

GMS Flash Alert

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Spain – Taxes Introduced on High-Net-Worth Nonresidents Owning Spanish Assets

On 28 December 2022, the *Boletín Oficial del Estado* (Spain's official gazette) published the final version of the Law 38/2022 (for the Establishment of Temporary Levies on Energy and on Credit and Financial Credit Institutions),¹ introducing, among other things, two major legislative changes that affect taxpayers owning assets and properties in the Spanish territory. The law creates a temporary solidarity tax on large fortunes and amends the Spanish wealth tax to apply to some nonresidents who indirectly own real estate property in Spain.

WHY THIS MATTERS

Companies with nonresident high-net-worth workers subject to the new rules should make sure they are aware of the need to appoint a representative for purposes of complying with the temporary solidarity tax and are aware of the potential tax liability exposure under the new approach to indirect ownership of real estate in Spain through a foreign entity.

Highlights of New Solidarity Tax on Large Fortunes of Nonresident Taxpayers

The new temporary solidarity tax on large fortunes will be levied in addition to the Spanish wealth tax and, given that it cannot be devolved to the autonomous communities, in those regions where the autonomous government has approved a 100-percent rebate of the tax liability of the wealth tax, the temporary solidarity tax on large fortunes will be levied in full.² In order to comply with this new tax obligation, nonresidents should appoint a representative.

The wealth tax is levied on net assets over EUR 3,000,000. In the case of nonresidents, the taxable net assets and rights are exclusively those which are located or can be executed in Spanish territory.

The taxable base is determined according to the wealth tax rules. The wealth tax law provides for a tax-free allowance of EUR 700,000 for both resident and nonresident taxpayers; however, this tax-free allowance is not available for nonresident taxpayers of the solidarity tax.

The table below shows the marginal tax rate that applies to the taxable income in each tax bracket:

Net taxable income (up to EUR)	Tax liability (EUR)	Remaining net taxable base (up to EUR)	Tax rate (%)
0.00	0.00	3,000,000.00	0.00
3,000,000.00	0.00	2,347,998.03	1.7
5,347,998.03	39,915.97	5,347,998.03	2.1
10,695,996.06	152,223.93	onwards	3.5

Source: KPMG in Spain

Nonresident taxpayers must appoint a representative (an individual or legal entity resident in Spain) before the end of the voluntary period for filing the tax return unless they are resident in another member state of the European Union (EU) or in a state of the European Economic Area (EEA). In the latter case there must be regulations on mutual assistance in the exchange of tax information and collection under the terms of the General Tax Law.

For the purpose of the solidarity tax, the taxable event takes place on 31 December of each year. However, the filing period is still unknown; it will be approved by the Ministry of Finance and Civil Service.

The solidarity tax has been created for a two-year period: 2022 and 2023. However, the Spanish government could extend the application of this tax beyond 2023.

Changes to Wealth Tax for Nonresidents Indirectly Owning Real Estate in Spain

Law 38/2022 modifies the wealth tax for nonresidents owning real estate in Spain through a nonresident company in Spain, by deeming securities representing the participation in equity of any type of nonresident entity (not traded in organised markets) to be located in Spain when at least 50 percent of the corresponding assets are constituted, directly or indirectly, of real estate located in Spain.

Spanish nonresident individuals are subject to wealth tax only on rights exercisable and assets located in Spain. Consequently, the direct ownership of real estate properties located in Spain by nonresident taxpayers has always been subject to the wealth tax; however, prior to Law 38/2022, it was not clear that the indirect ownership of real estate properties located in Spain by a nonresident individual through a nonresident entity was subject to the Spanish tax wealth tax.

This matter had always been controversial, and the General Directorate of Taxes issued a binding ruling on 13 September 2022, in which it ruled that real estate assets held indirectly by a Spanish nonresident through a nonresident entity could not be subject to the Spanish wealth tax – even when the nonresident company's assets consisted mainly in real estate property located in Spain.³

Nonetheless, after Law 38/2022 was passed, the above-mentioned DGT ruling became no longer valid since the law now establishes that securities representing an investment in the equity of entities whose assets consist of more than 50 percent of real estate located in Spain are considered to be located in Spain.

Likewise, and in order to assess which is the weight of the real estate properties over the rest of assets of an entity, the law states that the book value of the real estate property will be substituted by the higher of acquisition value, the cadastral value, or other value assessed by the Spanish tax authorities for tax purposes or the reference value⁴ (the latter will be considered for properties acquired from 1 January 2022).

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The form for declaring the temporary solidarity tax has not yet been approved; but, as a supplementary tax to the wealth tax, the filing season for 2022 returns may be expected to coincide with the wealth tax filing season, which will start in April 2023. Thus nonresidents with assets located in Spain that could be subject to the Temporary Solidarity Tax will need to appoint a representative before 30 June 2023.

Likewise, with respect to the wealth tax, nonresidents who hold real estate properties through a nonresident entity should review how this could impact their Spanish wealth tax liability.

FOOTNOTES:

1 *Ley 38/2022, de 27 de diciembre, para el establecimiento de gravámenes temporales energético y de entidades de crédito y establecimientos financieros de crédito y por la que se crea el impuesto temporal de solidaridad de las grandes fortunas, y se modifican determinadas normas tributarias.* See, in Spanish, at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-22684.

2 To the contrary, in those regions where it does not exist, a 100 percent rebate of the total Wealth Tax liability, the amount of Wealth Tax effectively paid will be deductible from the tax liability of the Temporary Solidarity Tax on large fortunes.

3 Binding ruling V1947-22.

4 The reference value is a value issued by the General Directorate of Cadastre that relates to market value and is updated periodically.

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RELATED RESOURCE:

To learn more about these topics, please read the “Temporary solidarity tax on large fortunes and other changes to wealth taxation in Spain” in *KPMG Alert* (January 2023), a publication of the KPMG International member firm in Spain.

Contact us

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