

PROMOTION - CABRERA RODRÍGUEZ

Inheritance and Gift Tax in Spain

In the past, Spanish people in general tended not to be very proactive concerning arrangements for succession and Inheritance Tax Planning.

It seems they felt it was a discussion which could always be postponed for a while. However, more and more, during the past couple of decades we have started to realise the relevance of paying proper attention to this subject. The simple matter of drafting a Will became such a stressful step that most of the time it was simply deferred to the next month or year. Thinking on what will happen with our assets or businesses after our own death was considered an undesirable process, which nobody wanted to go through.

In reality, facing this issue in advance creates great opportunities, not only in terms of tax saving but also on preventing and sorting family conflicts which no parents would like to leave with their children. Moreover, a proper review of family wealth structures creates scenarios for going through subjects and discussions which, by leading those at the right rhythm and with the right level of sensitivity, will definitely contribute to improving the solidity of the family wealth but also the strength and capacity of family relationships.

Inheritance and Gift Tax in Spain is a national Tax regulated for the whole state, although collection and some other procedures are under the charge of the different regions.

On top of this, regional parliaments hold the capacity of creating allowances on the tax which, in practice, means removing almost the whole impact of it by meeting a number of requirements and limitations.

Under that capacity and competence, from January 2016, the Canary Islands Parliament has reintroduced an allowance of 99.9 per cent (it previously existed from January 2008 till June 2012), under certain conditions on gift and inheritance tax from grandparents and parents to children, from children to parents and grandparents, and between husband and wife.

Two essential matters are to be considered regarding this particular regional allowance:

The first one refers to the often forgotten aspect which concerns the fact that any gift, excluding cash, implies not only tax on the receiver, which takes the benefit of the 99.9 per cent, but also Capital Gains Tax on the donor, calculated on the difference between the purchase price of the asset gifted and the market value of the same. Awareness of this second piece of taxation is essential in order to work out the appropriate transaction.

The second one falls into the consideration when the donor or receiver is non resident in Spain or the Canaries, or when the assets to be transmitted are not located in Spain or the Canaries but in the EU.

It's not been until Spain formally adopted the ruling of the European Court (with its consequences and interpretation incorporated into our own regulation) that this advantage of the regional allowances - such as the Canarian one - could become applied to taxation in situations such as the ones briefly described above.

This temporary, huge allowance, which, without question, could become a very interesting tax planning tool when properly used and implemented, we understand will definitely disappear as part of the harmonisation policy of the Spanish Government, as it is the official trend to equalise the tax in all regions. Consequently, any steps to take advantage of this specific measure should be addressed, in our view, as a matter of urgency within the year 2016.

Leaving aside all the above, within Inheritance and Gift Tax regulation, two basic items or assets have always been protected, in terms of significantly minimising taxation: the family house and the family business. In other words, the law protects the house where the family has been living or intends to live, and the business which has provided or that is currently providing the main income to some or all of the family members.

Regarding the family house, a number of interesting situations may be produced so that inheritors could keep their parents' house without effective tax or receive cash as gifts



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from parents for buying a family house.

However, we have to say that the star of the tax incentives can be the family business. Under this particular regulation there are huge opportunities for reorganising the wealth structure of the family which could be worked at little or almost no cost. A family trading company or even a family holding company could be adjusted and worked in order to meet the legal requirements which will provide a reduction on the tax base of both Inheritance and Gift Tax of either 95 per cent or even 99 per cent. Sometimes the reduction on both the trading and asset holding company of the family can be achieved. This could eventually imply - if optimising the planning - that most of the family wealth could end up reaping the benefit of

it, and consequently the threat of a major tax for your children could disappear.

It is not the first time we have heard about foreigners or even nationals deciding to leave Spain or just the Canaries because of the fear produced by the uncertainty of the tax regulations or the potential high taxation for passing assets to relatives. Of course, this could happen. But facing the issue in advance, getting the proper reliable and creative advice by putting the right vehicles in place, will highly contribute to reducing that impact.

All of this, together with the benefit and advantages of the analysis and renewal of the old business structures and its internal policies, could also have implications for the day-to-day running of the business, its profitability, present and future, and ultimately for securing a safe, cheap and peaceful succession.

We are available for any consultation, kindly contact us on the email address: info@cabrerarodriguez.com or visit our website: www.cabrerarodriguez.com.

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