

**Baker
McKenzie.**

**TAXES ON REAL ESTATE
PROPERTY INCLUDED IN THE
SPANISH CULTURAL HERITAGE**

May 2017

MONUMENTA
25
AÑOS

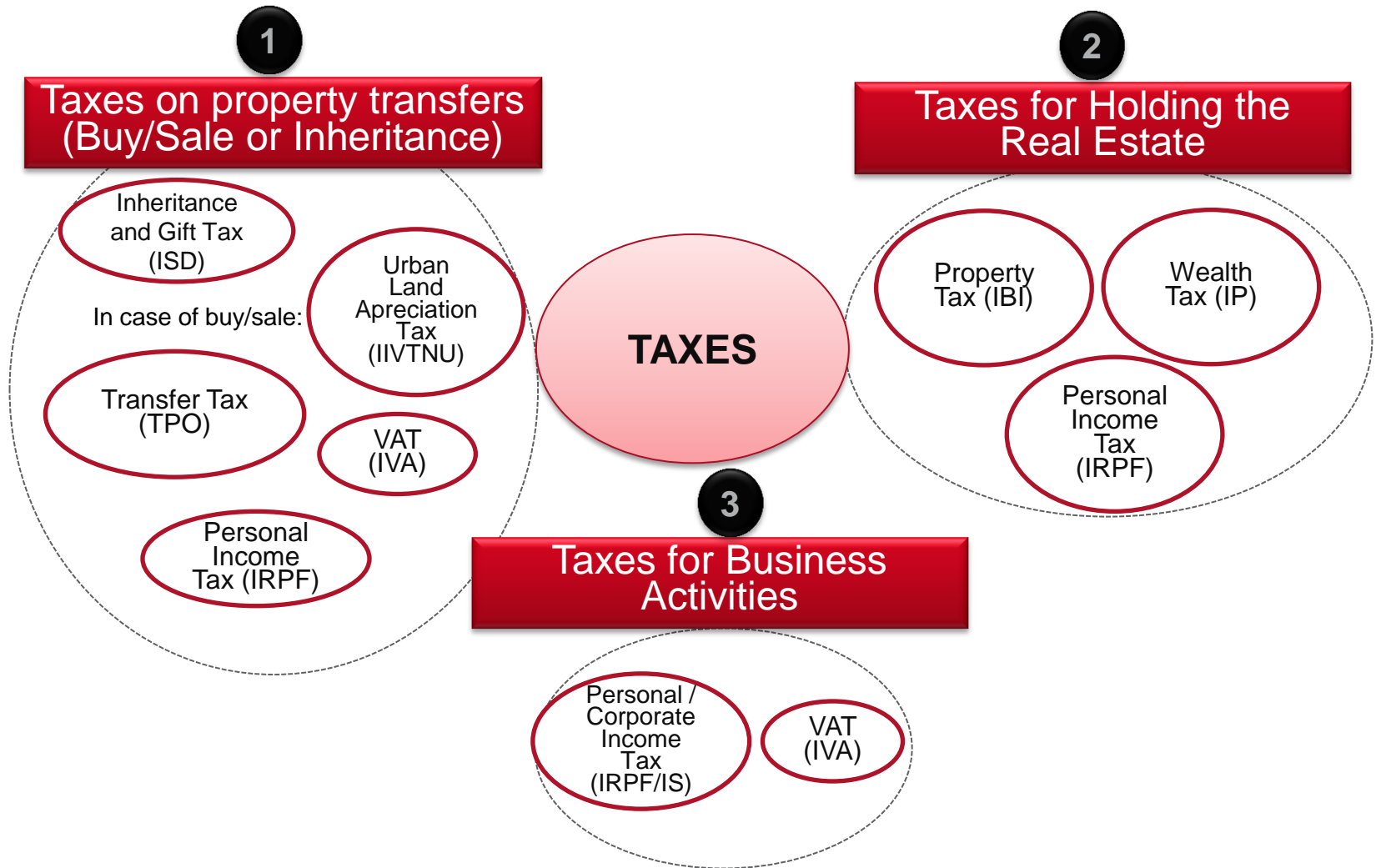




Agenda

1	Summary	3
2	Taxes on the Purchase	4
3	Taxes for Holding the Real Estate	5
4	Taxes on the Transfer	6
5	Family Business Regime	7
6	Taxes for Business Activities	8
7	Estimates in Spain	9
8	Comparison between jurisdictions	12

Individual owners of property included in the Spanish cultural heritage – Taxes to analyze:



1

Taxes on the Purchase

VAT

- As a general rule, transactions carried out by entrepreneurs or professionals in the course of their business activities are subject to VAT.

