

**Frequently asked questions |  
International inheritance in Spain –  
Civil and tax aspects**

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## A. Applicable Law

1. Why is it important to know the rules applicable to an inheritance?

Not all inheritances are governed by the same rules, neither from a civil nor a tax point of view. It is important to know which law is applicable because it will determine both the limits to the (legitimate) provisions stated in wills and the taxes to be paid.

2. What rules apply to inheritances from a civil point of view when there is an international component?

In general, the law of the State in which the testator had his habitual residence at the time of death applies. Exceptionally, if it were to transpire that the deceased had a manifestly closer link (family or economic) with a State other than the State of residence, this would be the other State. However, by an express provision (a will), the deceased may designate the law of the State of which he is a national.

3. Where do I have to report and pay the Inheritance Tax if the relatives live in different Autonomous Regions?

From a tax point of view, the rule that will determine the inheritance will be that of the Autonomous Region where the deceased lived at the time of death, regardless of the place of residence of the relatives.

The place of residence will be understood to be that where the deceased stayed for the greatest number of days in the five-year period immediately preceding the death.

4. The deceased lived outside Spain and the heirs in Spain, do they have to pay the Inheritance Tax?

They will have to report and pay, as a global tax duty ("*obligación personal*" in Spanish), for all the assets regardless of where they are located. This obligation must be fulfilled without prejudice to the specific taxation regulations in the State of residence of the testator and the possibility of applying a deduction for double taxation.

5. The deceased lived in Spain and the heirs abroad, do they have to pay the Inheritance Tax?

They will have to submit their statement and pay tax, as local tax duty ("*obligación real*" in Spanish), only for the assets and rights located in Spain.

This obligation must be fulfilled without prejudice to the specific taxation of the State of residence.

6. In the case of a testator outside Spain and an heir resident in Spain, what regulations would apply for the purpose of settling taxes?

The rule of the Autonomous Region where the highest value of the assets and rights located in Spain is found will be applied. If there are no assets in Spain, the regulations of the Autonomous Region where the heir resides will apply.

7. In the case of a taxpayer resident in Spain and an heir resident abroad, what regulations would apply for the purpose of settling taxes?

The rule of the Autonomous Regions where the deceased resided will be applied.

8. Are there any taxes due other than inheritance tax?

If real estate is included, the municipal capital gains tax will be due.

## B. Transactions made before the decease

9. When should a will be made?

In general, it is always advisable to formalize a will, but especially when we are faced with one of the following situations:

- Minor children: it is advisable to appoint a legal guardian in case of death of both spouses.
- Whether the testator wishes to modify the general provisions applicable to the case (for example: endowments, universal usufruct to the spouse, improvement to certain descendants, etc.).
- The testator has his/her residence abroad and wishes to have his/her nationality rules applied.

10. What happens if no will is made?

Those who believe they have the right to inherit must initiate a procedure to state their heirs *ab intestato* before the Notary. Once this right has been verified and the corresponding investigations have been carried out, the Notary will issue a statement certificate.

It should be noted that in this case the inheritance will be awarded in accordance with the provisions of the applicable Civil Code.

11. Is it possible to freely dispose of a part of the inheritance?

It depends on the applicable regulations. The common Civil Code sets out limitations. When the heirs are the spouse and children, we must divide the inheritance into three thirds:

- One-third legitimate inheritance: it must be given to the children in the same proportion.
- One-third 'improvement' inheritance: it must be given to the descendants, but not necessarily in the same proportion.
- One-third free-disposal inheritance: it can be freely distributed.

Likewise, the spouse shall be entitled to at least the usufruct of the 'improvement' third.

It must be taken into account that, in the absence of inheritance provisions, the divisions established in the Civil Code will be applied.

12. Should the inheritance be advanced through a gift?

It will depend on the specific situation. It may be advisable in cases such as the transfer of a family business or enterprise or to anticipate possible legislative changes that will worsen tax treatment.

However, it is important to carry out a prior analysis of the estate, personal circumstances of the family, taxation of the donation, compliance with legal limits in order to avoid possible non official gifts, etc. It should also be borne in mind that, although in certain Autonomous Regions inheritance tax is subsidized, gifts may involve taxation for both the donor (personal income tax) and the recipient (municipal capital gains tax).

13. Is it worthwhile to formalize a usufruct in life?

It will depend on the specific circumstances, both family and estate related. It should be taken into account that, although in certain Autonomous Regions inheritance tax is subsidized, gifts may imply taxation for the donor. In particular, on personal income tax and, in the case of real estate, the municipal capital gains tax.

14. Did the heir receive a gift from the deceased some years before the death? Does this affect the inheritance?

Previous gifts must be taken into account from a civil point of view in order to determine whether they may negatively affect the rights of the entitled parties.

Likewise, it must be verified whether the gift is collectible (counts in the inheritance) or not.

From a tax perspective, donations made during the four years prior to the inheritance must be taken into account for inheritance tax purposes.

