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SPANISH PROPERTY PURCHASES – PLAN TO AVOID INHERITANCE TAX!

The Spanish Government have been at odds with the EU for some time now with specific regard to the punitive manner that Non Residents of Spain are taxed. Subject to some expected changes to the Spanish Taxation system as a result of this pressure there remains a gulf between how Non Residents here are penalised in comparison to Spanish Residents.

The differences can be found in most classes of tax but are most profound in Capital Gains Tax (CGT) and Inheritance Tax (IHT).

I do not want to dwell on CGT today and wish to focus on IHT and, more to the point, estate planning around the acquisition of a property in Spain. Let me simply state that a rate of 35% is charged for CGT on the declarable gain for any property sale and this is not easily avoided. Residents here can if they invest the proceeds into another property as a main home, but not from 2nd or investment properties. Only Residents over 65 avoid it completely.

So to IHT.

The primary problem that the British have to contend with is the different attitudes and the history that has led to Spanish succession (estate transfer) being at almost total odds with the British system. That is a 'problem' only because the Brits make a dangerous assumption that it is likely to be the same. It is not and therefore any property purchase (and certainly retirement in general) needs careful planning as opposed to that 'assumptive' position being taken.

As the title line reads 'When in Rome do as the Romans do' meaning, of course, accept the institution of where you live to avoid painful exposure. Now, from an estate planning perspective, take a look at how the Spanish purchase a property and how they plan for succession.

Firstly, young and middle aged Spaniards will take an ordinary (British) view and buy in their own names, normally husband and wife. Remember that they do not have so much of an IHT issue in the event of a death because they are Nationals, equivalent to Non National's Resident status.

It is only for the aged that attitudes change. Where parents are getting on in years and there is a danger of an IHT exposure, it is common for the house to

be passed pre death to the children, normally with a 'life residence' via a Uoofructo Agreement to protect the parents while they are alive.

And then there is the Will. The Spanish understand that the beneficiaries of a Will each have their own personal allowance against IHT, so it is not unusual to see the family home passed on to direct line descendants of children AND grandchildren. That adds extra numbers as recipients and certainly ensures that there is no IHT exposure.

Now this is an important difference between the attitudes of the Spaniards and the British. The latter leave the 50% share of the family home to the surviving spouse and then, on the 2nd death, to the children. This creates a build up of IHT exposure, if not on the 1st death then certainly the 2nd, especially for Non Residents and even for Resident property owners. For the end recipients are invariably Non Resident meaning that higher IHT penalty.

So here is a simple fix to this peculiarly British attitude which will alleviate the risk of an IHT tax bill to end beneficiaries.

If you are a Non Resident property purchaser, ensure you execute a Spanish Will immediately you buy here. If it is a joint husband and wife transaction, consider adding the children as the beneficiaries on the 1st death and NOT an automatic transfer to the surviving spouse. That normally means kids taking over the half share and, of course, if the kids number 2 or 3, then you have the multiple IHT Allowances to use which are likely to wipe away any tax risk.

You have to be sure though that each kid respects the surviving parents right to the future of the property and that, if necessary, can be achieved via a private written agreement. It has family political undertones, of course which, in the event of any argument, needs a clear and definitive route to follow.

Then we have those that have taken Residencia here. This is different due to the more favourable treatment under IHT legislation, but even here there are the same considerations to be made.

Firstly, on that 1st death, whilst there is unlikely to be any tax exposure if the 50% share was passed to the surviving spouse, the result in doing this is that, as with Non Residents, it builds a greater exposure for the end beneficiaries when the 2nd death occurs. IF these end beneficiaries are also Resident and perhaps living in the same property, the tax threat is not as great. BUT, if they are Non Residents (which is more likely the case), then there is the same tax exposure.

A way to resolve this is for the parents to consider either together when both are alive or certainly on the 1st death for a Uoofructo Agreement to be executed. This grants life long tenancy to the parents whilst the property is owned by the children and/or grandchildren. And it eliminates the IHT risk completely.

So now you can see that any property purchase that is effected here needs some careful thought rather than the adoption of what is accepted as right in Britain but rather dangerous in Spain. At least until such time as the punitive system here is reviewed!

Mark Mountney, the proprietor of Rose Financial Planning, is a specialist mortgage brokerage and Independent Financial Advisor. He is a fully qualified mortgage and financial adviser in the UK with some 10 years experience in managing his own firm. Mark was also a founder of The Association of Mortgage Intermediaries, the trade association for mortgage advisors in the UK with 20,000 members. See www.rosefp.com or call 0034 677 874 948.