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Are there any Tax Advantages in Owning a Property in Spain in your Children's Names?

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Mark Roach of Wincham Consultants highlights some Spanish Tax aspects and Planning Possibilities in respect of Property Ownership in Spain.

Spanish Inheritance Tax (ISD)

I was recently asked by a client, who was purchasing a property in Spain, whether she could place the property in her daughter's name to safeguard against Spanish Inheritance Tax (ISD). This is a suggestion I come across many times, given by Spanish lawyers and advisors, as a method to avoid paying Spanish ISD. In reality this is a popular misconception masquerading as a solution. This strategy does not remove ISD in Spain, and it may leave your children with a 40% tax bill to pay in the UK as well.

The reason behind the suggestion is based on the probability the parent will pass away before the children. If that does happen, the children will not pay ISD because they own the property already. The alternative scenario is not uncommon and infinitely more problematical. If, heaven forbid, the children die before the parent, the parent then has to pay ISD in Spain to inherit the property back – a property that was originally the parent's.

Complications

Another situation worth considering is one where the children do survive the parents but the son or daughter is involved in matrimonial or insolvency issues. This could put their part of the property (or the whole property) at risk. It is very important to remember that all property owners in Spain have to submit a self assessment tax declaration each year irrespective of whether they are resident in Spain or not. This is then a cost which the children have to pay each year and if there are multiple owners of the property then a declaration has to be completed by each person on the deeds. If you combine this with one of the scenarios above then life can suddenly become very complicated.

You must also consider the tax liability back in the UK. As a British Citizen you are taxed on your estate worldwide. If you purchase a property in Spain for (let's say) €200,000 and you place it in your children's names, then in effect you have broadly given them €200,000 in cash to own the property. In the UK this is treated as a gift, and, given you have logged it with a professional in the UK (like an accountant or lawyer), then the €200,000 could be taxed in the UK at 40% if the parent does not survive more than 7 years.

Spanish Tax Planning

Anyone who owns a property in their children's names or jointly with them can in fact request it back. One guaranteed way you can do this without incurring a 7% Transfer Tax on the value of the property or possible Capital Gains Tax (both in Spain) is to **move the ownership of the property into a UK Limited company**. For example, consider a family consisting of mother and father with 2 children, and each person in the family owning a 25% stake in the property. Donating the property into the company and appointing the parents the shareholders of the company will give them complete ownership of the assets again. Furthermore, if the children are over 16 years of age, they can be appointed directors of the company.

EU directives then apply, so once the property is owned by the UK Limited company, taxation in Spain is completely removed. It is much more advantageous then to control shares and assets in the company by drafting a UK Will covering your worldwide assets. In a marriage there is no IHT payable between husband and wife in the UK.

UK Tax Implications

This article has considered Spanish tax aspects of property ownership in Spain. However, it is important to obtain tax advice in the UK as well.



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Article Added Sunday, 08 November 2009

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