



# 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?

Act 5/2014 of 24 April on the Personal Income Tax (PIT) Act sets the 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:

- 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.
- 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 2021*

### Income

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

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

*Law stated - 19 September 2021*

### 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 obligation 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 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 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 plus savings income benefit from a reduction of €3,000.

*Law stated - 19 September 2021*

### **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 case of family gifts up to the third level of kinship.

*Law stated - 19 September 2021*

### **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 is taxed for capital gain derived from transfer on death.

*Law stated - 19 September 2021*

### **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 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 on where it is located.

**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 2021

**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 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?

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 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 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 tax at zero per cent. Andorran holding companies are also used for estate planning purposes.

*Law stated - 19 September 2021*

## Charities

### How are charities taxed in your jurisdiction?

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

*Law stated - 19 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 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 2021*

## 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 2021*

### 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 a wealth planning vehicle, are not regulated in Andorra. However, Andorran residents can create or be beneficiaries of foreign private foundations.

*Law stated - 19 September 2021*

## 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 Qualified Act 4/2005 of 21 February on Couple Stable Union. These relationships have the same tax and succession treatment as marriage.

*Law stated - 19 September 2021*

### Heterosexual civil unions

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

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

*Law stated - 19 September 2021*

## 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 2021*

### 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 2021*

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 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; 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 state.

*Law stated - 19 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?**

Assuming that 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 to his or her relatives, the widowed spouse or the legal partner under a couple stable union without prejudice to the reserved portion for illegitimate heirs. 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 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?**

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.

*Law stated - 19 September 2021*

## **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 his nationality or exceptionally by the law of the closer link country.

*Law stated - 19 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 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 2021*

## 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 2021*

## 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 2021*

### 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 2021*

## Challenge

### 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.

*Law stated - 19 September 2021*

## 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 himself and his or her estate when he or she 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.

*Law stated - 19 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?

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

*Law stated - 19 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?

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

*Law stated - 19 September 2021*

## 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 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 2021*

## 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 an 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 €400,000 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 Financial Authority.

*Law stated - 19 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?

There are no proposals or developments relevant to high net worth individuals or foreign investors. However, the draft law on digital economy, entrepreneurship and innovation, admitted to parliamentary debate on 21 July 2021, provides for new immigration authorisations targeted to digital nomads and start-up workers.

*Law stated - 19 September 2021*

## Jurisdictions

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