

# The Spanish Property Inheritance Tax Time Bomb

**People who own property in Spain but are not Spanish tax resident (who do not live in Spain for more than 6 months of the year and account for their worldwide income to the Spanish tax authority) are sitting on a ticking IHT time bomb. Their heirs and estate may pay IHT and probate fees in both Spain and their country of tax residence. On the death of a property owner their beneficiaries (including a spouse) could have to part with a substantial sum of money or even lose the property that they inherit.**

Many clients tell us that they have been professionally advised to make a Spanish Will in order to solve this problem. This advice is erroneous as a Spanish Will simply makes probating in Spain an easier process, it does not remove Spanish inheritance tax. On the death of a Spanish property owner the process of probate transfers the relevant portion of that property from the name of the deceased into the name of the beneficiary, and when either party is not a Spanish fiscal resident (just having your *residencia* is not enough) Spanish inheritance tax will apply.

Other advice given is that double taxation treaties between Spain and the UK will mean that inheritance tax will not be paid on the same asset in both countries. This is true in identical taxes such as Income or Capital Gains Tax, but Inheritance Tax is not an identical tax because in the UK it is the Estate which is taxed whereas in Spain it is the beneficiaries. It should not therefore be assumed that all of the inheritance tax paid in Spain can be offset against that owing in the UK as they are both totally different taxes on totally different entities. Many owners are advised to re-finance the property because IHT is only charged on the equity amount, but this may end up leaving beneficiaries with a huge debt they cannot pay off. Also many lenders will only finance ownership if suitable life insurance is taken out, so the property is paid for on death and the tax still becomes due. Owning a property with your children is another favourite, but this is not a good idea either as their share of the property may end up being at risk through financial or marital issues, and if they die before the parents then the parents have to pay taxes to get the property back.

The rate of tax varies and is dependent on the value of the asset transferred, the relationship between the deceased and the beneficiary, plus the value of assets already owned in Spain by the person who inherits. The rate does not increase proportionately. The tax owed by a spouse on the death of his or her husband/wife is around €33,000 on a jointly owned property with a market value of €250,000. When the value of the property is €500,000 the tax does not double but rises by 160% to roughly €86,000. Spanish Probate, Notary and legal costs will be in addition to this tax. If the couple had two children and the surviving parent dies more than 2 years after the first death leaving that property to them equally, then assuming it is still worth €500,000 they must **each** find a further €86,000 plus probate costs. The Spanish tax authority (the *Publica Hacienda*) will have benefitted to the tune of nearly €260,000 over the death of both parents.

Our solution is comprehensive, legal and simple. We suggest that owner/s to invest their property into a UK Private Limited Company which they, as shareholders of that company, would own. They then bequeath the shares in that company via a UK Will. This has no implication in Spain as the property owner is the UK Company which, of course, has not died. Beneficiaries need no NIE numbers to inherit, there is no need to probate in Spain and no Spanish Inheritance Tax will be charged.

This method may eradicate all future national taxes in Spain in respect of the property because under EU Treaties a UK Company is only taxed in one jurisdiction, the UK. A UK Company is not an Offshore Company like those in Gibraltar or the Isle of Man so no annual Spanish tax of 3% is levied.

Direct property expenses such as mortgage interest, utility bills, comunidad, rates (IBI), electricity, repairs etc. can be tax deductible, and any rental income that the property might generate would be liable for tax at the UK Small Company Corporation Tax rate of 21%, falling to 20% from April of this year. If rental property is personally owned then Spanish Income Tax of 24% will be levied on the profits. Owners that do not rent their property would no longer have to pay Imputed Rental Income Tax and no personal tax return would be required unless they had other income or property in Spain. The UK Company does submit a Tax Declaration in Spain every January but it is treated as a non tax Resident Company of Spain so it is filed at zero.

Contrary to popular misconception there would be no 6.5% Transfer Tax payable and no Capital Gains tax implication

in Spain when owner's property is invested into their UK Company.

If required, this simple solution can be completed within 2 to 4 weeks and it could save your beneficiaries many thousands of pounds.

Expert advice on the complexity of tax and law in both jurisdictions should be left to the professionals who have developed and understand the concept, and we find time and again that clients have been badly advised by both Spanish and UK professionals who are only able to offer advice on one jurisdiction. Their lack of understanding and knowledge confuses or puts off interested owners from exploring the concept.

Wincham is an International organisation that has been established since 1994 helping clients purchase and own property in Spain using a corporate structure to combat Spanish taxation. In recent years we have seen a significant increase in the number of people who are concerned about Inheritance Tax in Spain and are now looking to address the situation to protect their beneficiaries. An extensive number of extremely happy clients have benefitted from the professional service that we have to offer and they are dealing with qualified experts in both our UK and Spanish offices who are operating in this field on a daily basis, including Gestores, Economistas, Tax Consultants, Lawyers, Will Writers, Chartered Accountants, Members of the Institute of Credit Management and a Companies House Formation Agent.

**Please read more and register for a FREE illustration showing your Inheritance Tax liability in Spain at [www.winchamiht.com](http://www.winchamiht.com) Further information or a consultation are also completely free and without obligation. Please call the UK on: +44 (0)1260 299 700 or Tenerife on 0034 699 597 082**



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