

PRIVATE CLIENT

Spain



Private Client

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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.

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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 the 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 their 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 to individuals with tax residence in Spain are personal income tax (PIT), net wealth tax (NWT), and inheritance and gift tax (IGT).

PIT includes the individual's worldwide income: 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 as a consequence of a work contract or as a result of acquiring the status of director of a company may choose between being taxed as a Spanish tax resident (according to the progressive tax rate) or as a non-resident (according to the non-residents income tax (NRIT) flat rate). 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. However, 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 (ie, exemption on family business). As a consequence, the final taxation on wealth tax may vary depending on the autonomous region where the individual is tax resident.

IGT is levied on goods and rights acquired by Spanish tax residents by inheritance, legacy, or other types of succession, or by donation. The tax is levied on assets' acquisition value (which equals 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 an extensive power to pass their tax reliefs and tax rates, so that, the tax liability could significantly differ from one region to another.

Non-residents

The taxable event of 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 source income and capital gains include: (1) income obtained through permanent establishments (PEs); (2) income obtained without a PE derived from economic activities, services or other activities carried out in Spain; (3) labour income that derives, directly or indirectly, from a personal activity carried out in Spain; (4) interests, royalties and other; (5) dividends; (6) income derived from real estate located in Spain; and (7) capital gains.

Besides NRIT, non-residents in Spain are subject to NWT on their assets and rights, which are located, can be exercised or must be complied with in Spain, considering a €700,000 exemption.

Inheritance and gift tax is also applicable to non-residents in Spain for (1) the acquisition of goods and rights that are located, can be exercised or must be complied within Spain and (2) 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.

Law stated - 15 September 2021

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 resides within 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; and 26 per cent for amounts exceeding €200,000. For general taxable income, progressive rates range from 18.5 per cent to 50 per cent (Catalonia, for instance), 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 saving income as employment income, business activities as an individual, rental income and deemed income.

Non-residents

Generally, non-resident income tax applies to dividends, interest, and capital gains at a 19 percent tax rate, and a 24 percent tax rate to 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.

Law stated - 15 September 2021

Capital gains

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

Tax-resident individuals will be subject to personal income tax on capital gains at 19 per cent up to €6,000; 21 percent from €6,000 to €50,000; 23 per cent from €50,000 to €200,000; and 26 per cent for amounts exceeding €200,000. Non-resident individuals will be subject to non-resident income tax at a 19 percent tax rate. Additionally, under certain specific circumstances, capital gains can be taxed under the general tax base.

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.

Law stated - 15 September 2021

Lifetime gifts

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

Lifetime gifts will be subject to inheritance and gift tax and, under certain circumstances, to personal income tax 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 inheritance and gift tax 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 (ie, 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 income tax any capital gains derived from the difference between the market value of the gift, and its acquisition cost (cash donations are not subject to personal income tax for the donor).

Law stated - 15 September 2021

Inheritance

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

As a rule, inheritances will be subject to inheritance and gift tax. The taxable event of inheritance and gift tax is regulated by the state legislation. However, autonomous regions have the right to legislate in terms of exemptions, allowances and tax rates. Consequently, inheritance and gift tax 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 the state legislation or the autonomous region's legislation.

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

Law stated - 15 September 2021

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 personal income tax or non-resident income tax on the rental or the deemed income obtained from such real estate.

Deemed income will be calculated as 1.1 per cent or 2 per cent of the real estate cadastral value depending on the date in which the cadastral value has been reviewed by the authorities. The cadastral value is the property value assigned by the government.

NWT is also levied on real estate, but some tax reliefs can be applicable. Namely, the specific minimum tax-exempt amount established by the autonomous regions where the asset is located, a tax exemption up to €300,000 for permanent dwellings or specific exemptions for real estate effectively engaged in a business activity, provided that some requirements are met.

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

Law stated - 15 September 2021

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, custom duties apply to the import, for personal use and enjoyment, of assets other than cash. Exports are usually tax exempt.

Law stated - 15 September 2021

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. As an example, if an individual acquires a residential property, VAT (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 to 11 per cent).

Law stated - 15 September 2021

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 kind 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:

- Spanish holding tax regime (ETVE). If certain requirements are met (minimum stake of 5 per cent of the subsidiary, 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.
- 95 per cent or 100 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 inheritance and gift tax and 100 per cent exemption on wealth tax.

Law stated - 15 September 2021

Charities

How are charities taxed in your jurisdiction?

In Spain, charities could 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 rate but income derived from their donors or from assets will be tax-exempt if certain requirements are met.

Law stated - 15 September 2021

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 as a consequence of (1) the taxpayer carrying out a notoriously artificial or unsuitable act or business to achieve this result; or (2) implementing an act or business that does not result in significant legal or economic effects other than tax savings.

