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 may 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 increases 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, 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 and costs can 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 April and 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 and are over the age of 65. These tax advantages can include less or no 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:-

1) Buying in your own names

a. If you buy the Spanish property in your own names, then bear in mind that upon death, whoever inherits the property may pay Spanish Inheritance Tax and the local improvement tax known as Plusvalia.

b. 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 Plusvalia as well as potential capital gains tax in your home country.

2) Buying in your children's names and retaining a life interest

If you have children over the age of 18, 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 not owning a property as their main residence and dying before you. In the case of early death, who would the share in the property go to?
Also, if they were declared bankrupt or divorced, this may affect ownership.

3) 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.

4) 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 share 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, 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.

1) Non-Residents Personal Income Tax

On an annual basis, non-resident individual owners of a Spanish property are obliged to submit a Non-Resident Personal Income Tax return by 31st 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 19% for citizens of the EU and 24% for non EU citizens. Any rental income is also subject to these rates. Companies that own Spanish properties are not subject to the Non-Residents Personal Income Tax, but would pay tax on rental income. Any income would also have to be declared in your home country and maybe subject to tax.

2) 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 however this amount varies depending on the region the asset is located in. Tax residents receive an allowance for their main residence. The rate starts at 0.1% and escalates to 3.03% depending on the region.

3) 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.

a. 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 may be 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.

b. 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 19%. 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, a rebate can be applied for.

c. Companies
If a Spanish company sold the property, any capital gain will be subject to Corporation Tax at the rate of between 25%-30%.

4) Inheritance tax for residents and non-resident
a. In the event of the death of an owner of Spanish property, any transfer would be subject to Spanish Inheritance Tax. The tax due would depend on the owners' relationship with the donor.

The heir's pre-existing net wealth, the market value of the property and location of the heirs. Allowances and deductions may apply and in some cases, they can be mitigated.

This article was originally published on www.mylawyerinspain.com and is not a substitute for specific tax and legal advice, which is highly advisable as each person's circumstances are different.

If you have any queries about your Spanish property ownership options and would like a conversation with one of the specialist lawyers at My Lawyer in Spain, you can contact us by email at enquiries@mylawyerinspain.com or by telephone.
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