Nordea

Guide to Wealth and Tax Planning in Spain

An overview of wealth planning principles, tax matters and tax instruments

Private Banking

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An overview of wealth planning principles, tax matters and tax instruments

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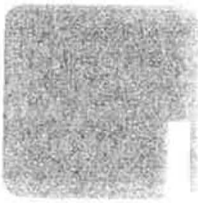

Only a few years ago, private banking clients were usually people who had inherited wealth and were not obliged to work for a living, employing an array of solicitors, accountants and stockbrokers to look after their personal and financial affairs. In contrast, today's investor is more likely to have amassed a fortune through personal effort, and is probably still active in a professional capacity. Such investors lead more complex lives than their predecessors. They also have greater demands and expectations as far as financial services are concerned.

Simultaneous developments have also assisted this change in the character of the private investor. Globalisation, the opening up of borders in Europe, advances in technology and communications, and cheaper air travel have all allowed companies and individuals to enjoy an unprecedented degree of mobility. In their wake, these factors have essentially "internationalised" the market for private banking services.

Consider, for instance, a Swedish citizen, living in Spain, who owns holiday homes in Denmark and the UK, and whose heirs are resident in France. While quite rare 20 years ago, such an example is nothing exceptional today. It follows that such a person, eager to preserve the wealth that he/she has acquired, needs a great deal of specialist advice in order to successfully negotiate the labyrinth of international tax and inheritance legislation. To realise that aim, a well-conceived wealth plan, flexible enough to take account of the changing personal and financial circumstances of the individual concerned, is absolutely vital.

This booklet has been devised as a basic guide for this new breed of investor and in particular for investors affected by Spanish tax and inheritance legislation. The first section deals with the basics of successful wealth planning, and addresses the most fundamental questions such investors should ask themselves. Section II examines the current (January 2008) legislative framework in Spain and provides essential information for the individual investor to be able to assess his/her potential tax liability, as well as indicating allowances that may be available. The third and final section considers ways of limiting taxation through a variety of structured investment alternatives.

Taken together, the three sections should equip the reader with the necessary information to begin the task of preparing at least the framework of a personalised wealth plan. However, it should be noted that the following pages are necessarily of a general nature and cannot cover every eventuality. Therefore, depending on the complexity of the particular situation, it is expressly recommended that expert advice be sought, especially in areas where clarity may be lacking, in order to customise the process to suit the individual's specific needs and requirements (see the Appendix, p.40).

1

Wealth Planning Principles

This first section of this booklet asks questions. It asks the questions that you should ask yourself. The remaining sections of the booklet are intended to help you formulate and refine the answers.

Questions, questions....

Unless you are a wealth planner by profession, a quick assessment of your personal and financial situation is likely to raise more questions than answers. In the initial phase of wealth planning, however, it is asking the right questions that counts. As with most personal matters, honesty is the best policy, so be sure to answer your questions faithfully wherever possible. You can begin by holding a dialogue with yourself, then progress to one between you and those family members who will be directly affected by your decisions.

If you are the sort of international investor that this publication is aimed at, you will probably require some external assistance. In order for your advisers to provide the most suitable recommendations, they need to know all the relevant details concerning your current situation and, of equal importance, what you want from life. The question "What do I want from life?" is deceptively simple. Answering that question fully will ultimately depend on the answers to a host of other questions that your advisers are bound to put to you, such as:

- Are you planning on relocating or moving abroad?
- At what age would you prefer to retire?

- Do you own a company and, if so, do you intend selling it before retirement?
- Do you have dependants with financial needs for education or healthcare?

It is important to consider these questions at the very outset of the wealth-planning process, as their answers will provide a framework, ideally established in close co-operation with your advisors, from which to proceed. In fact, it is vital to determine these parameters at the outset if wealth planning is to be at all effective.

