceased or, failing these, their ascendants, will have equal rights to this portion of the estate.
- 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 state.

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?

Assuming that the Andorran Decease Succession Act 46/2014, 18 December is applicable, when an individual die in Andorra without leaving valid instructions for the disposition of the estate the law calls as heirs of the deceased to his or her relatives, the widowed spouse or the legally partner under a couple stable union without prejudice to the reserved portion for illegitimate heirs. In absence of heirs, the Andorran Government will be appointed as heir.

Once the heirs are determined, they must accept or reject irrevocably 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 since they became aware of the betrayal.

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 Andorran Public Notary or before the Andorran courts.

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, the adoption causes 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 the intestate succession and in relation to the legitimate offspring.

On the other hand, a comparison between adoptive and biological filiation cannot be applied in the case of testamentary succession, because the discrimination of adopted children with respect to biological ones is possible if it derives from the private will manifested in a disposition of the last 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 will be determined by his nationality or exceptionally by the law of the closer link country.

Formalities

22 | 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. While the formal requirements are to be granted before a public notary or as a holographic will.

Foreign wills

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

Andorran law recognises foreign wills, which must be apostilled.

Administration

24 | 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.

25 | 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.

Challenge

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

There is not a specific procedure to make a claim against an estate. The heirs or the beneficiaries can file a claim before the Andorran courts.

CAPACITY AND POWER OF ATTORNEY

Minors

27 | 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 himself and his or her estate when he turns 18 old.

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

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

Age of majority

28 | 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 himself and his or her estate when he turns 18 years old.

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?

When an individual loses capacity to manage his or her affairs 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. The purpose of that procedure is to limit his or her capacity to act and to provide him or her of the duly protection measures.

By means of 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.

IMMIGRATION

Visitors' visas

30 | 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 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.

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

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 less than 90 days in a one-year period.

High net worth individuals

32 | 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 allow 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.
- To have sufficient financial resources.

- To have an illness, incapacity and old-age insurance.
- To have a dwelling in Andorra (ownership or rental);
- To establish the main effective residence in Andorra for at least 90 days per year.
- To invest a sum of at least €400,000 in real estate located in Andorra, in equity of Andorran companies debt, in financial instruments issued by Andorran public entities or in a non-remunerated deposit before the Andorran Financial Authority (AFA).

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

The individuals that obtain the residence authorisation can bring their family members with them as dependant residents.

These family members will have the same rights to reside in Andorra but their authorisation will be linked to the authorisation individual that obtained the of the non-lucrative residency authorisation.

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

The non-lucrative residence authorization gives the right to reside in Andorra during a two year period and can be renewed initially for another two year period and from then it can be renewed for three years. After seven years the individual can renew the residence authorization for 10 years period.

Notwithstanding the foregoing, Spanish French and Portuguese citizens benefit from a special regime that permits them to renew their residence authorisation directly for three year period until they achieve a residence period of five years. Then they can renew it for 10 years.

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

The individuals that benefit from this type of residence authorisation can obtain Andorran nationality if they file the relevant administrative procedure before the Andorran government proving that they have held their main and permanent residence in Andorra for at least the previous 20 years.

UPDATE & TRENDS

Key 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?

There are no proposals or developments relevant to high-net worth individuals or foreign investors since the specific residence authorisation to these individuals is currently working well and showing results.

Coronavirus

37 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

During the covid-19 pandemic, the Andorran government approved three Omnibus Acts, Act 3/2020, March 23, Act 5/2020, April 18 and Act 7/2020, May 25 to address the pandemic effects in different areas among which were implemented the following tax measures:

- To defer and pay by instalments tax debts, withholdings and penalties without applying interests or granting guarantees.
- To delay the payment of the business registry fee.
- To adjust the pre-payment of the Corporate Tax and the Personal Income Tax for the tax periods between January and May 2020 in accordance with the 20 per cent) of the pre-payment amount paid on 2019 and the possibility to pay by instalments of 2 per cent) on the net income of the previous year.
- To reduce the tax base by the unpaid lease amounts.
- To recover an amount equal to the minimum inter-professional salary from a private pension fund without penalty or taxation.

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