15. When should we give up our inheritance? How is it done?

When the amount of the debts is greater than the amount of the assets.

It must be waived by means of a public document before a Notary. Although there is no specific time limit, it can be understood as tacitly accepted if acts of disposition of the inheritance are carried out, other than those of conservation or provisional administration of the assets.

### C. Person liable for inheritance tax

16. Who has to file the Inheritance Tax?

Heirs, legatees or life insurance beneficiaries must file it.

17. Do taxpayers who apply the Beckham Law also have to pay inheritance tax?

These taxpayers do not have any special characteristics in terms of Inheritance Tax. The regulations apply to them without any restriction and they may be liable for global tax duty if they inherit, even if the deceased is not resident in Spain.

#### D. Formal inheritance tax issues

18. What is the deadline for submission, and can it be extended?

Six months from the date of death. It can be automatically extended for a further six-month period if an application is submitted within the first five months after death. The extension will incur interest on arrears.

19. Is it necessary to make a self-assessment or can the Administration settle the Inheritance Tax?

It will depend on each Autonomous Region. In general, there are two possibilities for submitting a self-assessment (the taxpayer him/herself declares and settles the tax) or a statement with the data so that the Autonomous Region can issue the settlement for payment.

It should be borne in mind that this second possibility may delay the disposal of the assets by the heirs.

20. Where does the tax have to be filed when the taxpayer is a non-resident?

At the National Tax Administration Office.

21. Can the heir use the money from the estate if he does not have enough money to pay the tax?

The funds will be available for tax payment. Several documents will have to be submitted for the bank to accept that the heirs have access to the bank accounts.

Additionally, they may request a partial tax settlement for the sole purpose of collecting life insurance, credits from the testator, money, etc.

22. Does the tax have to be paid in full at once?

Once the deferrals have been completed, you can request the deferral/division of the debt.

There are particularities in the case of the transfer of an individual business or family business, or the habitual residence.

#### E. Reductions in inheritance tax

23. Do you also have to pay the tax for inheriting the family home?

The main residence is also subject to inheritance tax. However, there are special reductions. In general, this will depend on the specific provisions of each Autonomous Region, but in the absence of such provisions, 95% of the value of the property may be reduced, up to a limit of 122,606.47 euros for each taxpayer.

This reduction will be applied to spouse, ascendants or descendants and collateral over 65 years of age who have lived together during the previous 2 years. The acquisition (or its value) must be maintained during the 10 years following the death.

24. What about the business of the deceased?

In cases where an individual company, a professional business or holdings in entities other than mere asset holdings -to which the regulated exemption in Wealth Tax is applicable- are inherited, a 95% reduction in value will be applied, provided that the acquisition is maintained, during the 10 years following the death.

It will be applied to the spouse, descendants or adopted children and, in the absence of these, to adopters and collateral, up to the third degree.

Some Autonomous Regions have improved this reduction.

## F. Calculation of inheritance tax

25. Is it possible to harmonize this tax?

We are constantly hearing about this. This harmonization should take place within the framework of the reform of the financing of the Autonomous Regions, within the Council for Fiscal and Financial Policy.

26. The deceased had debts, are they deductible?

Yes, debts that are duly demonstrated are deductible, unless they were in favor of the heirs.

27. Are expenses deductible?

Yes, expenses for litigation arising from the inheritance, as well as last will and testament, burial and funeral expenses are deductible when justified.

28. Is it true that the deceased has to pay income tax?

Yes, the personal income tax corresponding to the fiscal year of the death must be declared, including the income obtained until that moment. The heirs have to pay the IRPF and the cost is deductible in the Inheritance Tax. Similarly, if the result is a tax refund, the credit-claim right would have to be included.

29. What is a recumbent inheritance?

It is a temporary situation from the testator's death until the acceptance of the inheritance. A recumbent inheritance (an entity without legal personality) is considered to be the taxpayer who is required to comply with tax obligations while the inheritance is accepted (for example, tax settlement if the deceased was renting real estate).

30. What is a pre-existing estate?

It is the assets prior to the inheritance of each of the beneficiaries. It will determine the possible application of a multiplier coefficient that may increase the Inheritance Tax.

31. How is pre-existing wealth determined when the taxpayer lives outside Spain?

In this case, only assets located in Spain will be taken into account.



## G. After the inheritance

### 32. Can anything be done if an heir does not agree with the distribution of the inheritance?

You can instigate a voluntary probate procedure. This is a civil jurisdiction procedure that aims to divide the inheritance among the heirs *ab intestato* or by testament, when there are discrepancies between them.

In this case, the time limits established for the submission of documents and statements of the Inheritance Tax will be suspended, starting again from the day following that on which the final resolution terminating the judicial procedure is signed.

### 33. Is there a risk that the authorities will not agree with the tax assessment?

The Administration can review the self-assessment made during the statutory period (4 years). It is common for the values to be reviewed.

For the purposes of the settlement, the Autonomous Regions usually provide property valuation services.



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