Your current financial status

To begin with, perhaps the most important item for consideration is your current financial status. One way to approach this is by drawing up a personal balance sheet, listing your assets and liabilities. The estimated market value of your house, for example, is an asset, whereas any remaining mortgage on it is a liability. The amount by which your total assets exceed your total liabilities is your *net worth* and represents your basic investable capital.

Income needs

Another financial consideration is your potential need for income. Your immediate situation can be determined by creating a personal income statement, or budget, that compares regular income (e.g. salary) with periodic outlays such as monthly household spending, loan instalment repayments etc. The net difference between income and expenditure is your *disposable income*, i.e. money that is not earmarked for personal spending in the foreseeable future. Disposable income is therefore what you can safely save or invest for the years to come. (For future disposable income, items such as pension income or maturing insurance policies should also be taken into account). While factors such as these are a guide to defining your present financial status, they also form a basis for future projections and are therefore a platform from which financial and other decisions can be made.

Your assets (investments)

Once you have computed your total assets, including property and any other possessions of value that you may currently have, the following issues should be addressed:

- Do your investments match your needs for capital preservation and/or growth?
- Are they tax-efficient, both from today's perspective and in relation to where you expect to live in the future?
- Are they a suitable means of securing the lifestyle you would like to have later on or when you retire?

These are important questions that your advisers can help you answer, in order for you to structure your investments to more exactly match your goals.

Retirement

So far, we have considered your current financial situation. But what of the future? As we grow older, we often dream of a comfortable retirement, in the knowledge that our finances are sufficient to sustain the lifestyle we wish to enjoy and that our families and those dear to us are well provided for. To achieve all this, however, sound planning is vital. For many people, wealth is highly desirable. Once amassed, however, wealth also becomes a responsibility. It can even be something of a worry:

- How can I shelter and preserve my wealth?
- What investment strategy do I need?
- What are the taxation and legal obligations of where I live or may live in the future?
- How can I optimise my tax situation in this regard?
- What possibilities are available to me to ensure that my descendants prosper?

Major issues

Wherever you live, now or in the future, and whatever your personal aims and ambitions may be, you need to be aware of the possibilities available to you to realise the goals that you have set for yourself. Broadly speaking, the areas you should consider in this regard, and which are dealt with successively following the list below, are:

- Investment
- Inheritance
- Domestic and international taxation
- Property
- Company ownership and exit

As far as investment is concerned, you will need a financial advisor who can provide you with detailed advice and recommendations that address your particular financial requirements. Ideally, the right advisor should also be of some assistance in the other areas listed above. In fact, it would be wise to base your choice of advisors on whether or not they have an extensive network of competent, professional contacts (accountants, lawyers, real estate agents etc.) who can be brought into the picture to offer you their specialist services when needed. One of the many banks offering international private banking services should fit the bill in this regard.

In some cases, it may be beneficial, from a taxation point of view, to create a company to invest in assets for the long term or simply to trade securities - although the wisdom of this will necessarily depend on your personal circumstances and the tax jurisdiction concerned.

Basically, the choice of what type of investment form to take should be determined by the purpose (whether short-term or longer-term ownership is foreseen and whether the investment goal is capital preservation or growth) and in which countries you and your assets are located for tax purposes.

Keeping it in the family - efficient inheritance planning

A further key factor in the wealth-planning process, especially where families are concerned, is inheritance. It may seem obvious, but it is important in most jurisdictions to make a will if you have specific wishes as to whom you would like to benefit from your estate when you die or, if you own a company, who is to succeed you in its ownership. Most countries impose inheritance and gift taxes, but there are often significant differences in the rates of tax and how they are applied. These rules will also vary if you are resident for tax purposes in one country but hold assets in another. The domicile of the beneficiaries, and how that jurisdiction treats inheritance and gifts from a tax perspective, is a further matter for consideration.

