

Spanish Inheritance Tax on Property

Few who own a property or are thinking about owning a property in Spain are aware of the full implications of inheritance tax and the surrounding law. In my article "Protecting your assets in Spain – Spanish wills and inheritance law", I talked about the main legal issues surrounding the Spanish system of. Now I am going to explain the financial implications of this tax and how it has become an increasingly relevant concern due to the huge rise in the value of housing wealth in Spain.

UK Inheritance Tax

In the UK there is no inter spousal tax on inherited assets, therefore money inherited by your wife is tax free. There are also no guide lines as to how money should be split between your other inheritors. You are free to divide the money as you wish and the first 275,000 pounds is tax free. Any amount after this figure is subject to a flat tax rate of 40%.

Spanish Inheritance Tax

The implications of this tax are different for residents and non residents:

- Non residents only pay IHT on their net asset wealth in Spain only
- Spanish residents pay IHT on their whole world wide assets

As of yet there is no double taxation treaty between Britain and Spain, but the inland revenue may look at deducting the inheritance tax payment made in Spain from the taxes due on UK assets. I say 'may', as there is no confirmation in writing from the British authorities to this effect and it is only what I have heard from other peoples' experience. IHT is one of the few reasons for remaining a non resident.

In Spain the authorities charge a percentage where Spanish Property and the estate of a person are transferred by inheritance. The tax is based according to a sliding scale that is subject to various considerations.

An important note for anyone who is looking evade this tax, is that the authorities can and in some rare circumstances apply the same level of taxation applicable to donations and gifts, as well as penalties and interests.

The main differences in Spain are as follows:

- In Spain between husband and wife, ownership of a Spanish asset is deemed on a 50/50 basis only when the property is registered in joint names. The tax breaks are extremely limited and there are no inter spousal exemptions.
- The law doesn't recognize couples that are cohabitating and the tax break allowances don't apply.

- Inheritance tax is not calculated on the total value of the estate but on the value of the share acquired by each beneficiary (this point applies to both residents and nonresidents see **Fig. 1.**). The sliding scale rate of taxation depends on the preexisting wealth of each beneficiary and group and in certain situations the resulting tax can be in excess of 80%.
- The tax paid by a beneficiary depends on the net value of his share in the estate i.e. the market value of assets less deductible charges, debts and expenses. There are tax free allowances available for certain beneficiaries these are detailed below:
 - **Group 1:** Children and adopted children under 21: 16,000€ approx and a further 4000€ deduction for each year by which the beneficiary is under 21, to a maximum of roughly 48,000€
 - **Group 2:** Children and adopted children over 21, spouses, parents and adopted parents: 16,000€ approx
 - **Group 3:** Relatives in second and third degree: brothers/sisters and nephews/uncles, receive an allowance of approximately 8000€
 - **Group 4:** Relatives in fourth degree such as cousins or friends receive no allowances

Fig 1.

Tax base	Tax payable	Remaining Tax	Applicable Rate
(up to €)	€	Base (up to €)	%
0	0	7.993,46	7,65
7.999,46	611,5	7.987,45	8,5
15.980,91	1.290,43	7.987,45	9,35
23.968,36	2.037,26	7.987,45	10,2
31.955,81	2.851,98	7.987,45	11,05
39.943,26	3.734,59	7.987,45	11,9
47.930,72	4.685,10	7.987,45	12,75
55.918,17	5.703,50	7.987,45	13,6
63.905,62	6.789,79	7.987,45	14,45
71.893,07	7.943,98	7.987,45	15,3
79.880,52	9.166,06	7.987,45	16,15
119.757,67	15.606,22	7.987,45	18,7
159.634,83	23.063,25	79.754,30	21,25
239.389,13	40.011,04	159.388,41	25,5
398.777,54	80.655,08	398.777,54	29,75 and so on
797.555,08	199.291,40	And over	34 and so on

- When the tax has been calculated, a further coefficient (Fig 2.) is applied to the figure, taking into account pre-existing wealth.

