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Private Wealth 2022

Spain: Law & Practice

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SPAIN

Law and Practice

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1. TAX

1.1 Tax Regimes

Individuals who reside in Spain or who currently hold investments in Spain are subject to taxes such as Wealth Tax and Inheritance and Gift Tax (IGT), as well as Personal Income Tax (PIT). Non-resident individuals may be subject to taxes in Spain on their Spanish-source income and assets, notwithstanding any applicable tax treaty provisions and internal tax reliefs.

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 (so-called “family business reduction”).

Spanish Tax Residents

PIT is determined upon the individual’s worldwide income – employment income, salary as a member of a board of directors, dividends, capital gains, interest, rental income, etc, regardless of where such income is derived and who is the payor.

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

Spanish PIT distinguishes between two types of taxable income: general taxable income and savings taxable income. The main difference is in the tax rates.

Savings taxable income is taxed at the following rates:

- 19% on the first EUR6,000;
- 21% on EUR6,000 to EUR50,000;
- 23% on EUR50,000 to EUR200,000; and
- 26% on any amounts over EUR200,000.

General taxable income is taxed at progressive rates ranging from 18.5% to 54%, depending on the autonomous region within Spain in which the relevant taxpayer resides.

Savings taxable income results from the aggregation of dividends, interest and capital gains derived from the transfer of assets. General taxable income results from the aggregation of movable property income that may not be characterised as savings income, employment income, business activities income, rental income or attributed deemed income.

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 Spanish entity in which they do not directly or indirectly own 25% or more of the share capital may opt to apply the special tax regime set forth for inpatriates, provided that they acquire tax residence in Spain. Despite being Spanish tax residents, these taxpayers are entitled to be taxed as non-resident individuals.

Individuals under this regime are taxed at a flat rate of 24% for income up to EUR600,000 and at a flat rate of 47% for income above that threshold.

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

- they must not have been tax resident in Spain during the ten 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 an employment contract or as a consequence of becoming a director of an entity resident in Spain in which the

taxpayer does not own, directly or indirectly, 25% or more of the share capital.

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

Wealth Tax

Wealth Tax is a direct tax that is levied upon the personal net wealth of individuals and is due on 31 December each year.

However, the Wealth Tax Act includes an exemption of EUR300,000 for permanent domicile, and a general rebate of EUR700,000. Furthermore, to the extent Wealth Tax is managed by the Spanish autonomous regions, each region sets forth different deductions, reductions and exemptions, separate from the general deductions, reductions and exemptions regulated at the national level. Therefore, effective liability on Wealth Tax depends on the autonomous region's legislation that applies to the specific case, depending on the autonomous region where the individual is tax resident.

IGT

IGT is levied upon the transfer of property as a consequence of a person's death (ie, mortis causa) and from the transfer of property without consideration. Tax liability shall be determined considering the real value of the assets and rights being transferred, and the personal circumstances are taken into account to determine the final tax burden (kinship, age, previous net wealth of the acquiror, autonomous region of residence of the transferor and of the acquiror, etc).

Non-residents

Spanish-source income and capital gains derived by individuals who are not considered tax residents in Spain are subject to Spanish Non-Resident Income Tax (NRIT), notwithstanding the application of the provisions set forth in the tax treaties entered into by Spain with third countries.

Spanish source income and capital gains include the following:

- income obtained through a permanent establishment (PE);
- 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;
- interest and royalties;
- dividends;
- income derived from real estate located in Spain; and
- certain capital gains deriving from the transfer of Spanish-based assets and rights.

Nevertheless, NRIT individuals may be considered taxpayers for Wealth Tax purposes, although only upon assets and rights that are located or may be exercised or fulfilled within Spanish territory, as well as in connection with the receipt of amounts derived from life insurance contracts formalised with Spanish insurance companies or that have been formalised in Spain with foreign insurance companies, although with some particularities.

A general EUR700,000 Wealth Tax exemption is available to non-residents.

1.2 Exemptions

Provided that certain requirements are met, individuals are entitled to apply for an exemption on Wealth Tax and IGT for family-owned businesses. Such exemption requirements may vary depending on the autonomous region in which the entrepreneur, shareholder or beneficiary is a tax resident.

Subject to the fulfilment of certain conditions, the transfer of shares in a Spanish entity (including holding entities upon fulfilling additional requirements) may benefit from a 95% tax allowance on IGT and a 100% allowance on Wealth Tax.

