

QUESTIONS & ANSWERS ON SPANISH ESTATES

by Jon Sutton
Solicitor and Registered Foreign Lawyer at De Cotta McKenna y Santafé

1) Is it necessary for clients who own property in Spain to have a separate Spanish will?

Strictly speaking, it is possible to have one English form will to cover all your assets, moveable or immoveable throughout the world. The Spanish Civil Code permits this in Spain. However, the practicalities are somewhat different. The procedure to utilise an English form will in Spain is tortuous and can lead to delays of several months if not years.

It is far more practical for clients to have a separate Spanish will for their Spanish assets. This should be drafted by a Spanish law firm accustomed to dealing with British clients. It can be drafted in both languages. It must be signed in front of a Spanish notary. A translator (usually a representative from the law firm) must attend if the testator cannot speak good Spanish. The notary is then obliged to register the will with the central wills registry in Madrid.

Spanish law does not require the will to name executors. However it is possible (but not mandatory) to name 'Albaceas' whose permission must be sought when dealing with the estate, although the property does not legally rest with them. The partners of the law firm who draft the will are often

named as Albaceas.

One important thing to look out for is that the Spanish will does not accidentally revoke an existing English will and vice-versa. This is why it is important to use a firm which is accustomed to dealing with British clients. Similarly, lawyers should use an appropriately worded revocation clause when drafting English form wills for clients who already have a Spanish will.

The cost of making a Spanish will is reasonable. Having one will save beneficiaries a significant amount of money and complications in the future.

2) What is the position in respect of inheritance tax in Spain for UK residents who own property there?

In Spain the inheritance tax payable is charged to the beneficiary individually rather than to the estate. This means that each beneficiary has their own tax free allowance which depends upon their relationship to the deceased and their residential status. Also the tax is charged on a sliding scale basis, starting at 7.65% (for the first €7993.46 after the tax free allowance) up to 34% (for anything over €797,555.08). The consequence of this is that it is tax efficient to have as many beneficiaries as possible, particularly if they are related through blood or marriage. A parent, spouse or child (over 21) receives a tax free allowance of just under €16,000, younger children receive more, grandparents and grandchildren receive an allowance of just under €8,000. There is an uplift of tax if the beneficiary has pre-existing personal wealth in Spain of over €402,678.11. There is also an uplift of 100% if the beneficiary

is not related to the deceased. This means the maximum rate of inheritance tax that could be applied is a horrendous 81.6%. Thankfully, this is very rare.

Each autonomous region e.g. Andalucía, Catalunya etc also has its own tax allowances. However, these only apply to residents of that region. For example in Andalucía, if a parent, spouse or child receives less than €125,000 and both the beneficiary and deceased were residents of Andalucía at the time of death, there is no tax to pay for that beneficiary. This appears to be discriminatory in that residents of other EU states do not qualify and could well be challenged in the European Court of Justice.

Clearly when dealing with an estate which involves Spanish property, assistance should be sought from a lawyer practising in the region concerned.

Jon Sutton is a Solicitor and Registered Foreign Lawyer at De Cotta McKenna y Santafé, a law firm specialising in dealing with all aspects of Spanish Law for English speaking clients. Decotta has offices across the Local Connections region, including Coín, Mijas Costa, & Nerja. They also have an office in Tenerife.

Head Office:
Centro Comerical Valdepinos 1 y 3A
Urb. Calypso,
29649 Mijas Costa (Málaga).
Tel: 952 93 17 81
Fax: 952 93 35 47
Email: enquiries@decottalaw.net
Website: www.decottalaw.com

If you have a legal question, please forward it to us and we will endeavour to get it answered in a future issue.