



RESIDENT IN SPAIN WITH RENTAL PROPERTY

IN THE UK – THINGS TO CONSIDER

From our senior advisor Philip Carroll in response to member who intends to take up residency in Spain, his main source of income is from several rental properties in the UK.

As far as taxes are concerned, there is a double taxation agreement (DTA) between Spain and the UK which determines where you pay tax. As a general principle you will always pay tax in the country where income is derived but if you are a tax resident in another country, then normally you are required to declare and pay tax in that country. Consider that any tax already paid there can be claimed as relief. In fact as far as Rental income is concerned there is a specific section in the DTA which says :

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

So, the key issue is whether you are tax resident in Spain or the UK. As a general rule you will always be considered tax resident in a country if you spend more than 183 days living there. However, in 2014 the UK introduced a **Statutory Residence Test**, which determines your tax residence status based on how many days (hours) you work, whether you have somewhere to live etc., this test determines your residence. There is an online model which you can complete for the various years. I think you should complete this for yourself (it's only for your information). You can [find the model here](#), and you just click the phrase "[Go to the Tax Residence Indicator]". There's also a quick summary [here](#) .

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The model is not currently working, but based on the page I have just linked, and my understanding, if you have been tax resident in the UK for the previous 3 years, and you spend more than 91 days in the UK I think it will probably say you are resident, which means you may be tax resident in both countries. NB, there's also a [paper flowchart here](#) which is quite good.

If you are tax resident in the UK **and** you are tax resident by virtue of being in Spain more than 183 days then your status is determined by the DTA which says :

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national; d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

So, although you may be tax resident in both countries, under the DTA you must be resident in one or the other.

Firstly just to clarify, if you are tax resident **only in Spain** and if so then under the DTA you are required to declare and pay tax on your rental income in the UK and Spain as well. Spain is quite generous in terms of taxing rental income from properties which are let as residential property. Under Spanish tax law there is relief of 60% on the net rental income, and you can also claim relief on the mortgage interest (but note this affects the value for capital gains). However, there are a couple of drawbacks. The first is that each property has to be declared separately, and whilst you can claim expenses (pretty similar to the UK) incurred, these only relate to the generation of the income. So if a property is empty for say 6 months, you can only claim expenses for the period it is occupied.

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In fact for the period it is unoccupied you have to pay “imputed” income tax, although this is minimAL. The taxable amount for this calculation is the percentage of the value (either 2% or 1.1%). As far as expenses by third parties are concerned these must be supported by proper receipts and invoices. NB, this is based on the fact that you are not employing someone full time; as it would then be considered that you are running a business.

So, based on the above, it is unlikely that any further tax would be payable in Spain even though the allowances are significantly lower than the UK. You would receive an allowance of €5,550 in Spain versus £11,500 in the UK.

Secondly, though I am sure you are familiar with the need to pay **capital gains** in the UK if you sell any of the properties, the same applies in Spain, although the rates are slightly lower in Spain, there is no allowance as there is in the UK.

Another aspect to consider is **Inheritance Tax**. Depending on the autonomous region where you have taken up residency, the amount to pay will vary.

Up until 1st January 2015 there were no **regional IHT allowances** for non-residents, and they received the state allowances (€15,957). In 2014, the ECJ (European Court of Justice) ruled that Spain was discriminating against EU residents by only applying state IHT rules. Consequently the rules were changed with effect from the 1st January 2015 new rules apply where the beneficiaries are EU citizens, whether they are resident or not. However, the law changes are specifically restricted to EU citizens, so unless there is a separate agreement between the UK and Spain then following the exit of the United Kingdom from the EU, it is more than likely that **only the state allowances** will be available. Obviously this will make a significant difference in the allowances but, it is possible to structure your assets and/or will to mitigate these.

With regard to the **UK the standard IHT tax-free allowance** is £325,000 or £650,000 if the assets left have been inherited from a spouse. IHT is payable on any excess over the limits is payable at 40%. However, with effect from 6th April 2017 there is a new allowance if the assets include your main residence. The allowance starts at £100,000 and increases by £25,000 each year until it reaches £175,000 by 2020. Essentially you deduct this amount from the property value and then add the balance left to the value of the remaining assets and if the value is below £325,000 then there is no IHT to pay.

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The good news is that if you are considered “domiciled” in the UK then this allowance applies if your main residence is in Spain.

Summarising said member has been given several points to consider before making his move to Spain final and been advised to seek some professional advice from an organisation that can help him ensure that his assets are organised and structured in the most tax effective way, for all the aspects, not just income tax.

<https://www.facebook.com/groups/citizensinspain/>

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