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Taxation of non-residents on real estate in Spain

1. Tax residence criteria in Spain.

Tax residency is a crucial concept for determining the tax obligations of individuals in Spain. According to the Spanish Personal Income Tax Law, an individual is considered a tax resident in Spain under the following conditions:

- Duration of Stay: The individual spends more than 183 days within a calendar year in Spanish territory.
- Economic or Business Interests: Spain is the center of economic or business interests, either directly or indirectly.
- Family Presence: A presumption of residence arises if the individual's family lives in Spain.

Residency is determined on a full-year basis, meaning the evaluation considers the entire calendar year to establish the individual's tax residency status.

When a person is deemed a tax resident in two countries based on their respective internal legislation, resolving the country of residency requires adherence to the double tax treaty between the involved countries. This treaty typically outlines the rules and criteria for determining which country has the primary right to tax the individual's income.

2. Taxation for non-residents with properties in Spain

In general, non-resident taxpayers who own real estate in Spain can obtain income in the following ways:

1. Income from renting out the property.
2. Presumed income from urban property if the property is used by the owner or is unoccupied.
3. Capital gain from selling the property.

1. <u>Income from rented real estate</u>

If a non-resident individual rents out property in Spain, they must pay non-resident income tax on the rental income:

- Generally, the declared income is the total amount received from the tenant without deducting expenses. Deductions are only allowed if the lessor is a tax resident in another EU Member State, Iceland, or Norway.
- The applicable tax rate in 2024 is 24%. For residents of the EU, Iceland, and Norway, the rate is 19%.
- The filing deadline varies based on the tax return outcome. If the return results in a payment, it can be filed annually, with a deadline from January 1 to January 20.

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2. Presumed income from urban real estate for own use

If a non-resident individual owns a property in Spain for their own use, they must pay non-resident income tax for the presumed income.

- The income to be declared is calculated by applying a percentage to the property's cadastral value. The percentages are:
  - 1.1% for properties located in municipalities where the cadastral values have been revised within the last ten tax periods.
  - 2% for all other properties.
- In general, the applicable tax rate in 2024 is 24%. For residents of the EU, Iceland, and Norway, the rate is 19%.
- The deadline for filing is between January 1 to December 31 of the following year.

3. On the sale of real estate

If a non-resident individual sells a property, they must pay income tax on the gain obtained and the tax on the increase in value of urban land (municipal capital gains tax):

Tax on the income of non-residents (gain obtained):

- In general, the applicable rate in force in 2024 is 19%.
- Deadline for filing: Three months after the expiry of one month from the date of transfer (date of accrual) of the immovable property.

The person acquiring the property is obliged to withhold 3 percent of the sale from the seller within one month of the date of transfer.

Tax on the increase in value of urban land:

- The deadline for filing the municipal capital gains tax is one month from the date of the sale.

In the case of a donation, the donor must declare their capital gain as detailed above, and the donee must file the donation tax in Spain, where the property is located.

Wealth tax

Non-residents are subject to a wealth tax on assets located within Spanish territory.

A minimum exemption of 700,000 euros applies to this tax. In order to finalize the taxation process, provisions under the applicable double taxation agreement must be taken into consideration.

The deadline for filing this wealth tax is June 30 of the year following the tax year in question.

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***Please note that this information is a summary and should not be considered as legal advice.**