- Rates:
 - 21% business premises
 - 10% residential property
 - 4% council housing

Sale price

- Liable person: the buyer (reverse charge system).

Transfer Tax

- “Inter vivos” transfers of Real Estate are subject to transfer tax provided that they are not subject to VAT (e.g. the transferor is not an entrepreneur or professional).

- General Tax rate in Catalonia 10% / 11% market value > EUR 1 M.

- Liable person: the purchaser.

Urban Land Appreciation Tax

- IIVTNU: it taxes a theoretical ‘as of acquisition’ increase in the cadastral value of the urban land on which the property is located.

- Liable person: the seller.

- Specific limited exemption on Spanish Cultural Heritage.**

- RECENT CASE LAW: no accrual of this tax in case no capital gain arise.

Other Costs: -Notary fees
- Stamp Duties

Taxes for Holding the Real Estate

Property Tax (IBI)

- Tax to be paid by the owners of all Spanish properties regardless of their residential status.
- **Exemption:** real estate declared as Spanish Cultural Heritage. This exemption only operates with previous request.
- Rates: between 0,4% and 1,11% on the cadastral value.

Wealth Tax (IP)

Exemptions:

- The taxpayer's habitual dwelling up to EUR 300,000.
- Real Estate declared as Spanish Cultural Heritage.
- Rates: between 0,21% and 2,75% on the greater of the acquisition / cadastral value .

Personal Income Tax (IRPF)

- Second residences for personal use (not rented): 1,1% if the cadastral value is revised or 2% if not.
- **Deduction** for carrying out actions for the protection and diffusion of the Spanish Cultural Heritage. 15% of the amount of investments and expenses for the rehabilitation of buildings and maintenance. Up to 10% tax base.

3

Taxes on the Transfer

INHERITANCE

- **ISD:** Transfer of the property mortis causa. Applicable reductions:

- **Permanent dwelling:** 95% of the property's value up to EUR 500,000 (in Catalonia).

- **Cultural Heritage:** 95%. Maintenance 5 years.

- **IIVTNU:** The liable person is the purchaser.

GIFT

- **ISD:** Transfer of the property inter vivos. Applicable reductions:

- **Permanent dwelling:** 95% of the property's value up to EUR 60.000 (in Catalonia).

- **Cultural Heritage:** 95%. Maintenance 5 years.

- **IIVTNU:** The liable person is the purchaser.

SALE

- **Transfer Tax or VAT.**
- **IIVTNU:** The liable person is the seller.
- **PIT:** Seller's capital gain in its PIT return. (sale value – acquisition value).

Tax Band	2016
€0-6.000	19%
€6.000 - €50.000	21%
€50.000 +	23%

Family Business Regime

WEALTH TAX

100% exemption in the ownership of family business.

Requirements: significant participation in the share capital (5% individually or 20% jointly with close relatives) of entities that carry out economic activities and the taxpayer or any of his close relatives perform management activities in the company and receive remuneration for these functions that exceed 50% of his or their total employment, professional or business income from the company.

INHERITANCE AND GIFT TAX

95% reduction :

- *Mortis causa* transfers of a family business exempted of Wealth Tax, where the transfer is in favour of some relatives and the beneficiary retains the ownership of the family business for five years after the death of the deceased.
- In case of *inter vivos* transfers of a family business, the donor also has to be over 65 years old or legally incapacitated, has to resign from all management functions in the corporation and cease to receive any remuneration for such functions.

Taxes for Business Activities

PIT

Income derived from the leasing of the real estate:

- Without carrying out a business activity: Income - Expenses. Reduction 60% for habitual dwelling.
- Business or professional activity: the rent of buildings would constitute a business or professional activity when the complexity of the activity requires to hire a person full time. Income – Expenses. General tax base (progressive rates).

CIT

- Income derived from the leasing of the real estate owned by legal entities shall be taxed in its Corporate Income Tax (IS).
- Taxable base: Income - Expenses.
- General tax rate 25%.

