

INHERITANCE AND WILLS ABROAD: SPAIN

The main purpose of this article is to briefly explain and in a simple manner, point out the main issues of inheritance and wills abroad, especially in the context of English Law. Please note that different rules may apply to Scotland and Northern Ireland.

In the last two decades, many British nationals have bought properties abroad. This fact brings International Private Law into action, where the law in the testator's (a person who leaves a will when he/she dies) home country and Spanish law might conflict.

The potential inheritance conflict can be understood by the following:

- Spanish Civil Law states that succession is determined by the deceased's national law.
- English Law states that the law where the property is located will apply.

For example, if a foreigner owns a property in the Costa del Sol and dies, two different jurisdictions will dictate the way the inheritance is treated, i.e. the deceased's national law and Spanish law; as the property is located in Spain .

It is important to be aware that the Spanish law of inheritance is different from that in other jurisdictions. In general, under English Law you are allowed to dispose of your assets as you wish. However, Spanish inheritance rules state that two thirds of the inheritance shall be offered to the compulsory heirs i.e. the spouse and children. Therefore, only one third of the inheritance, under Spanish succession rules, will be free to be disposed of in the way the testator wishes.

There are three main possibilities in regards to inheritance:

1. That the owner of Spanish property dies intestate, i.e. the deceased did not have a valid Will

In order for the Spanish assets to be distributed, various documents will have to be presented to a Spanish Notary and then to the appropriate Spanish Property Registry (if the asset in question is a property). The documents required will include a Death Certificate, Letters of Administration (as the deceased did not have a will) and possibly even a Certificate of Law depending on the individual circumstances of the case. Any English documents must be officially translated into Spanish and must be legalised by the Foreign & Commonwealth Office in London.

2. That the owner of Spanish property dies with a duly executed English Will.

As in the first case, various documents will need to be translated and legalised, namely, the Death Certificate and the Grant of Probate.

3. Finally, that the foreign owner of Spanish property dies with a Spanish Will in place.

It is always advisable that foreigners who own property in Spain make a Spanish Will disposing only of their assets in Spain, as it is then a much quicker process than in cases 1 and 2 and simplifies legal formalities for the heirs. By granting a Spanish Will, the foreign testator can dispose of their Spanish assets in any way they wish; as long as the laws of their home country permit this.

The Spanish Will must be limited to Spain and should only dispose of the assets located there. A foreign Will should also be written disposing of any assets located in other countries. Ensure that there are no conflicts between the Spanish Will and any other valid Wills.

The Spanish Will can be drawn up in two columns, one must be in Spanish and the other can be in your own language. Unlike the English system regarding Wills, a Spanish Will must be registered at the Central Wills' Registry in Madrid.

If you have made a Spanish Will disposing of your Spanish property and you leave it to the person of your choice, please be aware that, according to Spanish law, your legitimate heirs may contest your Will and the Spanish authorities can enforce their own law strictly, as their law stipulates that two-thirds of the deceased's estate must be left to the compulsory heirs.

Please note that if the heirs are non-resident in Spain they will need an NIE number (Foreigner's Identification Number) for tax purposes.

Also remember that Wills deal only with assets and are not like letters of wishes. If, for instance, the testator has particular requirements for their funeral, a Spanish Will would not be the vehicle to express your last wishes.

INHERITANCE TAX AND GIFT (DONATION) TAX IN SPAIN

This tax is regulated by Law 29/1987 of 18th December implemented by Royal Decree 1629/1991 of 8th November. This law distinguishes between personal obligations and obligations in remainder.

The personal obligation is applicable to all tax payers resident in Spain regardless of where the assets are located, whereas the obligation in rem is applicable to assets and rights actually located in Spain. This means that a non-resident in Spain will be taxable for the assets and rights located in Spain and a Spanish resident will be taxable for all the assets and rights inherited regardless of where the assets and rights are located. In both cases Spanish inheritance tax is always payable by the inheritor.

The difference between inheritance tax and gift tax is that one is payable when the asset has been obtained by way of death and the other when an asset has been gifted while the transferor is still living.

The increase of wealth obtained by a person can be affected as a result of:

- The acquisition of assets and rights by way of inheritance, legacy or any other inheritance title. Non residents pay the Inheritance Tax in Spain only for those assets the deceased left in Spain
- The acquisition of assets and rights by way of donation (Gift) or any other gratuitous transfer during the transferor's lifetime
- The acquisition of revenue from a life insurance policy by the beneficiaries

It is the heirs or beneficiaries responsibility to pay the inheritance or gift tax. The payment of these taxes are not made by the estate — each beneficiary must pay it individually.

Tax rates may differ from one Spanish region to another and the amount of tax payable by the heirs or beneficiaries will depend on the net value of the property received.

To assess the inheritance tax payable it is necessary to value the assets and liabilities at the time of death less any deductible charges, debts and expenses (i.e. the net value of the inheritance). The total sum will then be liable to tax.

To assess the tax payable when assets have been gifted or for gratuitous transfers, this is assessed at their real value, less deducted charges and liabilities.

For life insurance policies, the proceeds that the beneficiary obtains will also be assessed as these will be liable to tax as well as the other assets acquired from the will.

Spanish Inheritance Tax Rates

Unfortunately there is no fixed tax rate. Different percentages are charged using a sliding scale, where different circumstances are considered.

Inheritance and gift tax is progressive, the rates applicable are determined depending on the following circumstances:

- The amount transferred to the beneficiary
- The wealth of the recipient prior to the transfer
- The beneficiary's relationship to the deceased
- Amount inherited

There is no exemption for a spouse.

Time Limitation Period

Please note that for Spanish inheritance tax the general statutory time limitation period operates:-

The inheritance tax must be paid within **6 months** from the transferor's death. However, the heirs may file for a 6 month extension, although in this case they will have to pay interest.

The **gift tax** must be paid within **30 days**, after the date of the transfer.

How can you minimize the effects of inheritance tax?

There are some legitimate ways to lower the tax burden:

a) When purchasing a property, its ownership can be split between the bare legal title and the life interest/use for life. This means that the purchasers can transfer ownership of the property to their children but specify that they will live in the property for life. If a couple purchasing the property only hold the life interest and their children have ownership of it, the Spanish inheritance tax will be minimal on the death of the life interest holders. The children cannot sell the property without full consent of the life interest holders while they are still alive.

It is common practice in Spain to leave the survivor spouse a life interest in the family house, rather than leaving them half of the property. By leaving the spouse a life interest, ownership of the house can pass to the children. The life interest holder can live in the property free for the rest of his/her lifetime.

b) Using a sizeable mortgage to purchase a property reduces inheritance tax, as the value of assets are based on the current market value of the property, less any charges levied on them.

There is no exemption on Spanish inheritance tax between a husband and wife where they are both resident in Spain. Where they are both resident in Spain and, for example, the husband dies, then the estate left to his wife is fully liable on the worldwide assets of the husband.

c) The value of the main place of residence would be virtually exempt from Inheritance tax if certain conditions are met. If the deceased was resident in Spain and the beneficiaries include the spouse, parents, grandparents or siblings who are over 65 years of age, lived with the deceased for at least 2 years prior to the date of death and owned the property for at least 10 years, each beneficiary enjoys a **95% allowance** with a limit of 122.600 Euros per beneficiary. This exemption is only against the main dwelling and does not apply to investments or second homes.

These are only general guidelines and are not definitive statements of law. All questions concerning the application of the law to individual cases should be directed to a Spanish lawyer.

This article has been written by GV&A Abogados, a panel firm of Goldsmith Williams Overseas Ltd.