1.3 Income Tax Planning

Subject to the fulfilment of certain conditions, setting up a Spanish holding entity may result in an efficient instrument from a tax standpoint as it may qualify for Wealth Tax and IGT exemptions, while dividends and capital gains derived from share transfers may benefit from the Spanish participation exemption regime, by means of which a 95% exemption applies if certain requirements are met. The main requirements are as follows:

- holding at least 5% of the subsidiary during the previous year uninterruptedly;
- foreign subsidiaries must be subject to and non-exempted from a tax equivalent to CIT at a standard tax rate of at least 10%; and
- not qualifying as a “passive entity”.

1.4 Taxation of Real Estate Owned by Non-residents

From a direct taxation standpoint, the acquiror of a residential property in Spain does not carry out a taxable event by means of which they should pay NRIT based on the sole effect of acquiring a residential property. Nevertheless, non-residents owning a real estate property located in Spain are subject to NRIT either on rental income or on a deemed income (if the asset is not rented).

Deemed income will be calculated as 1% or 2% of the real estate’s cadastral value. The cadastral value is an administrative value assigned to the property by the authorities and is not necessarily connected or referenced to the fair market value of the asset.

Only NRIT taxpayers that are resident in another EU Member State may deduct expenses incurred in the obtaining of Spanish-source income, provided they are strictly related to the activity undertaken in Spain.

The NRIT tax rate for income derived from immovable property is 24% (19% for NRIT taxpayers that are resident in another EU Member State or in a country within the European Economic Spain with which there is an effective exchange of information).

Real estate located in Spain that is directly owned by non-resident individuals is subject to Wealth Tax. Nevertheless, to verify effective taxation for Wealth Tax purposes, each case shall be analysed in accordance with the provisions set forth in the relevant tax treaty of application.

Furthermore, the tenancy and transfer of real estate located in Spain may be subject to some local taxes, such as property tax or tax on the increase of urban land value.

Real estate that is located in Spain and inherited by a non-resident will be subject to Inheritance Tax.

However, non-residents that inherit shares in a non-Spanish entity holding real estate located in Spain could be subject to Spanish Inheritance Tax if the assets of said company are mainly comprised, directly or indirectly, of real estate located in Spain (ie, more than 50%). General anti-abuse provisions set forth by the Spanish tax legislation may apply.

1.5 Stability of the Estate and Transfer Tax Laws

The so-called "white-book on the Spanish tax reform" was published in March 2022. This "white book" was drafted by a panel of tax experts consulted by the Spanish government and, among other items, it drafts the main drivers on a potential reform of Wealth Tax and IGT.

This intended tax reform aims to narrow the differences between the autonomous regions in terms of tax reliefs, reductions, exemptions, etc, on the aforementioned taxes. The intention is to force certain autonomous regions such as Madrid to reduce tax incentives on Wealth Tax and IGT, thus resulting in a higher tax burden for the taxpayers.

This proposed tax reform is yet to be discussed at the parliament, so it is not likely to be implemented within the short term.

1.6 Transparency and Increased Global Reporting

The Spanish tax authorities have significantly increased scrutiny on the following areas.

- Tax audit proceedings of multinational groups, large companies and tax unities, with higher priority being placed on companies less affected by the COVID-19 economic crisis. The main areas of performance are anti-tax avoidance tax measures, especially hybrid instruments, CFC, financial expense deduction or tax treaty abuse.
- Control of tax and company groups.
- The principal purpose test and the effectiveness of substance requirements required by the anti-abuse Spanish regulations on non-resident entity recipients of payments derived from interest, royalties and dividends from Spanish entities – ie, the business purpose test of non-resident entities benefitting from tax incentives derived from EU Directives or double taxation treaties.
- In the field of transfer pricing within the scope of multinational corporate groups, the tax authorities are focusing on:
  - (a) the review of the correct allocation of profits by Spanish entities according to the risks and functions assumed and performed, respectively, by the Spanish entity;
  - (b) the recharacterisation of business models adopted by Spanish entities according to the real functions and risks; and
  - (c) the determination of PEs in Spain derived from the functions carried out by dependent commercial agents (eg, substantial functions v ancillary or auxiliary functions).
- Taxation derived from operating via a company without its own means and resources by individual professionals due to the different rates for corporate tax and personal tax purposes.
- Customs control has been strengthened for the avoidance of tax fraud, as well as in relation to several sectors such as e-commerce and the digital economy.
- The transposition of the Directive on Administrative Cooperation (DAC6) involves focusing attention on those transactions that are subject to reporting under the DAC6 provisions.
- In the field of VAT, the tax authorities have strengthened control thanks to implemented systems and regimes such as SII (Immediate Supply of Information), which makes an in-time electronic supply of invoicing records through the tax authorities' web site mandatory for corporations.