**¿Which taxes must be borne by
someone who has Spanish cultural
heritage?**

ESTIMATES

ESTIMATES (I)

CATALONIA		1.000.000	2.000.000
Parents to their children	Inheritance Tax (no reduction for cultural heritage): <i>market value</i>	31.362,72 €	162.858,25 €
	Inheritance Tax (reduction 95% cultural heritage): <i>market value</i>	1.219,22 €	6.618,93 €
	Gift Tax (no reduction for cultural heritage): <i>market value</i>	74.000 €	164.000 €
	Gift Tax (reduction 95% for cultural heritage): <i>market value</i>	2.500 €	5.000 €
	Wealth Tax: <i>greater of acquisition or cadastral value</i>	1.747,58 €	11.174,49 €
	Property Tax (BCN): <i>cadastral value (urban real estate)</i>	7.500 €	11.250 €
	Urban Land Appreciation Tax (BCN): <i>cadastral value of the land</i>	168.000 €	252.000 €
	Capital Gain (PIT): <i>sale value – acquisition value = capital gain</i>	227.825,50 €	457.825,50 €

ESTIMATES (II)

CATALONIA	<i>NET INCOME (INCOME – EXPENSES) = 150.000 €</i>
PIT	56.495,81 €
CIT	37.500 €

MAP: COMPARISON BETWEEN JURISDICTIONS



WEALTH TAX	VAT	INHERITANCE TAX	CAPITAL GAINS	TRANSFER TAX	PROPERTY TAX	INCOME TAX	
<p>No, but ATED is payable by certain non-natural persons that own UK residential property above GBP500,000.</p> <p>Reliefs: Letting to a third party on a commercial basis, opening to public for 28 days a year, part of a property trading business, etc.</p>	<p>20%</p> <p>Extension of 20% VAT on improvements to or alterations of dwellings</p>	<p>40% above £325,000.</p> <p>Exemptions: transfers between spouses and a number of lifetime gifts.</p> <p>Reliefs: some business and agricultural properties, preeminent houses and contents (under the Cultural Property Scheme), if open to public for a minimum of 28 days a year, and other conditions to be met.</p>	<p>From 10% to 28%.</p> <p>Potential exemptions include the Cultural Property Scheme (which defers tax due on gifts of property to a charity, heritage body, etc., under certain conditions), principal private residence and transfers between spouses.</p>	<p>SDLT on the transfer of chargeable interests in land charged on a scale rate up to 12% (> £1.5 million).</p> <p>An additional 3% if purchasing a second, or further, residential property. Non-natural persons may be charged up to 15% if > £500,000. Different rates for leases. Gifts to charities benefit from relief from SDLT.</p>	<p>Local Council Tax charges vary by band (which are based on a valuation of the property).</p>	<p>Rate (20%-45%)</p>	<p>No deductions but some reliefs and a personal allowance of GBP11,000 of income above GBP100,000</p>

FRANCE

WEALTH TAX	VAT	INHERITANCE TAX	CAPITAL GAINS	TRANSFER TAX	PROPERTY TAX	INCOME TAX	
<p>Exempted under 1,300,000€. Exemptions: business assets, art works and antiques, forests (75% exemption under certain conditions) etc.</p> <p>Scale applicable for 2017 wealth tax: from 0,5% to 1,5%</p>	<p>Normal rate of 20%.</p> <p><u>Purchase:</u> Exemption of VAT for buildings completed for more than 5 years or non-constructible land.</p> <p><u>Improvement works:</u></p> <ul style="list-style-type: none"> - 10% if residential properties are completed for more than 2 years. - 20% for other cases. 	<ul style="list-style-type: none"> - From 5% to 45% depending on family relationship. - Otherwise, 60%. - If a special agreement with indefinite term, historical monument can be exempted. The monument must open for a certain number of days (from 60 to 80 days a year). 	<p>34,5% for real estate (19% of income tax, 15.5% of social taxes) plus surtax on high income</p> <ul style="list-style-type: none"> - Reliefs available when the property is held for at least 6 years. - Exemption of income tax after 22 years of holding and exemption of social taxes after 30 years of holding. 	<p>YES</p> <ul style="list-style-type: none"> - For purchase of residential property : 5,09% up to 5,81% - For purchase of shares of a company assets of which are composed of at least 50% of real estate assets: 5% 	<p>Dwelling and property taxes. Different rates depending on the region, town and department where the property is located.</p>	<p>Progressive rates up to 45%</p> <p>Social taxes at a global rate of 15,5% or social security contributions up to 23% depending on the nature of the income.</p> <p>Surtax on high income of 3%/4%.</p>	<p>Deduction of historical monument's expenses:</p> <ul style="list-style-type: none"> - Property opened to the public, not occupied by the owner and from which income arise: 100%. - Property from which no income arise: deduction of 100% of the repairs and maintenance expenses, 100%/50% of the other expenses when property opened/not opened to the public. - Income tax reduction for restoration work: 18%. - Income tax reduction for sponsorship : 66%.

