

ADVANCE

_Do you want to talk about black money?

Well, we certainly don't.

Much has been said and written lately about money laundering scandals in Spain. Spain like most European countries has strong legislation in place to prevent opaque investments from taking place. This includes in particular the usage of offshore companies for either holding property, or other investments, directly or through Spanish subsidiaries.

Professional firms, such as ours, have a duty to obtain information from their clients as to the source of the funds, wherever these may have come from. Failure to comply with this legal requirement can create problems for the firm in question, which could go as far as a jail sentence.

No amnesties are on the horizon with regard to money laundering, so if you are thinking of investing in Spain be prepared to do things the proper way. This firm has had a policy of KYC (know your client) in place for more than two years and we are proud to say that the vast majority of our clients have happily provided the required information. This improves our relationship and confidence with them and puts us in a position of being true external advisors.


We do not provide advice on how to unscramble opaque or money laundering structures, irrespective of their legality when they were formed. We do not provide nominee directors or shareholders nor registered office facilities, for any company.

Come and talk to us about genuine business opportunities, you will be surprised at the added values our services can provide.



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Wills and estate planning



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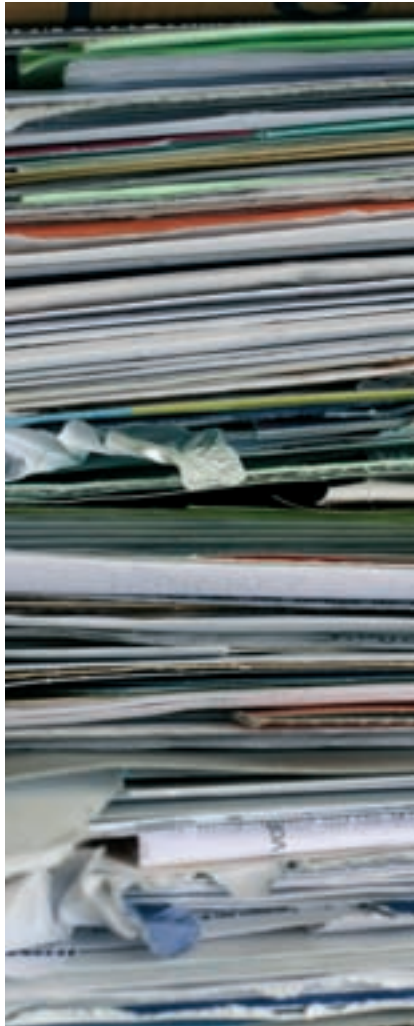
Like most expats living in Spain my affairs are more complicated than most. This is partly as a consequence of owning assets in different places and this has implications for estate planning and succession purposes which I will deal with in more detail below. Of course having made the decision to live in sunnier climes my wife and I have to deal with the Spanish system which is more bureaucratic than the system we are more familiar with back in England.

Although I would still say that in my experience many of the civil servants and health workers are very helpful and more so if you speak some Spanish. These complexities seem to effect many aspects of daily life whether it is ensuring that your tax affairs are in order or visiting your local medical centre for health treatment.

Indeed notwithstanding that Spain is part of the European Union, which is forever taking steps to harmonize and homogenize all things from the weight and shape of a banana to the corporate mobility of companies incorporated within the EU (which is obviously a much more complex issue than the weight of a banana but perhaps not as complicated as attempting to straighten it!) some of the more important areas such as social security and pensions seems to be overly complicated and difficult to get to grips with for foreigners and cross border workers alike.

The issue of Wills and estate planning is also more complicated for those who have made the decisions to move to Spain or have purchased a holiday home here. There are a number of important and technical considerations. Unfortunately this means that a cheap standard Will purchased from WH Smiths or off the web is unlikely to be adequate.

Indeed such a Will may in fact cause complications and be more costly should it ever need to be relied on to deal with assets in Spain. I would therefore strongly advise all British expats with assets in Spain to review their affairs and to obtain good professional advice. There is a myth that you need a Spanish Will for Spanish assets. Technically speaking this is not in fact true although



it is preferable. If you are British and you already have in place a valid English Will covering your worldwide estate this could be used in Spain. However the procedure is difficult and the costs involved are much higher. In such a case it would first be necessary to obtain a Grant of Probate in the UK. This may involve unnecessary costs if you have no assets in the UK and will certainly involve notification to the Inland Revenue which may have adverse consequences. The Grant of Probate which will include a copy of the Will then needs to be translated into Spanish which involves additional expense.

