

IHT time bomb in Spain — response to comment

Dear editor,

Having read the alternative view in OPP Magazine, February 2009 edition, by Peter Esders of International Law Partnership I would like to make the following comments.

He states that there are Double Taxation Treaties between the UK and Spain and, whilst this is correct, he fails to point out that this Treaty only applies to identical taxes and cannot apply to taxes of different types. IHT (ISD) in Spain is a tax on the individual recipient and not the Estate. In the UK it is the Estate that pays the Tax and not the recipient. It therefore should not be assumed that one Tax can be offset against the other as they are both totally different taxes on totally different entities. He is therefore wrong on this particular detail.

Mr Esders added that the solution provided by Wincham has been around for many years but is not advisable for the majority of cases. I fail to see how removing IHT in Spain in its entirety does not benefit the majority of people. He must concur that EU Law states that a Company from another EU Country is only taxed in one jurisdiction; therefore, a UK company that elects to be taxed in the UK cannot be taxed in Spain. This again must benefit the majority of cases.

Mr Esders states that a Gift of property in Spain can give rise to Gift Tax in Spain. This is correct if the Gift is to any entity other than a company or society.



Under Spanish Law the 7% Transfer Tax is not payable if the property is gifted to a company or society.

With regards to CGT in Spain, it is normally accepted practise, by the Hacienda, that a property can be gifted at its original purchase price as declared in the Public Deed, plus the 7% paid at the time of the original purchase, plus an amount for indexation based on the number of years that the property has been owned. These figures can be obtained from the Hacienda website and are accepted by Notaries, Land Registry and the Hacienda as an acceptable method for arriving at a Gift figure without incurring any CGT liability in Spain.

If a purchaser wishes to acquire a property from a seller into a UK Limited company the purchaser can form a UK Limited company using the Wincham Scheme, with the seller as the Shareholder of the company. The seller can attend the Notary and instead of selling the property to the company he can Gift the property to the company. In this instance there would be no 7% Purchase Tax to the purchaser and no 3% retention to the seller. There is a simple Sale of Shares to complete the deal.

This is a proven method operated by Wincham since 1994 for many clients and the entire process, including UK Company Formation costs, Legal, Notary costs in the UK and Spain, is less than most Lawyers would charge for Legal Fees in a purchase on probate in any event. The Wincham Solution completely eradicates all future Taxes in Spain. This is not a Loop Hole as the Laws are laid down by the EU, to which Spain has subscribed, and therefore, are unlikely to be changed.

Mark Roach, Wincham Investments

Bank guarantees in Spain

Dear Editor,

Due to the recent economic climate change we have seen lots of developers going out of business or not completing their projects on time as they have run out of funding.

But what happens when you have bought an off plan property, paid a deposit of up to 50% of the price and then don't get your property delivered?

If the purchase has gone according to plan and to Spanish laws you will have a bank guarantee (or aval bancario) which covers the deposited funds. This means that if you don't get your property, the bank in question pays you your money back.

Or so you may think. And so it should be according to article 3 of the Ley 57/1968.

When the market was all going well and banks were clamouring to lend to developers and their clients, your bank guarantee never became an issue. It was a safeguard that you had in case things went wrong but things never really went wrong.

Well things have gone quite wrong for ex-pat Ruth Genda from Leicestershire when her retirement home in the Costa Del Sol was delayed and

then declared illegal. She had paid £75,000 as a deposit and this was covered by a bank guarantee issued by the Banco Popular.

The property, being illegal, cannot be mortgaged or legally occupied or sold so Ruth cannot and will not complete on the property. Therefore, she decided, along with 5 other owners to put into effect her bank guarantee.

She received a nasty surprise when the bank simply refused to honour their agreement. When she found this out, she decided to take the bank to court, forking out more of her money to pay solicitors for this purpose.

The judge initially ruled in Ruth's favour and ordered the bank to pay out but when they appealed against this decision (recurrir la sentencia), the same judge changed their ruling and upheld the bank's appeal on a technicality.

Now Ruth is not only out of pocket on the deposit she paid but, on top of that, the corresponding legal fees.

She has decided to make a petition to the Governor of the Bank of Spain but is not hopeful of her chances of success to appeal this at the Supreme court. More than 185 people have signed the petition so far but Ruth believes that there are far more people affected by this and the numbers will only increase if nothing is done now.

Please help us to spread the word and to pressure the Bank of Spain to stop this from happening.

Marie-Hélène Dubois, agent and friend of the affected party

