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Concerned market: SP



Inheritance Tax: Where are Life Insurance Policy Proceeds Taxed?

Case of cross-border Spain-France succession

On the 10th February 2017 the Subdirector General for Wealth Taxes, Charges and Public Prices, the governing body of the Spanish Directorate General for Taxes, set forth in its binding expert consultation No. DGT V0353-17¹ that inherited intangible assets are subject to tax in the State in which the donor was residing at the time of her death.

Thus, the governing body issued an expert opinion on a matter brought forth by a Spanish resident who was the beneficiary of a non-Spanish life insurance policy taken out in France through a French bank by her aunt, who was a French resident and who died in France.

With regard to the issue of where the proceeds (the death benefits) should be taxed, under Spanish law, when the insured is a natural person other than the beneficiary, the life insurance policy proceeds to be received by the beneficiary are subject to Inheritance and Donations Tax² (hereinafter, "IDT"). Under this law, the beneficiary shall be considered as the taxpayer, and will be subject to taxation based on the taxpayer's residence (obligación personal) or on the place where the proceeds will be received (obligación real), depending on his or her place of residence.

Thus, it would appear that, as the party who requested the expert opinion resides in Spain, she should be taxed in Spain for the entire estate inherited from the donor, regardless of where the estate is located.

However, the governing body held that Spanish law applies without prejudice to International Law and Treaties that have

been incorporated into Spanish law³. Therefore, whenever an International Treaty has been ratified governing the matter in question, the treaty prevails over Spanish Tax Law.

As far as inheritance tax is concerned, Spain entered into a Treaty with France on 8 January 1963. The purpose of the treaty was to prevent double taxation and establish administrative guidelines for handling Estate Tax⁴. Article 34 of the treaty stipulates that:

"inherited intangible assets that are not subject to Articles 31 and 32⁵, shall only be subject to inheritance tax in the State of residence of the donor at the time of death."

Therefore, through its governing body, the Directorate General for Taxes, held that, even though Spanish law stipulates that the life insurance policy proceeds must be taxed in Spain as IDT, the criterion established in the Spain-France treaty shall prevail. Based on this criterion, a life insurance policy (being an intangible asset) is subject to taxation in France, i.e., the state in which the donor was residing at the time of her death.

This binding expert opinion reveals that, in light of the Treaty preventing double taxation, life insurance policies with Spanish and/or French beneficiaries are subject to taxation in the State in which the insured (when he or she is someone other than the beneficiary) was residing at the time of his or her death.

¹See the following link for reference: http://petete.minhfp.gob.es/consultas/?num_consulta=V0353-17

²Law No. 29 of 18 December 1989 on Inheritance and Donations Tax.

³Article 2.1, Law No. 29 of 18 December 1989 on Inheritance and Donations Tax.

⁴To date, Spain has entered into international treaties governing estate taxes with Greece, France and Sweden.

⁵Articles 31 and 32 of the Treaty refer specifically to tangible or intangible personal property invested in a commercial, industrial or any other kind of company, as well as any tangible or intangible personal property linked to permanent facilities and allocated for use in a self-employed profession.

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