Consequently, it is important to ascertain whether there is a risk of double taxation (in the absence of a treaty between the countries concerned) that effectively offsets the benefits. There are many ways to plan tax-efficient inheritance, and the ultimate solution will depend very much on the jurisdictions in question, as well as their relationship with each other from a tax point of view. In some countries, a trust may be the best solution for ensuring that your heirs are not fiscally disadvantaged. In other countries, life assurance may be the optimal way to mitigate the effects of inheritance tax.

One of life's certainties

Wherever you live, and wherever your assets are held, some form of taxation, direct or indirect, is almost inevitable. However, the discrepancies between the tax laws of different countries can be extremely wide. Some assets are taxed more in certain jurisdictions than others; some are heavily taxed here, but tax-exempt there. If you intend to reside in one country, with your assets either there or abroad, an overview of the tax legislation pertaining to those countries will be relatively straightforward.

However, if you plan to move to another country, and correspondingly change your tax residency, then further consideration must be given to the changed tax implications and an assessment made of the relative benefits of selecting different taxation environments for different types of assets. In foreseeing your potential tax exposure, your advisers should be able to identify practicable solutions and help you structure your assets in such a way as to obtain favourable tax treatment wherever possible. As the future is always uncertain, this should also be carried out by taking into account not only the acquisition and ownership of assets, but also their possible sale later on.

Home, sweet home - your property

Your property, whether residential or commercial, is likely to be one of your most important and valuable assets. It may be your primary residence or a second home, such as a holiday cottage. For wealth planners, the ownership of the property, whether as a private individual or in the form of a company or trust, is important because of its implications from a taxation point of view.

As with any other investment, the purpose of property ownership (residence, renting out, development, or speculation on property prices) plays an important part in wealth-planning terms. Many tax jurisdictions have rules and restrictions that differ according to the form and purpose of ownership. In addition, tax rates on property can vary significantly from country to country. There may also be taxes on the transfer of ownership that could have consequences for your inheritance plans. It is therefore important to identify the best means of enabling you to successfully transfer the ownership of your property with the minimal tax impact.

Another consideration might be whether or not to take out a mortgage loan, what the most suitable type of loan might be and how such financing can affect your wealth from inheritance and taxation perspectives, both in your home country and where the property is located.

It's your business

You may own, intend owning, or be thinking of selling a company, all of which require additional considerations, one of the most important being taxation.

For a new business, it is necessary to determine the appropriate form of corporate ownership in light of potential tax implications. Such a business might, perhaps, be in the form of a holding company, domiciled in a favourable tax jurisdiction selected from the point of view of how efficiently the flow of capital from the company to the business owners can be secured. The tax consequences will also depend on the purpose of the company, which may, for

example, be established to own property, be used for venture capital purposes, or be a structure created to optimise an exit from company ownership.

When selling a company, other factors apply, such as how ownership can be restructured to obtain more beneficial tax treatment when released, or the most tax-efficient way of transferring ownership to the intended successors, which is especially important for a family business.

A further consideration is the effect that moving to another country in connection with selling your business might have. In many such instances, there is scope for significant tax savings.

2

Tax Matters

This section is essentially a guide to the rules concerning what is mandatory and what is permissible from a taxation point of view under Spanish law. To the best of the authors' knowledge, the information provided below was in force at the time of going to press (February 2008).

Income tax
one of life's few certainties

Residence makes a difference

In Spain, individual taxpayers are divided into two categories: residents and non-residents. Resident individuals are subject to tax on the basis of their world-wide income. Non-residents are taxed on Spanish source income and on capital gains realised in Spain only. You are deemed resident in Spain for tax purposes if:

- you stay in Spain for more than 183 days during any calendar year (temporary absences are excluded when determining the 183 days residence period);
- your centre of activities or economic interest is located in Spain;
- the Spanish tax administration presumes that you are resident in Spain because your spouse and/or dependent children are Spanish residents.

If you do not meet any of the above criteria, you will be considered a non-resident.