DAC6

DAC6 aims to increase transparency and fairness in taxation. The Law for the transposition of DAC6 was published on 30 December 2020.

DAC6 implements Action 12 of the OECD BEPS Project, which provides recommendations for the design of rules to require taxpayers and advisers to disclose aggressive tax planning arrangements. These recommendations seek a balance between the need for early information on aggressive tax planning schemes and a requirement for disclosure to be appropriately targeted and enforceable, avoiding placing undue compliance burden on taxpayers.

The final regulation to complete the transposition of DAC6 was approved in April 2021, and the obligation to disclose cross-border mechanisms – to which any of the Hallmarks listed in Annex IV of Directive 2011/16/EU apply – has since been in force.

DAC6 applies to cross-border tax arrangements that meet one or more specified characteristics (Hallmarks), and concern either more than one EU country, or an EU country and a non-EU country. It mandates a reporting obligation for these tax arrangements if they are within scope, regardless of whether or not the arrangement is justified according to national law.

Failure to comply with DAC6 could lead to significant penalties under local regulations and reputational risks for businesses, individuals and intermediaries.

BEPS

Spain signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) on 7 June 2017, together with 67 other jurisdictions.

On 13 July 2018, the Spanish Council of Ministers approved the MLI as a starting point of the internal ratification process. Invoking Article 35.7 of the MLI, Spain decoupled the date of effect of the MLI from the date of its entry into force, meaning that the effects of the MLI would not begin until Spain notified the MLI Depositary. The notification issued by Spain was received by the Depositary on 1 June 2022.

Spain has played an active role in discussions on the BEPS Action Plan. In particular, the Spanish tax authorities have participated in several negotiations in international forums regarding the content and implementation of the BEPS programme, resulting in a package of 15 measures to be implemented in both European and domestic legislation.

As a result, and even though the BEPS Actions may be considered soft law (the OECD final reports on each Action are merely legal recommendations), Spain intends to transpose most of the BEPS Actions into its domestic legislation.

In general terms, most actions taken by Spain were reflected in the last CIT reform, which entered into force in 2015, with the most important amendments to Spanish domestic legislation being as follows.

- Tax planning disclosure (DAC6) – in April 2021, Spain approved the regulation that fulfils the transposition of the measures included within Council Directive (EU) 2018/822 of 25 May 2018, as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements.
- List of tax havens – the Spanish tax system contains an important number of anti-avoidance rules in relation to the use of tax havens. Spain adopts its own concept of “tax haven”, which does not necessarily compare with other EU jurisdictions. Nevertheless, the term “tax haven” was muted to “non-cooperative jurisdiction” in 2021 with the aim of harmonising the Spanish traditional “tax haven” concept with the OECD and EU standards.

- Tax treaty abuse – Spain's current tax treaty policy is to negotiate the inclusion of limitation on benefits clauses.
- CFC rules – before the implementation of the BEPS Actions, Spain already had important provisions in this regard. However, following the OECD recommendations, Spain has strengthened its CFC rules by making them more restrictive.
- Interest deductibility – Spain has already introduced a limitation on interest deductibility linked to earnings before interest, taxes, depreciation and amortisation (EBITDA) with the company.
- PEs – Spain has not passed or amended any current law in this regard but, in practice, the Spanish tax authorities have been applying a more economic approach to the PE definition, which is very close to the broader PE rule established within BEPS.

Within this environment, the Spanish government introduced an obligation for Spanish corporations to file a Country-by-Country Report for fiscal years commencing as of 1 January 2016.

