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Financial Planning

Spanish Property & Finance

IMPORTANT WARNING!

Having a Residencia Card does NOT mean you are Tax Resident

Historically, Spain has been known as a 'soft touch' when it comes to tax collection. It was felt that either they did not really care or their tax collection systems were so inept that there was easy to side step tax exposures and payments.

Be Warned! They have turned a corner and are now being much, much tougher!

January 2008 has seen an edict from the Spanish Tax Authority, the Hacienda, to all Notaries and Solicitors regarding the interpretation of Tax Residency and its application towards various common property transactions. They are also taking steps to tighten up on Income Tax collection.

Until now a flaw in the interpretation of various elements of Tax Law has meant that, provided a Residencia Card was produced at Notary, that person would be interpreted as being a Tax Resident and was therefore able to benefit from certain tax breaks, in particular Capital Gains Tax (CGT) withholding and Inheritance Tax (IHT), known as ISD here.

To the specifics!

For CGT Tax Residents able to prove 3 years tax residency will not have the 3% Retention withheld as the vendor on a property sale. That 3% goes towards the calculation of a potential 18% CGT tax on the taxable gain from inception less indexation.

Previously the Residencia Card was all that was necessary as proof, albeit that there was no correlation that a Resident was actually a Tax Resident!

So now, to prove Tax Residency, you will need to show that you are in the tax system by producing a Tax Certificate. That document will need to be requested from your local tax office.

And the same applies to IHT (ISD). To obtain the often considerable allowances as a Tax Resident over the abysmal allowance as a Non Resident, you need to provide the same Tax Certificate.

I cannot emphasise enough how important this new interpretation of the Tax Law is, and just how punitive the cost of getting it wrong could be!

For example, CGT. A property sale transaction with a net gain of say Euros 100,000, without that piece of paper, could take a perceived Resident into Non Resident status. The tax break of the former, being lost, would then mean a flat 18% charge. This can be avoided so simply provided you adhere to the letter of the law and ensure you file your annual tax return and can then prove that Tax Residency!

With IHT the potential is scary! What could have been a possible 100% exemption on the 1st death in a husband/wife owned property, could take the survivor into Non Residency status. A Non resident receives only a Euro 16,000 allowance on the share passed to them! So, on a Euro 300,000 property value, they receive a share valued at 50% or Euro 150,000. Take the 16,000 allowance off and a net 134,000 is exposed to IHT. That could give rise to a tax bill of circa Euro 10,000!

A Tax Resident on the other hand, in the tax system and able to show that all-important Tax Certificate for 3 years back, would likely not pay a Cent!

Not a single Cent, and all because the rules of Tax Law had been followed!

So what must you do if you think you are a Tax Resident?

Firstly, we need to ascertain whether you are, or should be, in the tax system. The basic rule is that if you spend 183 days a year or more in Spain you **MUST** become a Tax Resident. No ifs and No buts! That is the law.

The fact that you receive a pension or income in say the UK and tax is deducted there is irrelevant! You **HAVE** to file an Annual Resident Tax Return in Spain, but you will be given a credit for taxes deducted elsewhere, especially where this cannot be avoided.

For instance, 'Crown pensions' (Civil Services, Police, NHS, Armed Forces) **HAVE** to be taxed in the UK. So that means, when you file your tax return in Spain, it could be a Nil return. That's fine! You have done your duty and you are in the system.

Where you will have a problem is where you are living here for more than the 183 days, receive income from elsewhere, taxed or not taxed, and you have done nothing about it!

So, the bottom line is that now you must! No more apathy or head in the sand! Take action or a) you will lose the benefits that being a Tax Resident can bring and b) you are looking at having to pay back taxes and, worse, a fine!

Another point that I must bring in here as well!

Many people believe that registering for Spanish Tax, especially Income Tax, is likely to be punitive! This is far from the truth as allowances are fair and reasonable. Indeed, going back to the 'Crown pension' example, you will benefit from 2 personal allowances, the first in the UK and the second on any other income taxed in Spain! You will be better off in registering here despite the fact that it is the Law!

Another fact that is not known, misunderstood or even deliberately misrepresented!

Every property owner, whether Resident or Non Resident, MUST file an Annual Tax Return! Again, No ifs and No buts! To NOT do so will involve back taxes and that possible fine!

Be Warned! The Hacienda seems to have turned a corner and have (finally) realised that the tax systems are being misinterpreted and even abused. They have affected a sea change in attitude of late; we have even heard of instances where clients are being contacted by their local tax office asking for sight of a tax return!

Best you check your tax status NOW!

See www.rosefp.com or call 0034 677 874 948.