Spanish legislation does not allow double residency within the same tax year. Residents are liable to Spanish income tax on income and gains derived over the whole calendar year, regardless of the date on which the residency begins.

General income

There are several categories of general income, each of which has different rules governing the definition of income, deductible expenses and reductions:

- employment income (including director's fees, and public and private pension payments);
- pension income;
- income from carrying out business or professional activities including income derived from real estate;
- income imputed from Controlled Foreign Companies (i.e. in which the taxpayer controls a substantial amount of the equity).

Employment income

Employment income includes all remuneration that results exclusively from personal services rendered by taxpayers.

Pension income

Pension income includes pension payments from a former employer, pensions from the social security system and other public benefits. It also comprises pensions and disability benefits derived from collective insurances. Payments from private pension

schemes are, as a general rule, taxed according to the new rules for investment income that came into force on 1 January 2007.

Business income

Business income includes income from industrial and commercial activities, farming, livestock and timber, mining, and any professional and artistic activities you may carry out. To determine net business income, business expenses are allowed where these are necessary to obtain the income and charges for the depreciation of the assets related to the business activity. Business income also includes:

- deemed income amounting to 2% of the "cadastral" value (i.e. as stated in the public land register) of a secondary residence (1.1% if the value was adjusted after 1 January 1994);
- rental income received from the lease of rural or urban real estate (net rental income deriving from the lease of residential property is entitled to a 50% reduction).

Investment income

Investment income is taxed at an 18% flat rate and consists of all income derived from assets, real or personal, which are not related to your business activity. This income includes the following:

- interest and dividends;
- mutual funds - as a general rule, capital gains on mutual funds and qualifying investment companies incorporated in Spain, or in other EU countries, are taxable;

- the income part of a withdrawal from a capital insurance (PCP or MCP in Nordea);
- life and disability insurance benefits, except where the income falls within the category of employment income, or where the payment is liable to Inheritance and Gift Tax;
- payments from private pension schemes - e.g. only 16% of the pension payment is taxable if the scheme is paid out over a fixed term of 10 years.

The previous reductions, ranging from 40% to 75%, depending on the period over which certain income was generated, have been abolished. Capital gains (regardless of holding period) are, as a general rule, taxable. However, capital gains realised on the sale of your main home is tax free if:

- you are more than 65 years old and have owned the property for at least three years, or
- you re-invest the gains in another home.

Rates 2008

General income is taxed according to the following scale of rates:

Rates 2008	
Taxable income in EUR	**Rate applicable %**
0 – 17,360	24
17,360 – 32,360	28
32,360 – 52,360	37
more than 52,360	43

Part of the income tax is applied by the autonomous regions, at various rates.

Non-resident income tax

General matters

Non-residents (both individuals and companies) are taxed in Spain on Spanish source income and gains, subject to the provisions of any relevant Double Taxation Treaty. Capital gains derived by non-residents are assessed according to the rules applicable to individual residents, with a number of differences. Unlet real estate held by non-resident individuals triggers a deemed income that is computed as for resident individuals.

Exempt income and gains include:

- interest income derived by EU residents;
- capital gains obtained by EU residents on the disposal of shares in Spanish companies, except those deriving from shareholdings in:
  - Spanish (or foreign) companies where most of the assets consist, directly or indirectly, of real estate located in Spain, or
  - Spanish companies in which the taxpayer has held, directly or indirectly, at least 25% of the shares at any point during the year prior to the disposal;

- interest income derived from Spanish bank accounts;
- income derived from Spanish public debt;
- gains arising from the disposal of Spanish unitised funds, or shares in companies listed on a Spanish stock exchange, derived by residents in treaty countries (except Switzerland).

Non-resident income tax

Tax rates applicable to non-resident taxpayers are:

- a general rate of 24%;
- 18% for capital gains, dividends, interest income and gains deriving from the disposal of units in investment funds.

Acquirers of Spanish situs (i.e. located in Spain) properties transferred by Spanish non-residents, are required to withhold 3% of the purchase price.