Country-by-country reporting is required from:

- entities resident in the Spanish territory that are the parent in a group as defined in the terms established in corporate tax law, and that are not dependent on another resident or non-resident company, when the net business turnover of the group of persons or entities forming part of the group in the 12 months prior to the start of the tax period is at least EUR750 million; and
- entities resident in the Spanish territory that are direct or indirect subsidiaries of a non-resident company in the Spanish territory that is not, at the same time, a subsidiary of another, or a PE of non-resident companies when, likewise, the net business turnover of the group of persons or entities that form part of the group in the 12 months prior to the start of the tax period is at least EUR750 million, provided that one of the following circumstances exists:
  - (a) entities are designated by their non-resident parent entity to prepare this information;
  - (b) there is no obligation for country-by-country reporting or similar as set forth in this section regarding the aforementioned non-resident entity in its country or the territory of its tax residence;
  - (c) there is no agreement for the automatic exchange of this information with the country or territory in which this non-resident entity has its tax residence; or
  - (d) with the existence of an agreement for the automatic exchange of this information with the country or territory in which this entity has its tax residence, there has been a systematic non-compliance therewith, which has been notified by the Spanish tax agency to the subsidiary entities or to the permanent resident companies in the Spanish territory.

However, country-by-country reporting will not be required of entities if this reporting obligation has been fulfilled by the relevant parent entity in its relevant jurisdiction, provided that the conditions set forth in Council Directive 2016/881 of 25 May 2016 are met.

Any entity resident in the Spanish territory that forms part of a group that is obliged to carry out country-by-country reporting must notify the Spanish tax administration of the identification and tax country of residence of the entity within the group that is effectively obliged to prepare and submit this information. This notification must be made every year before the end of the tax period to which the information refers, and must include the identification of the entity obliged to report it and whether this is carried out depending on the parent entity, obliged affiliate entity or subrogating entity.

VAT Immediate Supply of Information system

2018 was the first complete fiscal year in which the Immediate Supply of Information system applied, according to which VAT taxpayers are required to file electronically and in real time the information related to invoices issued or received from their activity. Due to this system, the tax authorities have immediate access to all the information related to the operations carried out by Spanish entities, thereby strengthening the existing electronic control systems in the hands of the tax authorities.

This special regime is mandatory for:

- VAT taxpayers with revenue exceeding EUR6 million;
- VAT groups; and
- taxpayers voluntarily applying the VAT monthly refund.

2. SUCCESSION

2.1 Cultural Considerations in Succession Planning

In general terms, the Spanish succession regime has remained unchained for decades (or even centuries), so it seems to be quite outdated in terms of the new family models that have emerged over the last 20 years.

The Spanish succession regime varies depending on the autonomous region where the deceased is resident for civil law purposes, which may not coincide with tax residence for succession purposes (which in turn may differ from tax residence for PIT purposes).

Regardless of the particularities that may apply to the succession considering the applicable regional or local civil legislation in this field, in general terms blood-bound close relatives are well protected for succession purposes as the donor is obliged to transfer at least two thirds of the total estate to those relatives (a quarter in some regions).

On the other hand, spouses are generally not well protected as they may only acquire the legal usufruct of the estate in the case of intestate succession.

Apart from granting a will, years family protocols have emerged over the last 15 as a useful succession planning tool aimed at protecting and preserving family-owned businesses; in Spain it is very rare for such businesses to survive the third generation.

2.2 International Planning

Spain has entered into three tax treaties concerning succession, with Greece, France and Sweden, so there is not too much leeway on international planning from a Spanish succession law perspective.

In fact, international tax planning is usually focused on the repatriation of funds in an efficient manner from a direct tax perspective (mainly dividends, interest and capital gains) without prejudice to the structuring of investment in Spain through non-resident entities, which, in certain cases, can be efficient from a Wealth Tax and IGT perspective.

2.3 Forced Heirship Laws

The Spanish succession regime differs depending on the personal civil residence of the deceased. In this context, the autonomous regions of Aragon, the Basque Country, the Balearic Islands, Catalonia, Galicia and Navarra have their own civil regulation in terms of succession, which differs from the general succession regulation applicable in the rest of Spain.

However, only Navarra and some locations in the province of Alava (Basque Country) have some exceptions to the general rule of forced heirship in favour of descendants.

Depending on the regional applicable law, descendants are entitled to at least a quarter or two thirds of the estate.

Except in some locations in the Basque Country and the Balearic Islands, the surviving spouse has the right to the usufruct of the estate.

For those individuals that die without progeny, the Spanish common succession regime and the legislation applicable in Catalonia and the Balearic Islands set forth a compulsory heirship to surviving parents or any other surviving ascendant with respect to at least a quarter of the estate, depending on whether they concur with the surviving spouse.