Then there are possible complications if the Will contains trust provisions which

is usually the case in an English Will. The complication exists because Spain is not familiar with the concept of a trust as it is a civil law jurisdiction. As such an opinion from a lawyer would be required which would add to the cost involved. The task of dealing with Spanish assets using an English Will takes longer than it would using a Spanish Will. Therefore if you are a British expat whether you are permanently resident in Spain or not and you have assets in Spain such as a property or bank account the best advice is to put in place a Spanish Will covering your Spanish assets only.

Whilst Spaniards are not free to leave their assets as they wish because they are subject to Spanish forced heirship laws Spanish law accepts that British nationals have testamentary freedom and can therefore leave their assets to whomsoever they wish in a Spanish Will.

A quick word of caution – this is not the case in France which can have undesirable consequences!

There is an important consideration for those of you who have an existing Will and assets in other jurisdictions. If you make a Spanish Will which covers Spanish assets only and have an existing English Will in place which covers your worldwide estate you immediately have a conflict which needs to be corrected.

In such cases it is necessary to put in place a new English Will covering worldwide assets but specifically stating that your assets in Spain are excluded as they are covered by a separate Spanish Will.

For those of you with assets in Spain it is also important to consider the tax implications on death. The system of inheritance tax in Spain is very different to the UK position. Most importantly there is no exemption from tax for transfers between spouses. Depending on you circumstances there could be a hefty tax bill on the death of the first spouse which could cause great difficulty and perhaps some financial hardship. It is therefore sensible to ask a professional to review your potential tax liability so that if necessary you can plan ahead. [\[A\]](#)

_Human resource issues related to Globalization



Globalization is affecting business across all sectors. New markets are emerging and opportunities are being created on a regular basis. In order to remain competitive in the market, companies want, and need, to take advantage of these opportunities around the globe.

The Human Resource Manager plays a key role in a company's globalization plan. HR is asked to contribute increasing expertise to the globalization process. Managers need to, even though experienced in one culture, effectively interact with and manage people raised in one or more different cultures. HR also needs to develop effective Human Resource practices and policies in all of the various business environments where the company operates and help the organization's executives plan for, and effectively manage, these environments as well.

When a company makes the decision to operate globally, multiple employment situations may be encountered.

- _ Expatriate employees may be sent on

assignment to another country location;

- _ A branch or a subsidiary may be established in another country where local hiring becomes necessary;
- _ The acquisition of an existing business in another country may take place where current employees need to be retained; or

- _ A combination of any two or all three of these situations may occur. Regardless of the way that employees are hired, management must make decisions related to the local benefits and terms of employment for the staff. Many US managers make the mistake of assuming business can be conducted in other countries in exactly the same way as US. This is particularly true when the new location looks and sounds similar, the UK for example. If the language, legal, and accounting practices are based on same principals the temptation is to roll out the same business model world-wide. It is important to remember that this will not work.

Benefits and terms of employment vary

from country to country. Employers usually want to have similar quality and value of employment for all employees world-wide; however, it is essential to take into account local variations, which can be significant. The definition of the "Best Place to Work" varies from country to country. For example, in the US a company that offers 15 days vacation in the employee's first year may be considered very good. In Italy, however, legislation and collective agreements set out the amount of employees' annual holiday entitlement which is approximately 30 days per year. An employer can not assume they will set standard benefits and offer the same benefits to all employees world-wide. Each country must be looked at separately to ensure compliance with local regulations and to meet local common practices.

There are many key Human Resource related decisions that must be made when planning to globalize the business. Management needs to consider these questions early in the planning process.

- _ Will you relocate (temporarily or permanently) someone to setup and run the operation?

- _ How many local employees need to be hired?

- _ Where and how to recruit the staff?

- _ How will you compensate the local staff?

- _ Will HR practices and policies be uniform or tailored to each location or a combination?

- _ Will you have a local HR manager?

- _ What benefits are needed in each of the countries – statutory and additional?

- _ How will you pay the staff?