Additionally, an annual special tax is levied on real estate held by non-resident companies. The tax rate is 3%, being the taxable basis of the cadastral value. This tax can be avoided, provided that:

- the company is resident in a treaty country (except Switzerland);
- the identities of the final owners are disclosed;
- the company owners are Spanish residents or are resident in a treaty country (except Switzerland).

Wealth tax [illegible]

Individual net wealth tax is levied on the aggregate value of your assets, minus total liabilities, at the end of each calendar year. If you are resident in Spain, you are subject to net wealth tax on all your assets, regardless of where they are located. If you are a non-resident, you are only subject to tax on assets deemed to be located in Spain.

Exempt assets include:

- your principal private residence, up to an amount of EUR 150,000 per individual;
- pension plans;
- securities held by non-residents, provided that the income is exempt from Spanish non-resident tax according to Spanish legislation (non-residents may also benefit from additional exemptions provided by the relevant Double Taxation Treaty).

If you are resident in Spain, you are entitled to a standard general allowance amounting to EUR 108,000.

Wealth tax is levied on an individual basis. Ownership of assets and liabilities is determined pursuant to the applicable civil law regulations. Assets and liabilities are assessed according to specific valuation rules that differ depending on the nature of the asset. Tax rates range from 0.2% on the first EUR 167,000 to 2.5% on amounts of more than EUR 10.7 million. Each autonomous community is empowered to modify these maximums, in terms of both percentage and base.

For resident taxpayers, wealth tax liability is subject to a reduction mechanism, whereby the total amount of the items detailed below may not exceed 60% of general income:

- income tax on general income;
- gross wealth tax (prior to the reduction).

Any excess will reduce gross wealth tax, but net wealth tax cannot be reduced to less than 20% of the gross amount.

Inheritance and gift tax (IHT)

According to the Spanish Gift and Inheritance Tax Law, the taxable "event" is defined as the acquisition by individuals of goods or rights by virtue of inheritance (mortis causa), donation (inter vivos) or life insurance policies where the payer of the premium and the beneficiary are different persons (except in certain cases). Spanish legislation imposes gift and inheritance tax on donees, heirs or beneficiaries, regardless of the residence of the donor, deceased or policy payer.

Taxpayers are the heirs, donees or beneficiaries, and tax liability is subject to the following rules:

- resident taxpayers are liable on the basis of their share in the estate of the deceased (or the assets donated, or the life insurance benefit), regardless of where the assets (or rights forming part of the estate, or received by virtue of donation) are located, or where the life insurance policy is contracted;
- non-resident taxpayers are only liable on the basis of assets located in Spain (or rights acquired by virtue of inheritance or donation), or where the life insurance policy has been established through a Spanish insurance company.

Shares issued by foreign companies are deemed foreign situs assets for Spanish IHT purposes. However, the Spanish tax authorities have, at least twice, ruled that shares in foreign companies whose main assets are formed by Spanish situs properties may be deemed Spanish situs assets for IHT purposes. The Autonomous Regions may introduce limited modifications to the general IHT regime and may:

- introduce additional reductions to the taxable gains, or enhance those provided by the general regime;
- modify both the general scale of rates and special personal rates;
- introduce additional tax credits, or enhance those established by the general regime.

However, the Autonomous Regions' particular regulations only apply if the heir (or donee) is resident in Spain and the deceased (or donor) has been resident in a particular Autonomous Region for five years prior to death or donation. Regarding donations of Spanish real estate, IHT is levied on Spanish resident donees by application of the particular regulations of the Autonomous Region where the property is located. Otherwise, general IHT tax legislation will apply.

