

PANORAMIC

PRIVATE CLIENT

Andorra



LEXOLOGY

Private Client

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LEGAL FRAMEWORK

Key legislation

What key legislation and regulations are relevant to foreign individuals moving to or investing in your jurisdiction? What government bodies are charged with enforcing these laws and what is the extent of their powers?

Foreign investment in Andorra is defined by Law 10/2012, of 21 June, on foreign investment in the Principality of Andorra (FI Law) as the investment by any means in real estate properties or companies located in the Principality of Andorra by non-Andorran persons or non-resident natural persons; legal persons of foreign nationality; and Andorran companies with direct or indirect foreign equity participation equal to or greater than 50 per cent in its share capital or its voting rights.

The investor must provide the Ministry of Economy with sufficient information about the applicant or shareholders – if the applicant is a company – and the proposed venture, including its activity, financing and investments in the foreseeable future.

The government will reject requests for foreign investments from natural or legal persons with residence, domicile or nationality of countries considered as non-cooperative in money laundering and terrorist financing matters by the Financial Action Task Force, as well as foreign investments from natural and legal persons with an adverse report from the international agencies for the prevention of money laundering and terrorist financing.

Real property

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

A foreign investment authorisation is also mandatory for foreign investors to acquire ownership rights and other rights in rem in respect of real estate located in Andorra.

In accordance with FI Law, investments in real estate made by legal persons of foreign nationality engaged commercially in the acquisition or construction of real estate with the aim of commercialising such real estate would not be allowed. Thus, foreign legal persons aiming to carry out real estate business should incorporate an Andorran company as its branch in this jurisdiction.

Law 16/2023, of 7 September, concerning the temporary suspension of foreign investments in real estate in the Principality of Andorra, has established the temporary suspension of foreign investments in real estate until the approval of a new tax on the real estate investment carried out by non-residents. This tax initiative will run in parallel with the amendment of FI Law, scheduled for the first quarter of 2024.

Establishing a business

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

An investor shall obtain a foreign investment authorisation granted by the government of Andorra prior to the incorporation of a new company in Andorra, or prior to holding a percentage of share capital or voting rights greater than 10 per cent.

Once a foreign investment authorisation is granted and the company is duly incorporated, any modifications of its purpose, share capital, percentage of foreign participation or amendments that affect the conditions imposed by the original authorisation require the filing of an application for a new foreign investment authorisation.

TAX

Residence and domicile

How does an individual become taxable in your jurisdiction?

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

- the 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; and
- the 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 Law 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.

Income

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

All worldwide income, including the 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 benefits from a reduction of €24,000 and an additional bonus of 50 per cent on the nominal tax rate for income between €24,000 and €40,000.

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

Capital gains

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

Capital gains are taxable in Andorra pursuant to Law 21/2006 of 14 December on the Real Estate Capital Gains Tax (the Real Estate Capital Gains Law), Law 94/2010 of 29 December on the Non-Resident Income Tax (the Non-Resident Income Tax Law) and the PIT Law.

Capital gains from real estate

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

These capital gains are subject by the Real Estate Capital Gains Law to a digressive tax rate from 15 per cent to 1 per cent depending on the years of ownership, which range from zero to nine years, while the transfer of real estate owned for at least 10 years is subject to a zero per cent tax rate.

As of 1 January 2024, the Real Estate Capital Gains Tax will be integrated into the other direct taxes applicable in the Principality of Andorra. The tax rate applicable to these capital gains will be 10 per cent. However, speculative gains, understood as those gains generated in a period of less than two years, are taxed at 15 per cent.

Other capital gains

All non-real estate capital gains are subject to PIT or Non-Resident Income Tax at a tax rate of 10 per cent.

Capital gains obtained by both Andorran tax residents and Andorran non-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 and savings income obtained by Andorran tax residents benefit from a reduction of €3,000.

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 Law and the Real Estate Capital Gains Tax Law provide exemptions in the case of family gifts up to the third level of kinship.

Inheritance

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

There is no inheritance tax in Andorra, nor is the deceased taxed for capital gains derived from transfer on death.