The key to the successful globalization of any business is preparation. Managers must be aware of all of the related issues and take them into account when designing the business model. Managers also must be aware of legal and other HR requirements at the strategic planning stage. This will save both time and money during the implementation process. [A](#)



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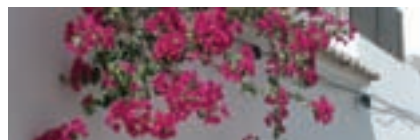
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_Buying Spanish Property



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Spain is a hotspot for tourists all year round, so choosing to buy commercial property has become an attractive way to start a profitable business. In recent years, interest rates and stock market returns have been low and many investors have started to view 'property' as a high performing asset.

However it is not all sunshine and sangria! There are number things that need to be taken under consideration to ensure the complexities of property purchases in Spain are fully understood. Common questions potential investors ask include:

What type of commercial property should I invest in?

First of all, there are a number of different commercial property opportunities in Spain. The hotel sector, although a volatile industry, has proven over the past five years to benefit from a steady market demand to allow for sufficient income. This can include hotels, bars and hostels. There is plenty of available office space at present. Even when the UN projections anticipate a decline in the workforce in most western European countries, including Spain, the prospects for some areas in Spain continue to be at least stable. The leader in terms of employment has been the Catalanian region, particularly in Barcelona. However, it is unlikely that developers will continue to embark on building a significant number of new offices. As a result it is likely that rent will stabilise and it may be easier to negotiate the price of this type of property.

Investors could also take the option to enter into administration agreements so that an agent may deal with the rental of the property. Care must be taken to avoid your returns disappearing in a flow of agents fees or commissions.

What is the best location?

The big cities (Spain has over 15 important cities) are normally the logical starting point for any consideration for investment in real estate. Valencia, Zaragoza, Barcelona, Madrid, Las Palmas, Bilbao and La Coruña are good examples. There are other possibilities for investment in certain areas where the

influx of tourists is particularly important. Mojacar, areas of the Costa del Sol, Costa de la Luz, Costa Tropical, Costa Almeria, Costa Calida, Costa Blanca, Costa Dorada, Costa Brava, Mijas, Benalmadena, Canary Islands and the Balearic Islands are popular locations for hotels, bars, hostels and apart-hotels.

How do I buy it?

Finding the location is the easy part compared to understanding how to go about buying it.

There is plenty of available financing from Spanish banks and should be considered on their own merits as opposed to sourcing recommendations. Mortgages in Spain are far easier to get now than they were just 10 years ago, however, it might be easier to deal with a bank that is affiliated with your bank at home such as Halifax or Natwest Bank. There are some legal formalities that need to be considered when taking a mortgage in Spain as this would result in time and expenses. For example, a deed will required to be executed in front of a notary public, both for the creation and cancellation of the mortgage and then registered at the Land Registry in Spain.

What will the interest rate be?

The loan available for commercial property is less generous than in the case of domestic property and normally the period stipulated for loans is between 10-12 years. The rates applicable for loans will normally be based on the Euribor rate plus a margin of 1.5%.

How much deposit is required?

When you approach the bank for a Spanish commercial mortgage, you must be buying a 'freehold property' (Spain does not operate a leasehold). You will also be expected to put up a deposit of atleast 40% and in many cases 50% of the value of the property. Banks or lending companies in Spain will only lend money against a fixed asset not the turnover or projected turnover of a business.

What currency will my repayments be in?

One of the things you need to consider when taking a mortgage in Spain is that repayments will be in Euros not Pounds. As most UK property owners in Spain get paid in pounds, it means that they are vulnerable to any change in the two currencies. This also means that the exchange rate may have an impact on the mortgage repayments.

Who will own the property?

The concept of the leasehold is not really common in Spain but it may be possible for small projects to have a lease *traspaso*. However, in this case, as the title of the property will remain with the owner of the property, the bank will require sufficient guarantees from those investing in the property.

Are there any other important considerations?


The way in which the investment is carried out will certainly depend on the specific circumstances of the investor. By way of a general recommendation, it should be mentioned that offshore companies will not normally be used for investment purposes. Instead, a EU company, including an English or Spanish company are common alternatives. The procedure for the acquisition of a Spanish commercial property is very similar to that of a domestic property in that it involves completion before a notary, a registration at the land registry and a non-resident tax number for those non-resident investors. However, in addition to tax issues such as the VAT rate, there are a number of other issues, which will require separate consideration such as licences and permits.

What advice should I seek?

