SPANISH PROPERTY OWNERSHIP OPTIONS

If you are considering buying a Spanish property it is important to consider who will pay, own and use the property and become the registered owners at the Land Registry. There are significant savings to be made in relation to inheritance and capital gains tax depending on who the eventual registered property owner is and how much time they spend in Spain.

Many married couples buying property in Spain are surprised to learn that they have to pay Spanish inheritance tax when they inherit their spouse's share in the property upon death. Even more surprised are unmarried couples when they learn that the Spanish inheritance tax liability can actually double if they inherit their unmarried partner's share in the property compared to if they were married.

Unlike other countries, in Spain there does not exist a free transfer of assets between spouses and inheritance tax is paid by the person inheriting the asset rather than the tax being deducted from the Estate. To make life even more complicated the trust concept, so widely used in the Anglo-Saxon legal world, is not officially recognised. However Spain does have what is known as an usufructo or life interest which would allow someone to stay in the property until they die and if you contribute more to the purchase price of the property then you can register a greater percentage of ownership at the Land Registry.

Before deciding which ownership option to select, consult your accountants and lawyers to be certain the chosen option is right for you. Carefully consider your present and future circumstances, your heirs´ tax residency, the potential capital gains or inheritance tax liability and weigh these up against the costs of incorporating and maintaining a structure. Also be prepared to review your ownership options as laws change.

A) OWNERSHIP OPTIONS

If you intend to make Spain your permanent home or stay for more than 183 days a year, then you will be considered a Spanish tax resident. As a tax resident there is an obligation to present a Spanish tax return between May & June of the year after your arrival and pay tax on worldwide income and assets.

Spanish tax resident

If you spend more than 183 days a year in Spain, then you should consider buying the property in your own names. Many autonomous regions in Spain have tax advantages for residents who have been a tax resident and declared their worldwide income for more than 3 years. These tax advantages can include less inheritance upon death of a spouse and less capital gains tax on the sale of the main home.

Non Spanish tax resident

If you do not intend to live in Spain for more than 183 days a year then consider buying the property in your own names, in the names of your children or in the names of a Spanish or Foreign Limited company. Below each of these options are considered.

Buying in your own names. If you buy the Spanish property in your own names, then bear in mind that upon death, whoever inherits the property will pay Spanish inheritance tax. Spanish inheritance tax can be mitigated with a Spanish will and is highly advisable. If you sell the property before you die, then you would have to pay Spanish capital gains tax and the local improvement tax known as plusvalia.

Buying in your children's names and retaining a life interest. If you have children over the age of 18 then they can become the legal owners of the property and you can take a life interest. It is important to take tax advice in your country to see if you are subject to any form of gift or donation tax because in effect you are gifting your children the value of the legal title to the Spanish property and you retain a life interest, which extinguishes on death.

Beware of the effects of any of your children dying before you in which case, who would their share in the property go to? Also if they were declared bankrupt or divorced, this may affect ownership.

Buying the property in the name of a Spanish company. Usually this is more suited to Spanish tax residents with shares held by family members. As the company owns the property, a market rent should be paid to the company by the occupiers of the property.

The costs of incorporating and maintaining a Spanish company are higher than incorporating an off the shelf company as it has to be incorporated before a notary. Shares in the Spanish company can be held in offshore companies.

There are inheritance tax advantages in inheriting shares of the company which owns the property compared to inheriting a part of the property. This has to be off set against the cost of incorporating and managing the company.

Buying the property in the name of an English or Foreign company.
In order to incorporate a company a registered address has to be provided along with the names of the shareholders and directors. The shares in the company can be held by the people paying for the property or by family members. Transfers of shares are completed in the country of the company and maybe subject to capital gains tax. If more than 50% of the shares changes hands then the Spanish tax authorities could consider this to be a transfer of the property and subject to purchase transfer tax. If heirs inherit shares with a nominal value of a foreign company such as an English Limited company that holds a Spanish asset then the value of the shares will be included in the English inheritance but as there will be no change of ownership at the Spanish Land Registry, currently, Spanish inheritance tax could be mitigated.

B) SPANISH TAX

Below are the taxes that you should be aware of as an owner of Spanish property either as an individual or company owner.

Non Residents Personal Income Tax
On an annual basis non resident individual owners of Spanish property are obliged to submit a Non Resident Personal Income Tax return by 31 December the year after purchase. The Spanish tax authorities automatically imply a deemed income of 2% of the cadastral value of the property (1.1% if said value has been updated since 1st January 1994).This figure is then subject to the current rate of 24.75%. Any rental income is also subject to this rate. Companies that own Spanish properties are not subject to the non residents´ personal income tax but would pay tax on rental income.

Wealth Tax ("WT")
Spanish tax residents and non residents are subject to WT on their assets located in Spain. Therefore an owner of real estate would be subject to this tax for Spanish assets over 700,000 euros. Tax residents receive an allowance for their main residence. The rate starts at 0.1% and escalates to 2.5%.

Capital Gains Tax ("CGT") on Sale of the Property
The capital gain subject to taxation will be calculated as the difference between the acquisition and transfer values of the real estate. Costs such as transfer taxes, notary, land registry, estate agent and legal fees are all deductible from any potential gain as are extensions to the property that required formal planning permission.

CGT - Individuals- Tax Resident
If you are a Spanish tax resident selling your property then depending on the region of Spain you live in you maybe able to rollover any gain into the purchase of the next property. At the point of sale you will have to prove that you are a Spanish tax resident by obtaining a certificate confirming this status.

CGT Individuals – Non Tax Resident
If a non Spanish tax resident or a Foreign company sells a property then any profits arising would be subject to CGT at the flat rate of 21%. In addition the buyer is obliged to withhold 3% of the total purchase price and pay it to the Spanish Treasury. This withheld amount represents a payment on account of the relevant tax payable by the non-resident for the profit made (if any). If no gain has been made then a rebate can be applied for.

Companies
If a Spanish company sold the property then any capital gain will be subject to corporation tax at the rate of between (25%-30%).

Inheritance tax for residents and non residents
In the event of the death of an owner of Spanish property, any transfer would be subject to Spanish gift or inheritance tax. The tax due would depend on the owner's relationship with the donor, the heir's pre-existing net wealth, the market value of the property and location of the heirs. The marginal tax rate is 34% for amounts exceeding €797,555.08.

Tax residents in Andalucia

If the heir is a spouse living in Andalucia who inherits a maximum of 175.000 euros in assets and does not have an existing wealth that exceeds, 402.678,11 euros then no inheritance tax is payable.

Inheritance tax for Non residents

If we use the example of a property worth 300,000€ and 50% of this (150,000€) is inherited by a spouse or child over the age of 18 then the Spanish IHT liability is 19,119.11€.

Using the same example if an unmarried friend or cousin inherited the 50% share of the property then their IHT liability is 44,206.08€.

If on the other hand a carefully drafted Spanish will left the same 50% share of the property to a surviving spouse and child over the age of 21, then the total inheritance tax liability would be 12,869€ or 6,434.5€ each.

To discuss your Spanish property ownership options please contact Alex Radford, Head of Real Estate & Private Client (Solicitor & Abogado) at Cremades & Calvo-Sotelo email aradford@cremadescalvosotelo.com Telephone 00 34 952 209 860. web www.cremadescalvosotelo.com

This information sheet is not a substitute for specific tax and legal advice which is highly advisable as each person´s circumstances are different.

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