Additionally, the Spanish personal income tax act and corporate income tax act establish controlling foreign corporation rules (CFC 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;
- the personal or corporate income tax borne is less than a 75 per cent of the tax that would have been due in accordance with Spanish regulations; and
- only certain income is considered for this purpose, such as insurance activities or real estate not considered as business activity.

The Spanish Personal Income Tax Act foresees an exit tax on unrealised capital gains from Spanish tax residents under a change on their tax residence as long as (1) the individual has been a Spanish tax resident for at least 10 of the 15 years preceding to the change of residence; and (2) when the market value of the shares exceeds €4 million or €1 million if such stake is equal 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 its shares, changes its tax residency out of the EU or does not comply with its information obligations.

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

Law stated - 15 September 2021

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.

Law stated - 15 September 2021

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 a legal union.

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

Law stated - 15 September 2021

Heterosexual civil unions

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

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

Law stated - 15 September 2021

SUCCESSION

Estate constitution

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

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

Law stated - 15 September 2021

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 as long as 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 life-time 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 decedent from avoiding the requirement by gifting the property before death.

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

Law stated - 15 September 2021

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

Each autonomous region of Spain has the right to legislate on different matters of the Spanish Civil Code. One of these matters is succession.

In this regard, the Spanish Civil Code foresees at least one-third of the non-disposal of the deceased (forced heirship). Such non-disposal estate is allocated to the descendants of the deceased and, on some occasions, the surviving spouse has the right to usufruct on different assets.

However, in certain autonomous regions, the Spanish Civil Code does not apply because a regional civil code is in force. As an example, in the Catalan Civil Code, it is foreseen that non-disposal assets of the deceased will be 25 percent of the inheritance, compared to the one-third foreseen in the Spanish Civil Code.

Law stated - 15 September 2021

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.

Law stated - 15 September 2021

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.

Law stated - 15 September 2021

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.

Law stated - 15 September 2021

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.

Law stated - 15 September 2021

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.

Law stated - 15 September 2021

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 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.

Law stated - 15 September 2021

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 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.

Law stated - 15 September 2021

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 in order to exercise the rights they are entitled to (ie, the payment of the non-disposed estate to certain beneficiaries, disagreement with the reasons argued by the deceased to disappoint heirs or challenge the testator's disability).

Law stated - 15 September 2021

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.

Law stated - 15 September 2021

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.

Law stated - 15 September 2021

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.

Law stated - 15 September 2021

IMMIGRATION

Visitors' visas

Do foreign nationals require a visa to visit your jurisdiction?

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

Law stated - 15 September 2021

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: (1) €500,000 investment in Spanish real estate, this can be one or more properties of any kind, (2) a €1 million investment in bank deposits in Spanish Financial Entities, (3) a €1 million investment in shares of Spanish companies, (4) a €2 million investment in Spanish Public Debts or (5) 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.

Law stated - 15 September 2021

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?

The Spanish government has published a draft bill which include amendments to the special tax regime for transferred employees. This regime gives to individuals who became Spanish tax residents because of a work contract or as a result of acquiring the status of director of a company the option to choose between being taxed as a Spanish tax resident (according to a progressive tax rate) or as a non-resident (according to the non-resident income tax flat rate).

Assuming that this draft bill is approved by the Spanish parliament, there will be an improvement in this regime, both in its temporary extension and in the ease of access to it.

Firstly, the draft bill plans to extend the period in which this regime is applicable. Currently, the option is effective for the period in which the change of residence takes place and the five years following. If the draft bill is approved, the regime

could be applied for 10 years.

Secondly, the current version of the Spanish law requires that the individual has not been resident in Spain during the preceding ten years. After the possible adoption of the draft bill, this period would be reduced to five years.

Finally, the draft bill provides the application of the special regime to the taxpayer's spouse and children under the age of 25 without the need for them to acquire tax residence in Spain as a result of an employment assignment or as a consequence of acquiring the status of director of a company.

Law stated - 15 September 2021

Jurisdictions

	Andorra	Cases & Lacambra Abogados SLP
	Australia	Kalus Kenny Intalex
	Austria	DORDA
	Belgium	Loyens & Loeff
	Bermuda	Butterfield Trust
	Cayman Islands	Butterfield Trust
	Colombia	Rimôn
	Cyprus	Patrikios Pavlou & Associates LLC
	Germany	POELLATH
	Guernsey	Butterfield Trust
	Hong Kong	Charles Russell Speechlys LLP
	Ireland	Matheson
	Japan	Anderson Mōri & Tomotsune
	Liechtenstein	Gasser Partner
	Malta	GVZH Advocates
	Monaco	CMS Pasquier Ciulla Marquet Pastor Svara & Gazo
	Panama	Pardini & Asociados
	Spain	Cases & Lacambra Abogados SLP
	Switzerland	Kellerhals Carrard
	United Kingdom - England & Wales	McDermott Will & Emery
	USA	Holland & Knight LLP