The advice required for the carrying out of an investment in commercial property should not therefore be restricted to the acquisition of a property. Additional advice will be required in accordance to the circumstances you find yourself in. For example, if you acquire a hotel, advice on employment and tax issues should follow.

What about letting agents?

If you are using a letting agent, consider that the right agent properly managed is an asset maximising your rental return. The wrong agent, badly managed will drain the profit out of your investment and drive away your tenants. You should have a detailed agreement with your chosen agent setting up fees and specifying the obligations and liabilities of the parties, for example, stating who will deal with issues such as contracting insurance policies.

Whatever the size of your investment abroad the golden rule remain the same: you must investigate the location and obtain prior advice. You must take into account Spanish rules and consider the tax implications which may exist in the UK including capital gains and inheritance tax. 

_Getting the best from your Community



C

Buying a property in Spain either for permanent use or holidays is one of the largest investments made by any individual or family.

In most cases the concept of Community living will be a new experience for many owners. So, what is involved in a Community and how does it work? A community is a collection or grouping of individually owned real estate, be it apartments, villas or for example office space.

When buying a property in Spain your title deed will specify the details of the Community in which your property is situated, and the percentage participation (quota) which your property will pay yearly depending on the community budget. Your Community should be legally formed once the Promoter has sold sufficient of the units in a development to ask the owners to form a Community, in effect a residents association to allow owners

to manage their own affairs.

The Community once formed will elect a President to represent them and an Administrator to carry out the day to day management.

Once a year the Community shall meet and decide on a budget to cover the expenses for the following year. So what is included in the budget:

_ **Essentials**, such as insurance, lift maintenance, pest control.

_ **Utilities** such as water and electricity.

_ **Services**, such as gardening, cleaning and maintenance; the cost of which can depend greatly on the level of service that the Community requires.

_ **Reserves** - the law provide a minimum reserve that any Community should include in the yearly budget but in most cases this is insufficient to provide a sufficient sink fund for many of the quality development in the Costa del Sol.

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_ **Miscellaneous** costs such as bank charges.

All owners of property have a legal obligation to pay their proportion of any community budget agreed at an annual meeting.

Should any owner fall into debt, the Community is obliged to commence legal action which will result in owners with debt eventually paying interest and legal costs on top of the outstanding debt.

Remember the debt stays with the property not the individual so when buying ensure your lawyer always obtains a certificate confirming that the seller has their Community fees paid up. 🏠

_Comparative Financing for equity release

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	REVERSE MORTGAGE	USUFRUCT
REQUIREMENTS	<ul style="list-style-type: none"> • Minimum age - 60 • Freehold property 	<ul style="list-style-type: none"> • Minimum age - 70 • Freehold property
LEGAL TYPE OF CONTRACT	<ul style="list-style-type: none"> • Loan with mortgage guarantee • Registered before the Notary Public in the Land Registry 	<ul style="list-style-type: none"> • Sale of the estate in remainder, maintenance and life usufruct • Registered before the Notary Public in the Land Registry
LIFE TIME BENEFITS	<ul style="list-style-type: none"> • Receives capital in form of income for life • Right to live in the property • Can rent the property • Can cancel the mortgage in any moment 	<ul style="list-style-type: none"> • Receives life annuity monthly • Right to live in the property • Can rent the property • Does not carry on paying the service charge, urban rates and all those related to the property
VARIANCES	<ul style="list-style-type: none"> • Initial capital • With capital advance • Capital as monthly income 	<ul style="list-style-type: none"> • Initial capital • With capital advance • Capital as monthly income and also as different forms
AMOUNT OF INCOME	• x	• x+30%
IMPLICATIONS AT DEATH	<ul style="list-style-type: none"> • The mortgaged property is inherited • The beneficiaries will have a period of time between 6 months to a year to cancel the mortgage 	<ul style="list-style-type: none"> • The residual owner obtains the property • No debt is paid off
PROFILE OF SUITABLE TAXPAYER	• Persons with beneficiaries	<ul style="list-style-type: none"> • Persons with no beneficiaries • Persons with income / equity release needs

_New accounting Rules and their fiscal impact



R

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The Government foresees the introduction of a broad package of fiscal measures to try to achieve a “Cero effect” in the fiscal area of Spanish companies as a consequence of the adoption of new accountancy regulations. This will be compulsory approximately from the 1st Jan 2008.

At present, there is a draft version which will possibly become the new General Chart of Accountants.