Fig 2.

Pre-existing wealth in Euros	Coefficient Group 1	Coefficient Group 2	Coefficient Group 4
From 0 to 402,678.11€	1.00	1.5882	2.00
From 402,678.11€ to 2,007,380.43€	1.05	1.6676	2.1
From 2,007,380.43€ to 4,020,770.98€	1.10	1.7471	2.2
4,020,770.98€ and above	1.20	1.9059	2.4

A Case Study

Ok, so you have looked at the figures and the tables, but what does this mean for you? Let's put yourself into the unfortunate position of you dying. You jointly own a property with your wife on the title deed and there are no outstanding debts or charges against the property such as a mortgage, this is the only asset you hold in Spain and to make life easier for me (in the following calculations) you're a mean spirited person who has no relatives or friends. In this circumstance your wife will inherit your 50% of the property as there will be no subdivision for beneficiaries. Rarely are things so simple, but the following is a breakdown of what would occur.

Let's assume you had a 1,000,000€ villa and it was your only asset, the following table breaks down the financial liabilities incurred from the share she receives.

Total inheritance	500,000€
Allowance	15,956€
Amount of Inheritance Tax Assessable	484,043.13€

If we refer to the above table **Fig 1**. we see that the sliding scale for the fixed rate for the 484,043.13€ is set at 398,777.54€ with the tax payable at 80,655.08€ Furthermore by subtracting 398,777.54€ from the 484,043.13€ there is a further inheritance tax due on the remaining 85,265.59€ As mentioned previously the rate of taxation is set by a coefficient rate that is determined by your wife's pre existing Spanish wealth.

Therefore, as an example the further tax due on the 85,265.59€ could be as follows:

% Tax Rate	Amount due	End Result Amount due
29.75%	25,366.51€	106,021.59€
31.24%	26,636.97€	107,292.05€
32.73%	27,907.43€	108,562.21€
35.70%	30,439.82€	111,094.90€

Even at the lowest scale your wife would have to pay 106,021.59€ to continue to own the property after applying the applicable coefficient for pre existing wealth "1.00" from **Fig 2**.

If your wife then keels over and leaves her assets to a wealthy friend or "**Group 4**" beneficiary who has a million euros of her own assets, the inheritance tax scenario would run as follows.

Total inheritance	1,000,000€
Allowance	0€
Amount of Inheritance Tax	1,000,000€
Assessable	

If we refer to the above table **Fig 1**. we see that the sliding scale for the fixed rate for this amount is set at 797,555.08€ with the tax payable at 199,291.40€ Furthermore by subtracting 797,555.08€ from the 1,000,000€ there is a further inheritance tax due on the remaining 202,445€

% Tax Rate	Amount due	End Result Amount due
34%	68831.30€	262,697.34€

NB: - Figures supplied are intended to give an approximation of IHT incurred

This end result is multiplied by the coefficient 2.1 (representing group status and pre existing wealth from **Fig. 2**) meaning that the inheritor must pay **563,057.67€** in IHT.

It's a lot of money at the end of the day, even without factoring in all sorts of other considerations. To make matters worse, inheritance taxes must be paid when the documents relating to the estate are filed, by self assessment. This must be done within six months from the day of death otherwise surcharges and interest will be imposed for late payment. However, in certain cases it is possible to have a deferment of up to five years. Tax authorities have a period of almost five years in which to review the self assessment and request further taxation payments if they consider assets have been under stated.

Minimising Inheritance Tax

Well now you know more or less what you are in for let me give you the good news. Arranging your assets to maximize the potential through the inheritance process can be a complex affair. I thoroughly recommend that you talk with a financial adviser and accountant before making a choice as to which option you would like to take. I would also strongly advise that you sort out your Spanish Will to ensure that it ties in correctly with you English Will (see article “Protecting your assets in Spain – Spanish wills and inheritance law”).

The good news is Spanish legislation will probably get round to reviewing the system of taxation over the next few years, certain political parties are already promising reform within their political manifesto. Until then here are some of the options that I have heard about being used to minimise taxation.