2.4 Marital Property

The default regime of marital property depends on which autonomous region's regulations apply to the marriage.

Under Spanish common civil law, the marriage property regime is community of property (*sociedad de gananciales*), which implies that spouses jointly own not only all assets and rights but also all income earned by the spouses during the marriage, although for tax purposes income derived from personal work may be imputed only to the relevant individual that obtained it.

2.5 Transfer of Property

In general terms, the acquisition of assets by means of a donation or succession involves the updating of the value of the assets and rights being transferred.

The acquiror may only not update the value of the assets and rights acquired in the case of donations of family-owned businesses that have benefited from the 95% exemption described in **1.1 Tax Regimes**.

2.6 Transfer of Assets: Vehicle and Planning Mechanisms

As explained in **1.1 Tax Regimes**, the transfer of family-owned businesses to the next generation may qualify for a 95% IGT and Wealth Tax relief.

To the extent the autonomous regions regulate their own exemptions, deductions and reductions in respect of both IGT and Wealth Tax (eg, in Madrid, a tax rebate of up to 99% for IGT and up to 100% for Wealth Tax is applicable), the tax residence, as so determined for each tax, in a specific autonomous region within Spain will determine the tax burden of the transfer of assets.

2.7 Transfer of Assets: Digital Assets

In terms of IGT, the transfer of digital assets does not generally differ from the transfer of other types of assets.

It is nevertheless relevant to mention that, in the donation of digital assets, the PIT of the donor shall be determined. In this context, it shall be differentiated whether the donor has obtained the digital assets donated in the primary market (ie, by means of a mining activity) or whether the digital assets donated have been acquired in the secondary market (ie, by means of a trading activity either as a professional or as a regular consumer).

3. TRUSTS, FOUNDATIONS AND SIMILAR ENTITIES

3.1 Types of Trusts, Foundations or Similar Entities

Although in Anglo-American law the trust is a characteristic institution that has a close relationship not only with the law of obligations and property but also with family and succession law, the concept of the trust is not recognised in the Spanish legal system.

Indeed, the Spanish legal system does not allow for a double property regime (ie, formal and legal) over any rights or assets, as would be the case in a trust.

3.2 Recognition of Trusts

Spain is one of the European countries that ignores the concept of the trust, so there is no law that regulates a similar construct, nor has Spain signed the Hague Convention on the Law Applicable to the Trust and its Recognition, dated 1 July 1985.

Considering this, the position adopted by the Spanish Directorate General for Taxes (GDT) is that the trust is a legal institution not recognised in Spain and therefore its treatment within the framework of the Spanish tax system shall be sustained on the fact that such institution has not been recognised by the Spanish legal system.

Consequently, 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 – ie, 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.

The only way that the GDT has considered recognising the effects derived from the constitution of a trust is limited to those cases where the beneficiary of a trust is also designated as the 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, and that the settlor has conveyed to the beneficiary the right of ownership over the assets contributed to the trust.

3.3 Tax Considerations: Fiduciary or Beneficiary Designation

If a Spanish tax resident individual serves as a fiduciary to the trust (ie, as trustee), they would not be deemed to be the owner of the assets contributed to the trust in accordance with Spanish civil law, but merely a representative.

If a Spanish tax resident individual is appointed as the beneficiary of a trust, they would not be deemed to be the owner of the assets contributed to the trust.

The beneficiary of a trust could only be deemed the owner of the assets contributed to the trust under Spanish civil law, and therefore also for Spanish tax purposes, if they were also appointed as a trustee. In any event, this approach should be confirmed on a case-by-case basis.

Planning opportunities linked to trusts are very limited from a Spanish legal perspective and, in fact, the unfolding effect of the legal treatment of the trust under the law of the jurisdiction where it is incorporated and regulated and the legal treatment of the trust under Spanish law must be carefully evaluated. It may be the case that assets contributed to a trust are deemed to have been transferred to the beneficiary according to the law of the jurisdiction of the trust, while from a Spanish legal perspective said transaction is deemed to not have occurred.

On the other hand, it may be the case that the settlor carries out a donation or other transaction involving the assets contributed to the trust that produces binding legal effects from a Spanish civil and tax law perspective, but such transaction may be contrary to the deed of trust or to the general laws of the jurisdiction of the trust.

3.4 Exercising Control Over Irrevocable Planning Vehicles

As trusts are not recognised under the Spanish legal system, there is no specific development in this area.

