
Spanish Tax Authorities look to levy wealth tax on non-residents having indirectly owned properties in Spain

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In brief

Many properties in Spain belong to non-tax resident individuals through companies. The tax authorities are currently reviewing these structures with the goal of levying wealth tax on these non-resident shareholders in Spain for the value of the properties which they own indirectly.

In detail

Article 5 of the Spanish Wealth Tax Act provides for taxation of Spanish assets and rights owned by non-resident individuals.

Many non-resident individuals own real estate in Spain and, in a significant number of cases, these properties are owned through companies. The Spanish tax authorities have recently initiated tax audits aimed at levying wealth tax on the individuals indirectly owning these properties.

In spite of not being expressly foreseen in Article 5 of the Wealth Tax Act, the Spanish tax authorities seem to be taking the view that Spain has jurisdiction to tax indirect

ownership of properties situated therein.

Several double tax treaties signed by Spain allow the levying of wealth tax on shares (or similar equity instruments) in an entity, the property of which consists mainly of real estate situated in Spain. In the specific case of U.S. resident individuals, wealth tax is not one of the taxes covered by the Spain-U.S. tax treaty and therefore the treaty will not restrict Spain's taxing jurisdiction.

The position taken by the Spanish tax authorities could also extend to levying non-residents' income tax on the imputed income arising from the ownership of real property

in Spain. The vast majority of treaties concluded by Spain — the U.S. treaty included — would allow Spain to tax income arising from the direct use, letting, or use in any other form of property situated in Spain, where the ownership of shares or other rights in an entity entitles the owner of such shares or rights to the enjoyment of real property held by the entity.

The takeaway

U.S. residents owning real property in Spain through companies or other legal entities may want to review their individual situation and carry out an analysis of potential implications, both from a wealth tax and income tax perspective.

Let's talk

For a deeper discussion of how this issue might affect you, please contact:

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