The taxable value of the gift/inheritance derived by the taxpayer is determined by taking into account the fair market value of the assets that form part of the estate, or are donated, or constitute the benefit from the life insurance policy. Encumbrances and liens (legal claims on property) attached to the assets of the estate, or donated along with the liabilities transferred by the deceased or donor, and certain expenses related to the deceased, may be deducted. The resulting amount is further reduced, regardless of the residence status of the acquirer, by the application of certain allowances in cases of inheritance or life insurance benefit, as follows:

- reductions in inheritance cases, depending on the family relationship between the heir and the deceased:
  - Group I - descendants under 21 years of age - EUR 16,000 plus EUR 4,000 for each year that the descendant is under 21 (the total reduction may not exceed EUR 48,000);
  - Group II - descendants over 21 years of age, spouse and ascendants - EUR 16,000;
  - Group III - ascendants and descendants by affinity, second and third degree relatives (brothers and sisters, uncles and aunts, nieces and nephews) - EUR 8,000;
  - Group IV - others - EUR 0.
- disabled acquirers - EUR 48,000 or EUR 150,000 (disability is determined according to Spanish Social Security regulations);
- acquisition of the principal private residence by close relatives - 95% of the real estate value, up to an amount of EUR 122,600 if the relatives live there for at least five years following the acquisition.

The resulting taxable value is taxed by the application of a progressive scale, with a maximum rate of 34% for acquisitions over EUR 800,000 per heir. For example, an heir will pay around EUR 12,000 on an inheritance of EUR 100,000 and around EUR 80,000 on an inheritance of EUR 400,000.

The resulting gross tax should be further increased by the application of certain additional personal rates that take into account the acquirer's net wealth prior to the acquisition, as well as his/her relationship with the donor/deceased (relative to the Groups mentioned above) as per the table below.

Group	Donee's pre-existing wealth (EUR '000)			
	0 - 403	404 - 2,007	2,008 - 4,021	4,021 +
I and II	1.0000	1.0500	1.1000	1.2000
III	1.5882	1.6676	1.7471	1.9059
IV	2.0000	2.1000	2.2000	2.4000

Therefore, the effective maximum rate may reach 81.60% (maximum general rate: 34% x maximum personal rate: 2.4% = 81.6%).

Transfer tax

The transfer of assets by individuals from their business or professional activities is subject to transfer tax at the following rates:

- real estate - 7% in most autonomous communities;
- other - 4%.

If the transfer is subject to VAT (first transfer from the constructor), there is no transfer tax; instead, Stamp Duty is applied.

Stamp duty

Stamp Duty at a rate of 1% is levied on the incorporation, capital increase or liquidation of companies. Stamp Duty is also levied on the registration of a mortgage loan secured by Spanish real estate (and on the first transfer as mentioned above).

3 Wealth Planning Instruments

Having read through the previous section, you will have realised that taxation costs in Spain can be very high. Income tax at a marginal rate of 43%, a wealth tax of up to 2.5% and inheritance tax of as much as 34% (and even more than 80% in special cases) underline the need for care and attention when it comes to planning your wealth. In many cases, an appropriate structuring of assets can contribute significantly to reducing tax liability.

This section will deal briefly with three ways to minimise your tax burden by means of strategic asset structuring. However, it should be said at the outset that, as your particular situation is unlikely to be identical to another's, the information provided here is of a necessarily general nature. After considering this material, therefore, you should ideally consult with a competent advisor of your choice, in order to asses the relevance and degree of benefit that may be attained by the use of the structures detailed below with specific regard to your personal circumstances.

Capital assurance

A capital assurance (or *bancassurance*) contract is a product widely used in Spain to manage an investment portfolio efficiently, primarily from a tax perspective but also in terms of the investment management itself.

Essentially, a capital assurance contract combines and links a life insurance policy with an investment portfolio. It offers the possibility of insuring one, or more, lives and is very flexible where the designation of beneficiaries is concerned. Furthermore, a capital assurance contract allows for an investment portfolio to be managed in a tax-efficient way. Depending on the circumstances, such a contract may allow you to invest in investment funds as well as in single securities. However, for the sake of clarity, it should be noted that those investing in such products are only the contract owners, while the underlying investments will remain the property of the insurance company throughout the life of the contract. The contract itself will have a value corresponding to the market value of the underlying investments.