Along with other modifications, there will be an amendment to Company Tax to allow the deduction of goodwill.

Current Fiscal News

_ Parliament is urging the government to review and increase the current applicable rates of amortisation for fixed assets. The purpose of this is to adapt the fiscal amortization to the useful life of the company’s assets. The current percentages of amortization are one of the lowest compared to other European Union countries.

_ The Tax office is promoting the use of Internet with the purpose of converting it into the main link to the taxpayers. Specifically, in a few weeks time a Ministerial order which will oblige to submit via Internet the Company tax return will be published. Next July companies will be obliged to submit the

corresponding Company tax return only via Internet. For large companies it was already compulsory since last year. _The future Wealth tax reform that the Government is trying to carry out has the purpose of converting Wealth Tax into a property census roll.

_ The Tax office will publish a new regulation which will permit companies to digitalize their invoices. With this, companies will be able to get rid of all the invoices stored for years and also to comply with legal and fiscal procedures. Before, to proceed with the use of this Software, the Tax office had to approve its use. Approved Software will be available for all the taxpayers. 📄

_Transfer pricing

T

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COUNTRY	PREFERRED METHOD	DOCUMENTATION	PREVIOUS VALUATION RULES	ADJUSTMENT RISK	TAX PENALTIES
Spain	Transactional methods, but all are excepted	Extensive and yearly	Yes	High in the future	Yes, 1500 € of the omitted data. 15,000 € for groups of data, or alternatively if there are any additional payments then 15% of these 1500 € of the omitted data. 15,000 for groups of data, or alternatively if there are any additional payments then 15% of these
United Kingdom	Appropriate method, preferably transactional	Yearly documentation required	Unilateral/ Bilateral	High. Specially for business restructuring	Up to 100% of the undeclared tax
USA	Best method	Extensive, yearly documentation	Unilateral/ Bilateral	High	20-40% of the undeclared income
Ireland	No specific ranks are established	Non Applicable	Possible, no existing rules	Minimum	No specific sanctions exist
Italy	Transactional methods	No specific requirements are established	Accepted	High	General fines on Tax
Germany	Transactional methods	Explicit documentation is required. Contemporary documentation not explicitly required but recommended	Available but subject to suppositions	High	5%-10% of adjustment on income (minimum adjustment of 5,000€). Up to one million Euros for late documentation. Debt interest non deductible on undeclared income

•Valid for all type of transactions

_No Tax ID number? - no deal!

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From December last year no private or commercial property or other transaction can be documented before a Notary in Spain unless all those signing the deed can prove they have a tax identification number. As virtually all such transactions have to be documented before a Notary to be effective, the lack of a tax ID number represents an absolute barrier to doing business in Spain.

Every Spaniard has an ID number. Every Spanish resident, every Spanish company and every foreign company or individual dealing in Spain has always had to have a tax ID Number. The only change is that from now on EVERYONE must quote their tax ID number in any public deed they sign. It's no longer an excuse to say 'it's in the post' or 'I made the application two months ago'.

The Tax ID number is a pivotal part of the tax system and must be quoted for all customers and all suppliers on all invoices documents and deeds, so that tax due, invoiced and withheld can be accounted for. By insisting that each party in each transaction quotes his or her Tax ID number the tax authorities have set up a reciprocal reporting mechanism. All a tax inspector needs to do is to input a tax ID into the computer and the taxpayer's life history will be revealed in seconds; hence the insistence on quoting the tax ID.

Until 30th November last year, some 'new boys' escaped the ID net. Until then a foreign individual or company had been able to sign a public deed without a tax ID, if it was declared that an application had been lodged but the number had not been issued. This exception has now been abolished.

In the case of an individual the fiscal Identity number is known as a NIE or Numero de Identificación Extranjero. In the case of a corporate entity the application should be made for a CIF (Cedula de Identificación fiscal). Specifically the new law provides that no document may be signed before any Spanish Notary which affects rights in immovable property or has other fiscal consequences in Spain unless evidence is provided to the Notary of the fiscal identity number of the persons signing and of any person or entity they represent. The same law goes on to

provide that if such evidence has not been recorded by the Notary in the document in question, the deed may not be registered at the Land Registry, thus depriving a purchaser of the very protection he needs.

Even if the vendor company has a CIF, each Director will require a NIE. Even persons signing as attorneys for third parties require a NIE.