ITALY

WEALTH TAX	VAT	INHERITANCE TAX	CAPITAL GAINS	TRANSFER TAX	PROPERTY TAX	INCOME TAX	
N/A	<p>Real estate transfer - put in place by Businesses - is exempt.</p> <p>Under certain conditions, Businesses could opt for the application of the ordinary VAT (22% rate and in particular cases 4% and 10% - i.e. first dwelling house).</p>	<p>Inheritance tax applies. from 4% to 8% depending on the relationship between parties and the net value of the transferred assets.</p> <p>If certain conditions are met (e.g. maintain conservation), exemption will apply in case of cultural/historical goods and cultural/historical real estate.</p>	<p>For individuals and non-commercial entities, no gain is taxed upon sale of buildings made after 5 years from the date of purchase. 20% if previously.</p> <p>Otherwise, progressive rates are applicable (from 23% to 43%) – capital gains of companies or business.</p>	<p>General rate 9%. Reduced rate (2%) if real estate is purchased as first dwelling house.</p>	<p>Property tax at municipal level (IMU) is applicable and the maximum rate is fixed at 1,06%. A reduction of 50% of the taxable base is provided in case the real estate is included in the Italian Cultural Heritage (very strict conditions).</p>	<p>Individual Rental income (historical houses): from 23% to 43%. Taxable income is only 65% of the total rents.</p> <p>Unrented historical houses: only IMU applies (if IMU is not applicable, income taxation is levied on cadastral value).</p> <p>A tax deduction equal to the 19% of maintenance expenses is available.</p>	<p>Businesses Rental income (historical houses): 24%. Taxable income is only 65% of the total rents.</p> <p>Unrented historical houses: 50% of the cadastral value (20% of IMU is deductible for determination of the income taxable basis).</p> <p>Maintenance expenses are deductible</p>

GERMANY

WEALTH TAX	VAT	INHERITANCE TAX	CAPITAL GAINS	TRANSFER TAX	PROPERTY TAX	INCOME TAX	
NO	19% (7% reduced rate for some goods).	<p>Rates depending on personal relationship between the parties and the amount inherited or donated, from 7% to 50%.</p> <p>Note: real estate value is determined by applying special valuation rules - close to fair market value.</p> <p>Historic houses:</p> <ul style="list-style-type: none"> - exemption > 60% - 85% depending on their importance. - total exemption if open to public. 	Disposal of real estate held as private asset by individuals is only taxed if held for less than 10 years.	YES (4,5%-6,5% depending on the Bundesländer)	0,8 – 1,8 % of the rateable value (Grundsteuer)	<p>Progressive rates for individuals from 14% to 45% depending on the annual taxable income from all sources + solidarity surcharge 5,5% thereon (tax base is the income tax).</p>	<p>All expenses necessary to obtain, maintain or preserve the taxable rental income. Up to 90% of the maintenance costs which cannot fully be deducted in the year of spending because they qualify as construction costs can be spread over 10 years or expenses for historic houses if rented out or used for own living purposes or open to the public. Prior approval required. Regular depreciation rate for residential property constructed before January 1, 1925 amounts to 2.5%. Interest for loans related to the acquisition and/or construction of the building is deductible from rental income.</p>

USA

WEALTH TAX	VAT	INHERITANCE TAX	CAPITAL GAINS	TRANSFER TAX	PROPERTY TAX	INCOME TAX	
Not in Federal Level but State to State basis.	SALES TAX. NO VAT (0%-7,5%).	<p>YES. At the Federal level there is a 40% estate tax and gift tax.</p> <p>At State level, 19 states have some form of estate/inheritance tax and tax rates can be up to 16%.</p> <p>Marital deductions and exemptions for or gifts or bequests to others may apply.</p>	<p>YES, both Federal and State level. Tax rate at Federal level from 18% to 23.8% (including surtax) depending on the condition of short or long term capital gain. State tax rates vary.</p>	<p>YES, levied by the County in which the property is situated.</p> <p>An additional tax on mortgage recording is usual.</p>	<p>YES. Tax rates set by the different States.</p>	<p>Yes at both the Federal and State level.</p> <p>Maximum Federal rate is 39.6%.</p> <p>47 States impose a state income tax and rate can be as high as 13%.</p>	<p>Personal exemptions and deductions of interests are usual.</p>

Baker McKenzie.

Esteban Raventos
Baker Mckenzie Barcelona, SLP
Avda. Diagonal, 652 Edif. D 8ª planta
08034 – Barcelona
Telf. 93 206 08 20
Esteban.Raventos@bakermckenzie.com
www.bakermckenzie.com

MONUMENTA
25
AÑOS

MONUMENTA
www.monumenta.info

Via Laietana, 32
Edifici Foment
Barcelona

Tlf.: 93 451 36 05

info@monumenta.info
apcecc@monumenta.info
presidencia@monumenta.info

Baker & McKenzie Barcelona, S.L.P. is a member firm of Baker & McKenzie International, a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organisations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm. This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.