

TAX ALERT

UPCOMING CHANGES TO THE WEALTH TAXES APPLICABLE IN SPAIN



UPCOMING CHANGES TO THE WEALTH TAXES APPLICABLE IN SPAIN

Last week the Government made public the draft of the so called “Large Fortunes Tax” whose articles have been incorporated into the Bill for the establishment of temporary energy tax and credit entities tax.

The novelties in terms of wealth taxation proposed by the Coalition Government (PSOE and UP) not only foresees the creation of this new Tax on Large Fortunes but also includes an important amendment to the Wealth Tax rules that will have a very significant impact on foreign corporate structures holding real estate assets located in Spain.

According to the Government's plans, both the modification of the Wealth Tax and the approval of the Tax on Large Fortunes are intended to be adopted before December 31, 2022, meaning that both taxes will become due and payable by June 2023.

Therefore, it is urgent to review your holding structure or your current position before the end of the year in order to determine whether or not, and to what extent, these changes in taxation affect you.



MODIFICATION OF THE WEALTH TAX AND ITS IMPACT ON NON-RESIDENTS

An important change to the Wealth Tax legislation is envisaged and it will exclusively affect non-residents who hold real estate assets in Spain. The purpose of this amendment is to widen the number of taxpayers required to pay this Wealth Tax and/or the Tax on Large Fortunes in Spain.

We all know that non-resident individuals who own assets located in Spain are also taxpayers of the Wealth Tax, unless a Double Taxation Agreement prevents it.

However, when these individuals are indirect owners (through a foreign corporate structure) of real estate located in Spain, they were excluded from their obligation to pay Wealth Tax, since they were not owners of assets located in Spain but of shares in foreign companies.

This conclusion was confirmed by the Spanish Courts and the General Directorate of Taxes has already echoed the judicial criteria and has indeed confirmed that the indirect ownership, through foreign corporate structures, of real estate assets in Spain, whatever the reason is, were excluded from the Wealth Tax.

Precisely with the purpose of cutting off this situation, the Coalition Government has introduced an amendment that modifies article 5 of the Wealth Tax Law to consider located in Spanish territory (and therefore subject to Wealth Tax) *“shares held in any type of entity (Spanish or foreign), unquoted, whose assets consist of at least 50%, directly or indirectly, of real estate located in Spanish territory”*.

This modification implies that those non-residents in Spain who hold shares in foreign companies that, in turn, hold (direct or indirect) real estate in Spain, could become new taxpayers of the Wealth Tax, and therefore, become potential taxpayers (depending on the value of the shares) of the Tax on Large Fortunes.

To determine whether the assets of a foreign company are made up of -50% or more- of real estate located in Spain, the net book values of all the assets will be replaced by their respective market values determined to date of accrual of the tax and, for real estate, the values to use are those used to determine the taxable base of the Wealth Tax.

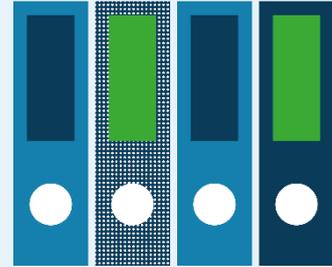
Therefore, a review of the equity structure and of the asset composition of your holding company must be carried out to determine whether the properties located in Spain represent at least 50% of the value, and if so, it would be necessary to determine if you become a Wealth Taxpayer in Spain or a taxpayer of the Tax on Large Fortunes, or both.

Finally, the Wealth Tax will be calculated on the values determined according to the Wealth Tax rules, which in certain cases could mitigate the tax burden.

This new definition of a taxpayer for Wealth Tax purposes carries on multiple technical uncertainty, among others, how the Double Taxation Agreements apply and what happens if the foreign company whose shares are subject to Spanish Wealth Tax holds also other assets located out of Spain.

In short, it is advisable to review structures and Double Tax Treaties to determine to what extent this imminent regulatory change may affect both the Wealth Tax and the Tax on Large Fortunes, because those foreigners with real estate in Madrid and Andalusia through foreign corporate structures could be affected.

Likewise, we recommend that you contact us to assess its impact and possible solutions.



TEMPORARY TAX OF SOLIDARITY OF THE GREAT FORTUNES

The Tax on Large Fortunes is a direct, personal, and complementary tax to the Wealth Tax and levies the net wealth of individuals, residents, and non-residents, in the amount exceeding 3,000,000 euros.

The assets and rights that are exempt from the Wealth Tax (namely, the habitual residence, family businesses, Pension Plans, among others) will also be exempt from this new Tax.

This Tax on Large Fortunes affects both residents and non-residents, the latter always on the assets and rights located in Spain and with the permission of the Double Taxation Agreement, if applicable. It should be noted that in general, non-resident individuals (direct) holders of assets and rights located in Spain (shares, credit rights, real estate) are subject to Wealth Tax on the value of said assets.

The taxable base is a replica of that the Wealth Tax taxable base, since it will be composed by the value of the net wealth of the taxpayer as of December 31 of each year (date of accrual of the tax), determining said amount according to the rules of the Wealth Tax regulations.