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 Law 11/2012 of 21 June on the General Indirect Tax (IGI Law) 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 Law 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 (local authority) where the real property is located. Since each parish has its own regulation, the real property can be taxed between zero 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 Law 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 Law.

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 of 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;
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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.

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 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, as these vehicles are taxed at zero per cent.

Andorran holding companies are also used for estate planning purposes.

Charities

How are charities taxed in your jurisdiction?

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

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, Law 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.

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.

Private foundations

Does your jurisdiction recognise private foundations?

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

Disputes

What issues typically give rise to disputes relating to trusts and foundations? How are these disputes resolved? (What are the most common causes of action? Which courts are used? Is alternative dispute resolution (ADR) available and commonly used? What remedies are commonly awarded?)

Andorran law does not recognise trusts because Andorra has not signed the Hague Convention of Recognition of Trusts.

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 Law 30/2022 of individuals and families of 21 July. These relationships have the same tax and succession treatment as marriage.

Heterosexual civil unions

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

The Qualified Law 30/2022 of individuals and families of 21 July recognises the legal relationships of heterosexual couples other than marriage, which has the same effect and treatment for tax and succession purposes.

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.

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.

Disposition

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

Law 46/2014 of 18 December on Andorran Decease Succession establishes the restrictions to the testamentary freedom knowledge as reserved portions of the estate, which are:

- a quarter of the estate must be transmitted to first-degree relatives. The descendants 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 estate.

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?

If Law 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 his or her relatives, the widowed spouse or the legal partner under a couple stable union. 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 of the estate must be made expressly before an Andorran Public Notary or before the Andorran courts.

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?

According to Andorran law, biological children have the same rights regardless of whether they were born in or out of wedlock.

Moreover, adopted children are treated as equal to biological 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 biological children in the adoptive family, both in intestate succession and in relation to the offspring.

However, a comparison between adoptive and biological filiation cannot be applied in the case of testamentary succession because discrimination between adopted and biological children is possible if it derives from the private will manifested in the disposition of the last will.

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 their nationality or exceptionally by the law of the closer link country.

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.

Foreign wills

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

Andorran law recognises foreign wills, which must be apostilled.

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.

Administration

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

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

There is no 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

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 his or her estate when he or she turns 18 old.

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

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

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 full capacity to manage his or her estate when they turn 18 years old.

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 and the Ministry of Social Affairs.

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

Through 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

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 for less than 90 days in a one-year period.

If visitors wish to stay in Andorra for more than 90 days per year, they need to obtain an immigration authorisation following the relevant procedure according to Andorran immigration law.

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 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 €350,000 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 law. Additionally, a non-refundable deposit of €47,500 for the applicant and €9,500 for each dependent family member should be deposited to the Andorran Financial Authorities.

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?

Law 16/2023, of 7 September, concerning the temporary suspension of foreign investments in real estate in the Principality of Andorra, has established the temporary suspension of foreign investments in real estate until the approval of a new tax on the real estate investment carried out by non-residents. This tax initiative will run in parallel with the amendment of FI Law, scheduled for the first quarter of 2024.

For its part, Law 24/2022, of 30 June (Digital Assets Law), has established a comprehensive regulatory framework for digital assets and blockchain technology in the country, including provisions governing the taxation of digital assets or digital currencies.

The Digital Assets Law aims to create an optimal balance between innovation, markets, society's preferences, technological development and the legal framework while allowing participation with certainty and legal security, thus ensuring strict compliance with the basic pillars of the rules of operation of the capital market in terms of protection of personal data, electronic contracting, investor protection, market abuse, and regulations for the prevention and fight against money or securities laundering and the financing of terrorism, among others.

Finally, Law 42/2022, of 1 December (Digital Economy, Entrepreneurship and Innovation Law) aims to promote new business models focused on the digital world and to make the competitive advantages of the Andorran economy more attractive. In addition, it has provided for new immigration authorisations targeted to individuals willing to reside in

Andorra carrying out an economic activity that contributes to the development of the digital economy, entrepreneurship and innovation in Andorra.