Payments made into a capital assurance are normally in the form of a single premium payment, although additional premium payments are always possible. The premium may be invested into various funds or single securities, such as equities, bonds or other commonly traded securities, depending on the chosen asset allocation strategy and the risk profile of the investor, or investors, concerned.

For tax purposes, a capital assurance product provides the contract owner with benefits concerning:

capital income tax - as long as the investment assets continue to be held within the contract, any increase in their value will not be subject to Spanish capital income tax; only at the time of withdrawal or encashment of the policy will any capital gains from the assets be subject to the 18% Spanish capital tax; the premiums paid are not taxed at any time.

inheritance tax - capital assurance products provide planning opportunities due to the degree of flexibility permitted in the selection of beneficiaries; only beneficiaries resident in Spain for tax purposes are subject to Spanish inheritance tax, and this means that there is plenty of scope in the designation of beneficiaries.

net wealth tax - provided that the contract owner can accept certain restrictions to accessing the capital managed in the contract, the contract may fall outside the scope of Spanish net wealth tax.

Finally, a capital assurance contract is not subject to any exit taxes, should the contract owner decide to leave Spain.

Company structures or other legal entities

In tax planning, companies and other legal entities are used for a variety of reasons. One of the most common purposes is the tax-efficient administration of a business activity. Another purpose might be the management of an investment portfolio, or perhaps the ownership of real estate. The choice as to whether to place the assets/activities involved into a company structure, or to manage/carry them out under a regime of private ownership, depends entirely on the type of assets or business concerned, and also where these may be located geographically.

For a commercial business activity, some type of legal entity or form of association is normally recommended. Whether to establish a company, or perhaps a partnership, or to carry out your business in a self-employed capacity, will depend on the type and size of the activities in question. The same applies where taxation is concerned. Larger commercial activities are usually better suited to a company framework, within which standard taxation rules for businesses apply.

In Spain, both Spanish and non-Spanish companies can be used to own domestic real estate. Some years ago, offshore companies and offshore structures were also quite common for this purpose. Today, however, offshore entities often incur higher taxation rates than before, which, in most cases, has reduced their appeal as tax-efficient vehicles. Their attractions have been further diminished by the fact that the Spanish authorities require transparency when it comes to the beneficial ownership of Spanish properties. To keep matters simple, the easiest and most tax-efficient way of handling property, when it is for personal use, is private ownership.

If, on the other hand, the property has a commercial (e.g. rental) purpose, it may be fiscally advantageous to place it within a company structure, not only because of the commercial nature of the property's use but also because having a company structure permits the offsetting of running costs against rental income. For this purpose, both Spanish companies and non-Spanish companies may be used. However, since Spain will always retain the right to tax real property located within its jurisdiction, a Spanish company may be more beneficial and more effective. Moreover, a non-Spanish company would be liable to taxation in both Spain and the country of establishment. As well as inevitably complicating matters, administratively and legislatively speaking, such a company would be subject to the existence or otherwise of any double taxation treaty.

Aside from running businesses and owning property, companies are often used to manage an investment portfolio. An investment or asset management company is an alternative to taking out a capital assurance contract or to managing the investments privately. The benefit of this type of company is that there are no limitations to the kind of investments that can be made. And, there is also the additional possibility of combining the management of the assets concerned with other business activities.

When establishing an investment company, it is essential to choose a country with a favourable tax regime. At the same time, it is important to make sure that the established company is accepted by the Spanish authorities. If this is not the case, the tax benefits may be lost. So, there are many issues for Spanish residents to consider before deciding whether or not an investment company makes financial and fiscal sense from the point of view of their individual situation. To help you make the right decision when considering the establishment of an investment company, you should always seek competent and professional advice from an acknowledged expert in this field.