4. FAMILY BUSINESS PLANNING

4.1 Asset Protection

Although Spanish law establishes measures to protect the assets of minors or disabled individuals, it does not recognise legal institutions that are familiar to common law practitioners and asset protection, such as trusts, which extract assets from the economic sphere of an individual in favour of third parties (typically descendants) to protect them from potential liabilities incurred by that individual.

4.2 Succession Planning

Inheritance and gifts are liable to IGT in Spain, which 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 the acquisition value of assets, 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, and the autonomous region of residency. The autonomous regions have extensive power to pass their tax reliefs and tax rates, so that tax liability can differ significantly from one region to another.

The most popular family business succession planning strategy consists of applying the 95% reduction in the taxable base of succession by descendants or spouses. This requires the company to be exempted under the Net Wealth Tax (NWT) rules, which in turn requires the following.

- The company's main activity must be something other than the mere management of a movable or immovable asset portfolio and, therefore, a test of the assets used for active business must be performed. Management of qualified shareholdings is not deemed management of a portfolio for these purposes, so holding entities normally qualify if their subsidiaries (of which they own at least 5%) are active companies. If minority shareholdings (less than 5%) or other "passive" assets represent more than 50% of the value of the holding, the benefit is not applicable. Moreover, even if this first test is met, the value of the shares corresponding to the percentage of passive assets or minority stakes will not benefit from the tax relief.
- The NWT taxpayer must hold a minimum stake of 5% in the share capital of the company (20% if computed together with the stakes belonging to their spouse, ascendants, descendants and siblings).
- The NWT taxpayer (or any of the stakeholding relatives referred to above) must be involved in the management of the company, for which they receive remuneration that exceeds 50% of their total employment and business income.
- The acquirer must keep the stake in the company (they cannot transfer it to a third party) for a period of ten years after the acquisition was made, unless they die beforehand.

4.3 Transfer of Partial Interest

When a partial interest in an entity is transferred, either during lifetime or upon death, the fair market value of the interest for Spanish Transfer Tax purposes is not adjusted to reflect a discount for lack of marketability and control. All transactions carried out by and between related parties shall be valued at arms' length.

5. WEALTH DISPUTES

5.1 Trends Driving Disputes

Disputes regarding estates often result from lack of succession planning or successions with international parties.

Arbitration and mediation are alternative ways to solve wealth disputes, requiring less time and money than the judicial proceedings of ordinary jurisdictional bodies.

5.2 Mechanism for Compensation

The calculation of damages follows general Spanish civil law rules, essentially aimed at repairing the damages suffered by the parties.

Penalty clauses included in succession planning instruments are very important.

6. ROLES AND RESPONSIBILITIES OF FIDUCIARIES

6.1 Prevalence of Corporate Fiduciaries

The use of corporate fiduciaries is not prevalent in Spain.

6.2 Fiduciary Liabilities

This is not applicable in Spain.

6.3 Fiduciary Regulation

This is not applicable in Spain.

6.4 Fiduciary Investment

This is not applicable in Spain.

7. CITIZENSHIP AND RESIDENCY

7.1 Requirements for Domicile, Residency and Citizenship

In Spain, tax residence determines tax liability and Spanish PIT sets forth two rules and a presumption to consider an individual as a tax resident in Spain:

- a “permanence test” applies when the individual remains in Spain for more than 183 days per calendar year; occasional absences shall be included to calculate the period of residence, except when individuals prove that they have their tax residence in another country; anda “centre of economic interest test” applies when the main or central place of business or the majority of the investment of the individual is directly or indirectly located in Spain.

Finally, unless there is clear evidence from the taxpayer demonstrating otherwise, the law presumes that an individual will be considered a resident in Spain when their spouse and dependent minor children reside in Spain (presumption applicable).

Tax residence is key to determining the personal liability of direct taxes. Domicile is just an indication of habitual residence.

Spain does not request any visas for EU and EEE jurisdictions, for most Latin American jurisdictions, or for other jurisdictions such as Israel, Singapore, the United States and South Korea, among others. A tourist visa in Spain lasts 90 days from arrival.

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 years and, ultimately, for five years. The following qualified investments in Spain must be carried out in order to be eligible:

- EUR500,000 in real estate;
- EUR1 million in bank deposits, securities or investment funds; or
- EUR2 million in Spanish public debt.