Tax Concessions Available Within Andalucia

As Spain is made up of semi autonomous states, depending where you are in Spain affects the way you pay IHT and how it's assessed. In Andalucia there are certain concessions available to residents only. You must have lived in your property for a minimum of 3 years, the property must be your principal residence, the inheritor/s must be a direct family member/s, and continue to own it for a minimum of 10 years. The first 240,000€ of the official value of the property may be avoided and each inheritor has a nil rate tax band of maximum 120,000€

Using a Company Structure to Own the Property

If the property is owned by a Spanish limited company, due to certain exemptions on Transfer tax on shares, it may be possible to establish a calendar to organize the transfer of shares from yourself to your future inheritors, in a given period of time, at almost no cost.

Alternatively, you could also split ownership of the shares and allocate your children the bare ownership while retaining a life interest on them. The downside of these options is not everyone is comfortable with giving away their assets to their beneficiaries prior to death.

If you do not wish to lose control over the shares, it is also possible to have the shares sold to an offshore company (which you would own), over a period of time, which can then be disposed of either in life, or after death, at almost no cost. However there is taxation of 3% on property owned by offshore companies and this may well become as expensive as paying the inheritance tax.

Warning: ‘La Hacienda’ (Spanish Tax Authority) is starting to look into these activities, particularly in lieu of the recent scandal with [Del Valle](#) Lawyers in Marbella. So be warned that your planned exit strategy can change considerably if the law changes.

Tax Planning

Joint Ownership with Children

By having your children’s names already on the deeds of your property you are reducing the share of inheritance they receive in the eyes of the tax man. Again not everyone is comfortable with the idea that they are not full owners of their property.

Gift Property directly to children

This option is really open only to UK non residents in Spain who own property. Under UK law the first 275,000€ gifts or inheritance is tax free. This tax free allowance is renewed every seven years so it is possible to gift away your estate in 275,000 pound chunks every seven years up until your death. Again not everyone is comfortable with giving away large sections of their property.

Sharing out your estate between many inheritors

This option makes maximum use of each inheritors 16,000€ tax break and ensures that each bequest is in the lowest possible tax band for assessment by spreading the total amount of money between as many hands as possible.

Equity Release Schemes

This system is quite new in the market. The method is simple as Inheritance Tax may only be charged on the value of assets after the deduction of charges or debts. Some financial advisors are beginning to offer the opportunity to release up to 95% of the value of the property and place these monies into a managed fund offshore. This money is invested as part of the fund with proposes rates of interest at a higher level than banks or rates of inflation. When the assessment of Inheritance Tax is made your property value is subject to the deduction of the debt which greatly minimizes charges incurred. However, rates of interests from the offshore fund are not guaranteed and are prone to the same factors that affect all investment markets. The implications for residents and non residents is very complex so ensure you talk to a financial advisor, I plan to start recommending companies on my web site so check the links page often.

Several companies are offering this service and it will be interesting to see how it develops, I plan on doing some further research on this option so look out for future articles.

Offshore Trusts

This is the system my father is using, so that we, his beloved children don't get stuck with a tax bill on his villa. A trust is supposed to be one of the most secure, time honored and flexible financial planning initiatives available, particularly when established offshore. It can be used as an effective tax planning tool in respect to inheritance taxes on assets situated outside your country of nationality.

A Trust also enables you to make the long term plans for preservation or distribution of wealth in precisely the way you would like. Ensuring and that the management of the property will not be interrupted by probate or other such formalities, and to continue and in accordance and with your letter of wishes.

The down side is that Trusts are not recognized under Spanish Law so a lot of the tax avoidance instruments available in the UK, do not apply in Spain. You will also have to put in quite lot of money into the trust to hopefully cover the inheritance tax bill over the years that the trust is functioning; so it's not really avoidance but tax planning. However, trusts can own companies, so there may be loop holes to explore with this approach; I hope to be able to provide you with further material on this subject at a future date.