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## The Spanish Property Inheritance Tax Time Bomb

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Mark Roach of Wincham Consultants Ltd highlights a potential tax problem for owners of property in Spain, and outlines a possible solution.

### Introduction

Non-Domiciled property owners in Spain are sitting on a ticking IHT time bomb. Most owners do not understand that their heirs and their estate will pay IHT in two jurisdictions: Spain and their country of domicile. The reason for this is that in Spain the individual inheritor is taxed, whereas in other countries, like the UK, it is the estate that is taxed. This could mean that on the death of an owner, the surviving partner, or the owner's beneficiaries, could have a tax bill that virtually wipes out the entire Spanish inheritance. Added to this is the cost of probate in both countries for the inheritors too.

### Common Misconceptions

Most lawyers in Spain recommend to owners that having a Spanish Will deals with the problem; this is incorrect as a Will only deals with the issue when there is a death and does not remove taxation in Spain.

Other advice given is that Double Taxation Treaties between Spain and the UK help with the tax being reduced; this is true with identical taxes but these are not, as in the UK it is the estate which is taxed and in Spain it is the beneficiaries who are taxed. 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.

Many owners are advised to re-finance the property as IHT is not charged on the property amount if there is an outstanding mortgage and loan, but this may end up leaving the beneficiaries with a huge debt they cannot pay off.

Owning a property with your children is a favourite; this is not a good idea either, as their share of the property may end up being at risk through money or marital issues and if they die before the parents then the parents have to pay taxes to get the property back too.

### Solution

Our solution to the IHT problem in Spain is for the owner/s to transfer the property to a UK Private Limited Company. There would not be a 7% Transfer Tax in Spain on this transaction unlike other property transfer transactions. This method may eradicate all Taxes in Spain in the future, in respect of the property, as under EU Law a UK company is only taxed in one jurisdiction, the UK, and no taxes are payable onwardly in Spain. A UK company is not an 'offshore company' like Gibraltar or the Isle of Man - they are charged an annual 3% tax by Spain for not being part of the EU Community.

Shares in the UK company can be dealt with in a UK Will, and depending on the structure of the company the shares may be exempt from Inheritance Tax in the UK. One example is that there is normally no Inheritance Tax in the UK between husband and wife, this means the shares and loan account in the UK Company may be transferred in the UK between husband and wife with no Inheritance Tax to pay.

A further advantage of the company structure is that attributable expenses such as mortgage interest, council tax bills, water, electricity, repairs and maintenance can all be tax-deductible by the company; this may also include car hire and flights for the directors. Unfortunately if you own a property in Spain in your own name then you are not allowed to offset income against expenditure by the Spanish tax authorities.

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 for the purchaser and no 3% retention to the seller. There is a simple sale of shares to complete the deal.

This is a simple solution costing less than most probate and legal fees in Spain when there is a death of an owner of the property. Our unique service is available to all nationalities, including both residents and non-residents of Spain.

*This information has been provided by Mark Roach, Company Director and Spanish Tax Consultant, Wincham Consultants Limited.*

*Wincham Consultants has been providing the above service to clients for many years and also operates through a number of Approved Consultants who introduce clients wishing to use this service. Prospective Consultants can attend a two-day training course which provides an*

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opportunity to learn how to provide potential clients with the relevant information regarding both Spanish and UK Inheritance Taxes in respect of Spanish property ownership. This is an exciting new opportunity to participate in an emerging and growing market introducing a concept that can only benefit and protect clients, who are failed time and time again by Spanish professionals as they are unable to advise on more than one jurisdiction. This also supplies a method where UK professionals can still supply UK advice on the assets where in most cases they cannot if the property in Spain is owned in the individual's name.

The clients website where they can register for their FREE illustration demonstrating the IHT liability can be found at <http://www.winchamihmt.com/>

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**About The Author**

Mark Roach is a Spanish Tax Consultant and director of Wincham Consultants Limited.

Wincham Consultants Limited is a Division of Wincham Investments Limited which is a proud approved Member of the A.I.P.P (The Association of International Property Professionals)

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