TAX NEWS SPECIAL

Avoid paying Spanish Inheritance Tax

PHILIP M. OGDEN of Spanish tax consultancy, Wincham Consultants Limited, offers sound advice on how Spanish homeowners can avoid paying inheritance tax to the Spanish authorities.

Leaving your loved ones with a property in Spain is considered by many to be an ideal legacy. But there is a hidden danger lying in wait to ambush the unsuspecting, and that is Spanish inheritance tax.

Unlike in the UK, there is no exemption of inheritance tax between spouses for non-domiciled property owners in Spain, merely a small tax free sum of just below €16,000, and the same allowance for children over the age of 21. Furthermore, it is the beneficiaries that must probate individually, at considerable cost, and pay the tax, before they are able to take ownership of the property. The effect of this means that the beneficiaries are unable to use the property to raise the necessary funds, as they do not yet own it, therefore they need to have the cash to hand from their own resources.

An additional sting in the tail is the fact that the deceased's Spanish bank accounts are also included in this, meaning that they are frozen, even joint accounts, while this lengthy process grinds on. The tax needs to be paid in full within six months to avoid fines being levied in addition, by the tax office.

The only legal solution to completely avoid these distressing consequences is for homeowners to invest their property into a UK private limited company. There would be no national transfer tax payable on this transaction, usually charged at between five and seven per cent, unlike other property transfers, while all other Income Taxes payable in Spain are also eradicated. This is possible because, under European Union agreements, a British company, trading or owning assets in another EU member state, can elect under which jurisdiction it wishes to be taxed. Naturally, one would elect to pay taxes in the UK, where there are no such onerous impositions.

Upon death, the shares in the UK Company can be dealt with, in a British will, which is far less expensive to draw up, and far easier to amend. There is no need for a Spanish Will, as there would be no personal assets in Spain to probate.

A further advantage to the corporate structure, is that all the property ownership expenses, such as mortgage interest, council tax, water, electricity, improvements, repairs and renewals, can all be used to mitigate future Capital Gains Tax liability in the event of sale of the property; this may also include flights and car hire for the directors of the Company.

As far as they are aware, Wincham Consultants Limited are the only specialised professionals in this arena, offering this solution, and they have developed this system over many years, to a point where the whole process is streamlined and problem free for clients.

They have, over the years, encountered many objections from the legal and accountancy professions in both the UK and Spain, all of which have subsequently proved to be unfounded.

In Britain, most people are unaware of, or unable to comment on Spanish law and therefore have little understanding of this investment vehicle. While the Spanish tend to indulge in protectionism, in order to safeguard their future income by keeping the property in the Spanish system, with complete disregard for what is best for the client.

These objections will typically be:

The DOUBLE TAXATION TREATY between the UK and Spain operates with comparable taxes, but no treaty applies in this respect as the Inheritance Taxes are fundamentally different.

GIFT TAX – a credible source of income for the Spanish government – does not apply to the transfer if gifting to a limited company.

CAPITAL GAINS TAX which is usually payable at transfer is also avoided under their scheme.

Three per cent annual TAX FOR OFFSHORE COMPANIES, but the United Kingdom is not offshore, and so no such tax applies.

A BENEFIT IN KIND taxation for directors was abolished in the 2008 Budget; nevertheless, it still arises as an objection. Either way, it does not apply to their investment vehicle.

UK COMPANIES ARE DIFFICULT AND EXPENSIVE TO OPERATE.

A theory that is propounded by Spanish advisors, but it is widely accepted that the UK is amongst the simplest countries in the world to own and run a limited company; operational costs are around £575 per year.

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