Non-resident wealth tax on real estate owned in Spain through foreign entities

Tax Alert

February 2021

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Non-resident wealth tax on real estate indirectly owned in Spain through foreign entities.

The Balearic Islands High Court strays from the administrative precedent and rulings of the Directorate-General of Taxes (“DGT”), holding that non-residents are not subject to wealth tax (“WT”) on real estate owned in Spain through foreign entities.

Non-resident Wealth Tax on real estate in Spain

Under *Wealth Tax Law 19/1991, of 6 June 1991* (“WTL”), individuals who are **not resident** in Spain are liable for WT in respect of any **assets and rights** they own, where they are **located**, may be **exercised** or must be **complied with** in Spain.

Generally speaking, non-residents are thus subject to wealth tax on any **real estate directly owned** by them in Spain.

Law 19/1991 makes no express provision for the **indirect ownership of real estate**.

Transferrable securities located or exercisable in Spain are subject to non-resident wealth tax.

Double Taxation Treaties (“DTT”)

Certain DTTs signed by Spain (*e.g., those with Germany, Saudi Arabia, Armenia, Egypt, Slovenia, France, Georgia, India, Iceland, Israel, Kazakhstan, Kuwait, Luxembourg, Mexico, Moldova, Norway, Panama, United Kingdom, South Africa, Uruguay and Uzbekistan*), contain a provision regarding WT on the **indirect ownership** of property, which grants sovereignty to tax the indirect ownership of real estate properties to the country in which such properties are located.

The clause appearing in such treaties that defines cases of indirect ownership of real estate is generally worded along the following lines:

“Capital constituted by shares or other rights in a company or any other body of persons, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in a Contracting State may be taxed in the Contracting State in which the immovable property is situated”.

DGT rulings and administrative precedent

In binding rulings V 4968-16 and V 0905-13, (in cases concerning Norway and Germany, respectively) the DGT ruled that it is sufficient that the treaty provide for the possibility of taxing indirect ownership for WT to be levied on non-residents owning real estate assets in Spain via foreign entities.

New approach taken in Balearic Islands High Court Judgment 621/2020

In this judgment, the court distances itself from the DGT’s interpretation, holding that properties owned indirectly via non-resident entities do not give rise to a taxable event for non-resident WT purposes in Spain, as the relevant assets or rights are neither located nor exercisable in Spain.

Spanish domestic legislation (the WTL) does not expressly implement the powers of taxation granted by the above treaties, and it is thus not possible to tax the relevant scenarios.

Implications

We recommend reviewing any non-statute-barred **WT** returns of **non-resident** individuals where they were taxed on properties owned in Spain through non-resident entities and, as the case may be, considering the advisability or otherwise of requesting a refund.

In any event, non-resident individuals that own (or are considering acquiring) real estate property in Spain should seek advice on the equity structure that would best optimise their holding.

Please do not hesitate to contact KPMG Abogados, S.L.P’s Private Client and Family Business team if you wish to discuss any of these matters.

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