The requirement that a foreigner should quote a tax ID number, if he wants to do business in Spain is hardly objectionable when the same rule applies to Spaniards. However the cumbersome procedural requirements coupled with the administration's lack of consistency in applying the rules are at times so infuriating that they appear to amount to discrimination.

Until recently, the authorities allowed an applicant to delegate the task of applying for a tax ID to a representative in Spain. In all but a few cases this has been stopped for reasons which remain a mystery. Now, obtaining the NIE is a time consuming and irksome process involving attendance by the applicant in person and often lengthy queues at the local police station in Spain. Alternatively if the applicant lives outside Spain he must attend in person before the appropriate Spanish Consulate. In both cases, production of identification, such as the applicant's passport and other documentation are required.

Applicants can expect to wait at least two weeks to obtain the NIE if the application is lodged in Spain and considerably longer (three months is being quoted officially) if the application is lodged via a Spanish Consulate. It seems that there is no set of uniform requirements established by the Spanish

authorities for obtaining a N.I.E. which makes it essential that any interested party seeks informed reliable and up to date local advice to ensure the application proceeds as smoothly as possible. It is not without irony that the Spanish Authorities have made the requirement to obtain a N.I.E. so essential whilst at the same time placing so many seemingly unnecessary obstacles in the way of obtaining one.

In conclusion anyone who is contemplating any financial transaction or any investment in property in Spain should apply for a Fiscal Identity number, before doing anything else.

Until the Fiscal ID has been obtained a foreign purchaser or investor may be pressurised into relying on a 'Private Contact' (so called because it is not signed before a Notary Public). Such contracts can be signed without stating a NIE but they are of limited value and are only capable of recording promises. If a promise is broken a purchaser under a private contract will have no interest in the land he has bought and usually no other enforceable remedy. This will leave him with no protection against an insolvent or fraudulent vendor or intermediary.

Only a Public Deed can be registered at the Land Registry. The Public deed is what a purchaser should insist on but this can only be signed before a Notary Public and cannot be signed now until all parties have obtained a Tax ID. No doubt Watchdog's postbag will swell with letters from those who are persuaded to ignore advice such as this. Ironically the new rules will create an obstacle to obtaining a proper title deed promptly and this could lead to an increase in the level of fraud. [\[A\]](#)



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_Tax Tables 2007

Income Tax

Taxable Base Up to Euros	Tax Due Euros	Remaining Taxable Base Up to Euros	Rate Applicable %
0	0	17.360	24
17.360	4.166,40	15.000	28
32.360	8.366,40	20.000	37
52.360	15.766,40	Onwards	43

Wealth Tax

Taxable Base Up to Euros	Tax Due Euros	Remaining Taxable Base Up to Euros	Rate Applicable %
0	0	167129,45	0,2
167.129,45	334,26	167123,43	0,3
334.252,88	835,63	334.246,87	0,5
668.499,75	2.506,86	668.499,76	0,9
1.336.999,51	8.523,36	1.336.999,50	1,3
2.673.999,01	25.904,35	2.673.999,02	1,7
5.347.998,03	71.362,33	5.347.998,03	2,1
10.695.996,06	183.670,29	Onwards	2,5

Inheritance Tax

Taxable Base Up to Euros	Tax Due Euros	Remaining Taxable Base Up to Euros	Rate Applicable %
0	0	7.993,46	7,65%
7.993,46	611,50	7.987,45	8,50%
15.980,91	1.290,43	7.987,45	9,35%
23.968,36	2037,26	7.987,45	10,20%
31.955,81	2851,98	7.987,45	11,05%
39.943,26	3734,59	7.987,45	11,90%
47.930,72	4685,10	7.987,45	12,75%
55.918,17	5703,50	7.987,45	13,60%
63.905,62	6789,79	7.987,45	14,45%
71.893,07	7943,98	7.987,45	15,30%
79.880,52	9166,06	3.987,15	16,15%
119.757,67	15606,22	3.987,16	18,70%
159.634,83	23063,25	7.975,30	21,25%
239.389,13	40011,04	15.938,41	25,50%
398.777,54	80655,08	3.987,75	29,74%
797.555,08	199.291,40	Onwards	34,00%

_What do you think?



Please let us know which areas of this newsletter you found most helpful, and what, if anything, you would like to see added

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COUNTRY

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NAME

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