

A brief overview of the inheritance and gift tax in Spain

Over the past decades many foreigners have become owners of real estate property in Spain.

When it comes to estate planning, questions of all types, e.g. regarding the applicable law or taxes may arise, and although this is, of course, a very complex issue, - even more in an international context -, we hereby try to give the reader a brief overview of the issue.

I. Applicable inheritance law

According to the International Private Law of most countries, including Spain and Germany, the national law of the deceased generally applies to inheritance issues. This means, that even in case part of the estate is located in Spain, Spanish inheritance law will not apply to foreign owners, except for the inheritance tax law.

Notwithstanding the aforesaid, certain Spanish rules have to be observed by the heirs in order to become legal successors of the real estate; especially heirs have to **formally accept** the estate by means of a **Notary's deed** ("**aceptación de herencia**"). Only then and after paying the corresponding (Spanish) inheritance taxes, the heirs can apply for transcription in the Land Register.

II. Inheritance tax

1. Inheritance tax subject to Spanish Law

The inheritance tax is jointly regulated with the gift tax in the Act 29/1987 of 18 December about inheritance and gift tax ("**Ley 29/1987, de 18 de diciembre, del Impuesto sobre Sucesiones y Donaciones**", shortly called "**LISD**").

Both, either the acquisition of assets and rights by way of succession or gift, is, generally speaking, subject to the same and quite high tax rates, lying the main difference in certain exemptions related with successions.

Concretely, the following main aspects have to be observed:

2. Tax rates and basis of assessment

2.1. Basis of assessment

The basis of calculation for the inheritance and gift tax, which may differ from one Spanish region to another, is progressive and the rates applicable depend on the following three main circumstances:

- The value of the asset to be transferred to the heirs or, in general, to the beneficiary
- The beneficiary's pre-existing wealth (in Spain)
- The degree of relationship between the deceased /donator and the beneficiary

According to section 21 ff "**LISD**" the tax rates are stipulated between 7,65 % in case of low values up to approximately 8.000,- € and rise progressively up to 34 % in case of values of approximately 800.000,- €. The resulting amounts will be multiplied by a coefficient of between 1 and 2,4, to be determined exactly by the degree of relationship between the deceased / donator and the beneficiary and the beneficiary's existing wealth. As with regard to the latter, just real estate and

bank accounts in Spain are to be taken into account, the coefficient is usually of not much importance for Non-Resident beneficiaries.

2.2. Reductions and final tax payable

The basis of assessment is legally reduced depending on the degree of consanguinity between the deceased and the heir/transferee, arising to 13.651,99 € for direct descendants, spouses and direct ascendants over 21 years of age; for descendants under age 21 the reduction arises to 13.651,99 € plus 3.413,75 € multiplied by the number of years to arrive at age 21.

No reduction is applied in case of gifts.

2.3. Pre-existing wealth

Finally, the heir's or beneficiary's pre-existing wealth is taken into account by applying a coefficient to the gross tax payable depending on the relationship with the deceased. The value of the pre-existing wealth is calculated according to the wealth tax rules.

For direct descendants, spouses and direct ascendants, however, the coefficient is relatively low, which means between 1 in case of existing wealth of a value up to 402.678,- € and 1.2 in case of wealth of more than approx. 4 million €.

Furthermore, it has to be mentioned in this context that only real estate and bank accounts in Spain are to be taken into account, so the coefficient is usually of not much importance for Non-Resident beneficiaries.

III. Capital gains tax on land ("plusvalía")

The capital gains tax on land is a tax levied by the local authorities in relation with any and all transfer of real estate, either purchase, inheritance, gift, etc. This tax is levied on the increase of value since the last acquisition of the real estate, serving as a basis for calculation just the value of the ground, not of the houses or apartments.

Depending on the size and importance of the municipals, the capital gains tax on land may amount to between approximately 16 % and 30 %. The exact amount can be asked for in the respective town halls by submission of the last document of acquisition of the real estate.

IV. Payment schedule

The inheritance tax comes due within 6 months from the deceased's death.

Barcelona, March 2011

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