The scope of the Golden Visa includes relatives of the applicant: the spouse and descendants under 18 may apply – jointly, simultaneously or subsequently – for the authorisation and the visa. This scope has been extended to the partner of the applicant and to children of legal age economically dependent and unmarried, as well as to the economically dependent ascendants of the applicant.

7.2 Expeditious Citizenship

The Golden Visa does not permit Spanish citizenship. However, among other channels, the Spanish Civil Code allows individuals to obtain Spanish citizenship if they have ten years of residence in Spain, or two years of residence for citizens of Ibero-American jurisdictions including Andorra, the Philippines, Equatorial Guinea and Portugal and individuals with Sephardic ancestors.

In any case, nationality is originally acquired on an ius sanguinis basis (ie, Spanish national-born descendants). However, other factors also enable the acquisition of Spanish nationality, such as residence, affiliation/adoption bonds and discretionary measures (naturalisation card – *carta de naturaleza*).

8. PLANNING FOR MINORS, ADULTS WITH DISABILITIES AND ELDERS

8.1 Special Planning Mechanisms

Spanish legislation contains a specific regime to protect the net worth of disabled individuals. This regime is intended to foster the consolidation of funds to cover the vital needs of disabled individuals throughout their lives without triggering regular taxes that would be levied upon the standard contributions made in any other case.

8.2 Appointment of a Guardian

Legal capacity may be revoked by a judge, in which case 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 person concerned. Once appointed, management must be carried in the best interest of the incapacitated person; except for some specific powers that would require a judge's authorisation, the custody shall be performed under the criteria of the guardian, curator or custodian.

8.3 Elder Law

Spanish legislation has developed the so-called "Dependency Law", which aims at providing public assistance and financial aid to individuals who take care of relatives that are not self-sufficient and need help in their day-to-day routine.

9. PLANNING FOR NON-TRADITIONAL FAMILIES

9.1 Children

Spanish legislation applies equally to all biological children, regardless of whether or not they are born to married parents.

Adopted children are treated equally to biological children except for Spanish peerages, for which being born in wedlock may be a requisite.

9.2 Same-Sex Marriage

The Spanish legal system confers the same legal status on same-sex marriages as opposite-sex marriages. Civil unions are also recognised as a form of a legal union, in terms very similar to marriage.

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

10. CHARITABLE PLANNING

10.1 Charitable Giving

Act 49/2002 of 23 December provides for a specific tax regime applicable to foundations, associations of public interest, non-profit-making organisations and philanthropic activities.

This tax regime sets forth a total exemption for contributions and donations received by the relevant foundations, associations and non-profit-making organisations, and also for the income derived by those entities that is strictly connected to their general interest purpose.

Foundations and associations of public interest that derive income that may not qualify as fully exempt are taxed at a 10% rate on said non-exempt income.

These entities are also entitled to certain tax exemption on local taxes such as Real Estate Tax or Tax on the Increase of Value of Urban Land.

Patronage activities are also entitled to tax benefits under Act 49/2002 of 23 December.

Individuals and legal entities that carry out contributions to these entities are entitled to tax deductions in their respective PIT or CIT, as applicable.

As it refers to individuals, tax deductions amount to 80% of the donations up to EUR150 carried out, and 35% of the amounts exceeding this threshold.

If donations to the same entity are carried out in the last two consecutive tax periods for an amount equal to or greater than the amount donated in the previous year, the amount exceeding EUR150 will be 40%. In any event, tax deductions may not exceed an amount equivalent of 10% of the total PIT liability of the relevant individual.

Legal entities will be entitled to deduct an amount equivalent to the 35% of the donations and contributions carried out, up to a limit of 10% of the CIT base. Amounts exceeding said limit may be applied in the following ten years.

10.2 Common Charitable Structures

Spanish charitable entities may be organised under different legal forms in Spain, with the most common forms being associations and foundations. Both types of charities pursue a general interest and are based on non-profit-making principles.

These entities are compelled to use the donations and contributions received to fulfil their statutory purpose. There is a very strict regime relating to the beneficiaries of the activities carried out by these entities: representatives (and their relatives) are excluded as beneficiaries and may not receive a salary for their involvement with these entities.

Charitable structures are typically used in Spain by high net worth individuals and large companies that are and wish to be involved in certain activities of general interest (educational grants, maintenance of artistic heritage, etc).

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