Capital assurance contracts and company structures are solutions to dealing with assets. However, a mortgage loan, while a liability, can be an equally important tool in the overall wealth-planning process.

As Spanish wealth tax can be as high as 2.5%, it can have severe consequences for an individual's net wealth. Similarly, failure to take sufficient account of Spanish inheritance tax (which may be as high as 34%, or even above 80% in certain situations) in the wealth-planning process, may lead to an unexpected and financially unpleasant surprise for the heirs. Fortunately, there are ways of mitigating both the wealth tax and the inheritance tax at the same time, one of which is to take up a mortgage loan.

In most cases, the purpose of using a mortgage loan to buy a Spanish property is simply that the purchaser requires financial assistance to acquire the property. However, there are some borrowers who use a mortgage loan to minimise the net value of their Spanish assets.

Borrowers may take up a mortgage loan either at the time of the purchase of a Spanish property or after having owned the property for some time. While both possibilities exist, the latter case is more aggressive from a tax point of view and therefore more uncertain. If you use the proceeds from the loan to purchase the property, the Spanish tax authorities are unlikely to take any further interest. However, taking up the loan at a later stage runs the risk of the Spanish authorities questioning the purpose of the mortgage. (In fact, as this publication was being prepared, mortgaging Spanish property some time after its original acquisition was a matter of some debate in Spain; according to the information the authors had at their disposal at the time of writing, taking up a mortgage at a later stage was still expected to be accepted by the Spanish authorities in future).

Generally speaking, the risk of receiving unwelcome enquiries from the Spanish taxman should only exist in situations where the owner is a non-resident who takes up a mortgage loan with the aim of trying to minimise his/her Spanish net wealth tax liability. For residents, the proceeds from a loan taken up after the purchase of a property could be placed in a tax-efficient capital assurance contract (see above), which offers potential exemption from wealth tax.

Another issue is the amount to be borrowed. As there is no need for the size of the mortgage loan to exceed the taxable value of the mortgaged asset, a reasonable level should be considered.

To summarise the above, as a tool in the wealth planning process, mortgage loans offer a number of possibilities when it comes to mitigating tax exposure, provided that there is clarity about the overall purpose and actual need of the loan, and on the understanding that there is a sensible relationship between the size of the loan and the value of the mortgaged assets.

If you have come this far, you will have read the basic principles of wealth planning and considered them in relation to your own situation. You will also have seen the Spanish tax rules and discovered some of the tools available for mitigating tax liability in a general sense. Now that you have an idea of what is required, the next step is to consult the specialists who can help construct and implement your individual plan.

Wealth planning experts are rather like architects. Their essential value to you is twofold: it lies both in their ability to design a customised plan and in their knowledge, through a network of skilled contacts, of who is best equipped to execute that plan.

Selecting a wealth-planning advisor

Ideally, the wealth planner of your choice should:

- adopt an individual approach to solving wealth-planning issues;
- help you identify your personal parameters (in terms of investment, inheritance, taxation, property and company ownership etc.) as the basis for an effective, individualised strategy;
- help you define your current financial status (assets and liabilities, income needs, etc.);
- be able to assess the suitability of investment forms by:
  - matching your investments with your need for capital preservation or growth;
  - ensuring that your investments are tax-efficient, both today and for the future;
  - aiming to tailor your investments to financially secure the future lifestyle you desire;
- have an extensive network of professional specialists (e.g. accountants, lawyers, real estate agents etc.) who can be consulted in confidence whenever necessary.

Finding the right solutions

Together, you and your advisors should focus on the following basic goals, always taking account of your particular, individual circumstances:

- sheltering and preserving, and/or increasing, your wealth;
- determining the most appropriate investment strategy;
- assessing the fiscal and legal obligations of your current and future residence and seeking to optimise your tax situation in this regard;
- ensuring, through proper inheritance planning, that your descendants prosper.