A minimum exemption of 700,000 euros is established, equivalent to that of the Wealth Tax and the tax scale starts at €3M, once the exempted minimum mentioned has been logically discounted, as well as those assets that are exempt from the Tax.

The scale is as follows:

Taxable base Up to Euros	Tax quote Euros	Excess up to Euros	Rate
0,00	0,00	3,000,000	0,00
3,000,000	0,00	2,347,998	1,7%
5.347.998	39,915	5.347.998	2,1%
10.695.996	152,223	En adelante	3,5%

As in the case of the Wealth Tax, the full amount of this tax, together with the Personal Income Tax and Wealth Tax payable, may not exceed 60% of the sum of the tax bases of the former, referring to the Wealth Tax Law for that calculation. In case of excess, the amount of this tax will be reduced until the indicated limit is reached, without the reduction being able to exceed 80%.

By way of example, a person with tax residence in Madrid or Andalusia and with assets of €5,500,000, of which €250,000 is the habitual residence and €2,000,000 shares in their exempt family business, will not be required to file a declaration nor to pay this Tax, since their subject and non-exempt assets do not exceed €3,000,000;

If, on the contrary, the family business in which he participates does not meet the requirements to be exempt (or not 100%), the cost that he will have to pay for this new Tax would amount to €26,350, without considering the income / equity limit, which also applies to this new Tax, and which could reduce its cost.

Another example would be that of a natural person residing in the United Kingdom or Germany who had a real estate investment in Spain worth €4M through a UK or German company. In this case, if the property is located in Marbella or Madrid, there would be no Wealth Tax payable because it has been 100% relieved in those territories, however, the Tax on Large Fortunes could be applicable. Apart from any discussion about the legality of this new tax, it is convenient to carry out a verification of the necessary requirements to leave exempt the shares in your family business, as well as to review and monitor, if this tax is applicable, how the income / wealth tax limitation plays, in order to mitigate its impact as much as possible for the year 2022, in which it will foreseeably be applied.

For this reason, we recommend that you contact us to assess the impact that these measures may have on you and possible solutions.

FOR MORE INFORMATION CONTACT US

Inmaculada Domecq
Partner



idp@uhy-fay.com

MARBELLA: +34 952 76 40 65

MADRID: +34 91 426 07 23

LEGAL NOTICE: This publication has been carefully prepared; however, it has been written in general terms and should be considered only as a general reference. This publication cannot be used as a basis to cover specific situations and you should not act or refrain from acting in accordance with the information contained in this document without obtaining specific professional advice. Contact UHY Fay & Co at any of our offices to discuss these matters for your circumstances. UHY Fay & Co, its partners, employees, and agents do not accept or assume any responsibility or duty of care for any loss arising from any action taken or not taken by any individual in reliance on the information contained in this publication or any decision based on it.

We do more

UHY Fay & Co es una firma de servicios profesionales multidisciplinar con 35 años de experiencia ofreciendo servicios integrales a la medida de las necesidades de nuestros clientes.

Nuestra ventaja competitiva es nuestro conocimiento local y capacidad internacional. A través de nuestra red global, UHY, disponemos de más de 300 oficinas en más de 100 países

UHY FAY & CO

MADRID +34 91 426 07 23
BARCELONA +34 93 595 50 50
MALAGA +34 95 206 04 69
MARBELLA +34 95 276 40 65

Email mailbox@uhy-fay.com

SERVICIOS

Audit & Assurance
Advisory
Tax
Legal
Laboral
Business Services
Sostenibilidad y ESG
Corporate Finance
Internacionalización de Empresas

UHY Fay & Co es miembro de Urbach Hacker Young International Limited, sociedad del Reino Unido, y forma parte de UHY, red internacional de firmas independientes de auditoría y consultoría. UHY es la marca de la red internacional UHY. Los servicios aquí descritos son prestados por UHY Fay & Co y no por UHY o ningún otro miembro de UHY. Ni UHY ni ningún otro miembro de UHY tiene responsabilidad alguna por los servicios prestados por otros miembros.

© 2022 UHY Fay & Co

We do more

UHY Fay & Co is a leading firm of multidisciplinary professional services with 35 years of experience offering tailor-made integral services to our clients.

Our competitive advantage is our local knowledge and global reach. Through our global network, UHY, we have access to more than 300 offices in over 100 countries.

UHY FAY & CO

MADRID +34 91 426 07 23
BARCELONA +34 93 595 50 50
MALAGA +34 95 206 04 69
MARBELLA +34 95 276 40 65

Email mailbox@uhy-fay.com

SERVICES

Audit & Assurance
Advisory
Tax
Legal
Labour
Business Services
Sustainability and ESG
Corporate Finance
Internationalization of Businesses

UHY Fay & Co (the "Firm") is a member of Urbach Hacker Young International Limited, a UK company, and forms part of the international UHY network of legally independent accounting and consulting firms. UHY is the brand name for the UHY international network. The services described herein are provided by the Firm and not by UHY or any other member firm of UHY. Neither UHY nor any member of UHY has any liability for services provided by other members."

© 2022 UHY Fay & Co