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GUIDANCE NOTES CONCERNING SPANISH INHERITANCE TAX (ISD)

Whilst inheritance tax legislation originates from the Spanish State, for beneficiaries resident in Spain the tax has been ceded to and is collectable by the Autonomous Communities (e.g. Andalucía, Madrid, Valencia, etc.), which also have the power to modify elements of ISD (e.g. personal allowances and deductions).

For non-resident beneficiaries the tax remains collectable by the Spanish State and subject to the standard State rules for allowances and deductions.

Unlike the UK, the tax is assessed on the beneficiaries of an Estate and the Estate itself is not taxable.

The appendices to these notes show the various tax tables and the main allowances/deductions.

All tax residents of Spain are ISD on an inheritance or a gift.

The definition of residence for the purposes of ISD is similar to income tax law (very generally 183 days presence in Spain in a calendar year results in tax residence) except that instead of considering a calendar tax year, the 365 days preceding the taxable event (i.e. date of death or gift) are relevant to classifying a beneficiary as resident.

It is most important to note that the 183 day rule is indicative only and it is possible to be considered tax resident in Spain with fewer or even no days of physical presence in Spain because of other factors, e.g. family or main interests or home in Spain. Tax residence status in other countries and double tax treaties may also affect the determination of tax residence status for ISD.

It should also be noted that ISD residence rules are unaffected by the special income/wealth tax regime specified by article 93 of income tax law, commonly known as the Beckham scheme. Beneficiaries electing for this income/wealth tax scheme are therefore be subject to ISD as normal tax residents.

In considering the impact of ISD the following is particularly notable:

- No general inter-spouse exemption exists
- The system does not contemplate same sex marriages or 'common law' marriages. However, some Autonomous Communities, including Andalucía, extend the definition of married persons to duly registered civil partnerships.

- Very significant differences can arise for beneficiaries residing in different parts of Spain because of the power given to the Autonomous Communities to vary ISD. Some commentators speculate that these differences are so significant as to make the tax 'unconstitutional'. The EU prosecuted Spain for breaching EU law and the European Court of Justice finally ruled in August 2014 that Spanish ISD is in part illegal. We await the Spanish Government's reaction to this decision.
- Real estate assets are not valued strictly according to market value. Simply speaking the taxable value would be the higher of the purchase deed value, last used mortgage value or a multiple of the Valor Catastral (a kind of rateable value) of a property that is established by the regional tax authority.
- Tax is calculated by applying a sliding scale depending on the total value of the assets acquired and this amount is subject to a multiplier that depends on the blood relationship of the deceased and the value of the beneficiary's pre-existing wealth.

A few comments regarding UK Domiciles:

The estate of a person may remain subject to UK IHT even if tax residence in Spain has been established. In advising clients on ISD, it is therefore essential to analyse UK domicile status and obtain UK specialist advice if there are any doubts.

Although the UK provides a total inter-spouse exemption, inheriting children and other beneficiaries may suffer UK IHT in the case that the parents remain UK domiciled.

Both Spain and the UK provide a form of unilateral tax relief to prevent double taxation but this is a complex matter that requires considerable analysis.

Spence Clarke & Co.
Marbella, September 2014

Appendix 1 - Main exemptions/deductions that may be claimed by children/grandchildren and spouses for inheritances– note that these are available to each beneficiary:

Each beneficiary may deduct from the value of an inheritance, according to the relationship or consanguinity of the testator/donor and the beneficiary, the following amounts:

- Group I: Descendants and adopted children under 21
- Group II: Descendants and adopted children over 21, spouses, parents and adoptant parents.
- Group III: Relatives in second and third degree, i.e. brothers/sisters and nephews/uncles
- Group IV: Relatives in fourth degree, or without any relationship, for example, a friend, unmarried couples.

2011	State system (non residents)	Andalucia tax residents
Group I beneficiaries- Personal allowance for beneficiaries under 21	3,990.72 € for each year under 21 with a max of 47,858.59 €	3,990.72 € for each year under 21 with a max of 47,858.59 €
Group II beneficiaries- Personal allowance for beneficiaries 21 or over	15,956.87 €	15,956.87 €
Group III beneficiaries-	7,993.46 €	7,993.46 €
Group III beneficiaries	No allowances	No allowances
Inheritance of deceased's principal residence (deceased must have resided for 3 years+ and property must not be sold in subsequent 10 years+)	95% of the value of the inheritance subject to a maximum of 122,606.47 €	99% of the value of the inheritance subject to a maximum of 122,606.47 €
Inheritance of the deceased business assets	95 % exemption for Group I and II beneficiaries. Assets must be retained 10 years +	95 % exemption for Group I, II and III beneficiaries. Assets must be retained 5 years +
Smaller estates	Not applicable	125,000 € exempt if deceased's total estate less than 500,000 € and beneficiary's pre-existing wealth less than 402.678,11 €

In the case of the transmission of the same asset (or substituted assets) by subsequent inheritances within 10 years, any tax paid on the earlier inheritances is allowed as a further deduction. This allowance is restricted to direct descendants.

For beneficiaries of gifts, only the business asset deduction is available.

Appendix 2 - Tax rates, applicable to each beneficiary:

Each beneficiary may deduct from the value of an inheritance, according to the relationship or consanguinity of the testator/donor and the beneficiary, the following amounts:

- Group I: Descendants and adopted children under 21
- Group II: Descendants and adopted children over 21, spouses, parents and adoptant parents.
- Group III: Relatives in second and third degree, i.e. brothers/sisters and nephews/uncles
- Group IV: Relatives in fourth degree, or without any relationship, for example a friend, unmarried couples.

Current tax rates applicable to the value of an inheritance are:

Band up to €	Tax rate on band %	Cumulative tax €
7,993.46	7.65	611.50
15,980.91	8.50	1,290.43
23,968.36	9.35	2,037.26
31,955.81	10.20	2,851.98
39,943.26	11.05	3,734.59
47,930.72	11.90	4,685.10
55,918.17	12.75	5,703.50
63,905.62	13.60	6,789.79
71,893.07	14.45	7,943.98
79,880.52	15.30	9,166.06
119,757.67	16.15	15,606.22
159,634.83	18.70	23,063.25
239,389.13	21.25	40,011.04
398,777.54	25.50	80,665.08
797,555.08	31.75	207,266.95
excess	36.50	-

The resulting tax amount is then subject to the following multiplication factor, according to consanguinity of the beneficiary to the testator or donor and the pre-existing wealth of the beneficiary.

*Pre-existing wealth in €	Degree of consanguinity - Group as defined above		
	I & II	III	IV
0 to 402,678.11	1.00	1.5882	2.00
402,678.11 - 2,007,380.43	1.05	1.6676	2.10
2,007,380.43 - 4,020,770.98	1.10	1.7471	2.20
4,020,770.98 +	1.20	1.9059	2.40

*For non-resident beneficiaries, the pre-existing wealth calculation is limited to Spanish assets.