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How will Brexit affect Spanish property owners?

One consequence of the United Kingdom leaving the European Union may be that UK citizens who own Spanish property may lose some of the tax benefits they have previously enjoyed.

These concerns are based on the distinction made in Spanish tax law regarding the status of non-resident taxpayers from EU/EEA member states and those from other countries worldwide. Barring any contrary arrangement reached with the Spanish government, UK residents may be subject to the less favourable tax treatment currently extended to non-EU/EEA members.

Three key areas to be aware of potential changes in are the taxation of rental income, Capital Gains Tax, and Inheritance/Gift Tax:



Rental income

One current quirk of the Spanish tax system is that it deems all second homes to generate rental income – even if they are not necessarily let out. It allocates a notional taxable rent of 1.1% - or 2% if the value has not been revised in the previous 10 years - of the valor catastral (rateable value) of the property. This is then assessed on the owner as a form of non-resident income tax.

For EU/EEA citizens, rental income received after expenses is taxed at 19% whereas those with non-EU/EEA status are taxed at a flat rate of 24% and are not entitled to deduct reasonable costs incurred in maintaining the property from their taxable income.



Capital Gains Tax (CGT)

CGT is applied at a maximum of 23% on the difference in the value of the asset from the date of acquisition to the date of disposal regardless of the residential status of the seller and so will remain unchanged after the UK leaves the European Union.

Upon ceasing to be resident in Spain for tax purposes, individuals may be subject to an exit tax of 24% if they hold investments in excess of €4,000,000 or total shareholdings exceeding 25% of a company – provided that the market value of the shares exceeds €1,000,000. If they move to an EU/EEA country this tax can be deferred until the asset is sold, or for 10 years. However, this right of deferral is lost if they decide to move to the UK after Brexit.



Inheritance/Gift Tax (IGT)

While each of the 17 autonomous regions of Spain are individually responsible for the administration and collection of IGT, there is a separate state system which mandatorily applies to non-residents from outside the EU/EEA. The state system is invariably less beneficial – indeed some regional systems have virtually eliminated IGT altogether for those with close family relations to the deceased.

The Spanish Supreme Court ruled in February 2018 that the right to choose between the state system or the system of the autonomous region in which a property is located should be extended not only to EU residents, but also to residents of other countries worldwide. However, there is no guarantee that this decision will be implemented by the Spanish government.

This is perhaps illustrative of the wider difficulty with preparing for Brexit. The terms of a withdrawal agreement, assuming one is eventually reached, remain unclear, nor is there clarity on whether EU status will apply to UK residents during the withdrawal period. Accordingly, it is prudent to operate under the assumption that British owners of Spanish property will receive the same tax treatment accorded to non-EU/EEA citizens provided for in Spanish law.



Does this topic raise any questions in your mind?

Would you like more information on a particular item?

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