

Private Client

Contributing editors

Anthony Thompson and Nicole Aubin-Parvu



2019

GETTING THE
DEAL THROUGH

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Forsters LLP

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Preface

Private Client 2019

Seventh edition

Getting the Deal Through is delighted to publish the seventh edition of *Private Client*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Andorra, Colombia, Ireland, Netherlands, Panama, Singapore and Spain.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Anthony Thompson and Nicole Aubin-Parvu of Forsters LLP, for their continued assistance with this volume.

GETTING THE 
DEAL THROUGH 

London
October 2018

Andorra

Jose Maria Alfin and Marc Urgell

Cases&Lacambra

Tax

1 How does an individual become taxable in your jurisdiction?

Tax residence is key to determining the tax liability of an individual and entails the obligation to include all income obtained worldwide; or what the law defines as tax liability by personal obligation, and is regulated by the Personal Income Tax Act (Law 5/2014, 24 April (PIT)).

Regarding individuals, Andorran PIT sets forth two rules and a presumption to consider an individual as a tax resident in Andorra:

- A permanence test applies when the individual stays for more than 183 days per calendar year in Andorra. Occasional absences shall be included to calculate the period of residence, except when individuals prove that they have their tax residence in another country. In other words, to calculate the days spent on Andorran territory, sporadic absences will be computed as time of residence unless the individual can prove that his or her tax residence is located in another country.
- The centre of economic interest test applies when the main or central place of business of the individual is directly or indirectly located in Andorra.

Finally, unless there is clear evidence by the taxpayer demonstrating otherwise, the law presumes that if the non-separated husband or spouse and dependent minor children reside in Andorra (presumption applicable), the individual will be considered as resident in such jurisdiction.

2 What, if any, taxes apply to an individual's income?

Individuals resident and classified as taxpayers by personal obligation must include in their declaration all their worldwide income, including the capital gains. Moreover, capital gains derived from the sale of real estate located in Andorra are subject to a specific tax and, consequently, are not subject to PIT.

3 What, if any, taxes apply to an individual's capital gains?

Capital gains are taxable in Andorra; however, in some cases the Andorran tax framework foresees different exemptions. The most important exemptions to an individual's capital gains are the following:

- capital gains obtained by Andorran tax-residents derived from alienation of local or foreign companies are exempt under certain conditions, specifically, in the following cases:
 - if the individual has held a stake of less than 25 per cent of the company during the previous year before alienation; and
 - if the individual had held the investment uninterruptedly for, at least, the previous 10 years before alienation;
- capital gains obtained by Andorran tax-residents derived from alienation of collective investment undertakings participations are generally exempt in the following cases:
 - if the individual held a stake of less than 25 per cent of the participation of collective investment undertakings during the year before alienation; and
 - if the individual had held the investment uninterruptedly for at least the previous 10 years before alienation; and
- capital gains obtained by Andorran individuals derived from alienation of real estate properties in Andorra are exempt if they have held the ownership for at least 10 years. In the case of capital gains

acquired fewer than 10 years before the acquisition of the company, the special law regulating the capital gain tax on real estate transactions regulates degressive tax rates from 15 per cent to 1 per cent.

4 What, if any, taxes apply if an individual makes lifetime gifts?

We do not have gift tax for individuals resident in Andorra. Consequently, if an individual resident receives a gift, that gift would not entail any tax levy.

The donor will be subject to tax if the gift generates a capital gain. However, the PIT law provides exemptions in the case of family transactions (up to the third level of kinship).

5 What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

There is no inheritance tax for individuals resident in Andorra. Consequently, if an individual resident in Andorra receives an inheritance, that inheritance would not entail any tax levy.

The deceased is not subject to taxes for capital gain derived from the mortis causa transfer.

6 What, if any, taxes apply to an individual's real property?

Andorra has a local property tax that taxes real estate property located in Andorra. The tax is between zero and €0.75 per square metre of surface area of the property per year. It is not a relevant tax in terms of tax burden.

7 What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

Imported goods are subject to indirect taxation (VAT) in Andorra, and the standard tax rate applicable is 4.5 per cent, governed by Law 11/2012, 21 June (VAT).

However, goods imported for personal use and enjoyment are exempt if the importation is linked to a change of tax residency.

8 What, if any, other taxes may be particularly relevant to an individual?

For an individual who plans to invest in Andorra, the most relevant taxes would be related to real estate investments. If an individual acquires a residential property in Andorra, VAT (at 4.5 per cent) would apply if the seller is a company or professional regularly carrying out real estate transactions, or transfer tax (4 per cent) if the seller is an individual.

As regards VAT, apart from the general tax rate of 4.5 per cent, there are special tax rates that depend on the kind of goods or service. A summary of these tax rates is as follows:

- a super low rate of zero per cent (for public medical services, public education and housing leases);
- a reduced rate of 1 per cent (for private education services, books, newspapers and food);
- a special rate of 2.5 per cent (for transport and its commercialisation (except cableway transport), objects or art and private libraries, theatres, exhibitions and other cultural and social activities);
- an increased rate of 9.5 per cent for financial services; and
- EU citizens' reinsurance operations activities are taxed by tax on the provision of services, at 4 per cent rate and not subject to VAT.

Finally, Andorra does not have a wealth tax and, consequently, holding goods or rights in Andorra are not taxable.

9 What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Trusts are not recognised under Andorran law because Andorra has not signed the Hague Convention of Recognition of Trusts and is a civil law country.

In fact, there is no inheritance or gift tax; consequently, tax planning regarding local assets will be not necessary.

Nevertheless, normally there is always an international or cross-border element that must be carefully analysed for inheritors resident in Andorra. An Andorran tax-resident may use an Andorran company to hold different kind of assets in several jurisdictions. Andorran company shares will be the subject of the inheritance instead of the resident's foreign assets, and this fact could reduce the tax burden in some cases.

10 How are charities taxed in your jurisdiction?

Andorran tax residents do not have any tax incentive to donate money to charities.

Charitable institutions are not subject and exempt to corporate income tax. Consequently, they would not entail any tax levy.

Trusts and foundations

11 Does your jurisdiction recognise trusts?

Trusts are not recognised under Andorran law because Andorra has not signed the Hague Convention of Recognition of Trusts and is a civil law country.

The tax treatment of foreign trust income was clarified by Technical Communication 25-11-15 published by the Andorran tax authorities.

First, the most important consideration is whether the assets have changed possession or not. If the beneficiary does not have possession and control of the assets, Andorran law considers that the settlor is still the owner. Otherwise, if the beneficiary has possession and control of the assets and the settlor cannot revoke the trust, Andorran law considers that the beneficiary is the owner of the assets.

At the time of creation of the trust, settlors can have a capital gain when they transfer their assets only if the settlor cannot revoke the situation. Under Andorran law, this contribution involves the transmission of settlors' assets to the beneficiaries of the trust. If the beneficiaries are relatives of the settlors, up to a third degree of kinship, settlors have no capital gain, as considered under the express provision of the law. When the transmission of assets to the trust is *mortis causa*, the potential capital gain will be exempt under the express provision of the law.

During the lifetime of the trust, income and capital gains linked with it will be allocated to the beneficiary or to the settlor, depending on the above-mentioned first consideration.

At the time of distribution of the assets, the beneficiary will receive the trust assets and they will be considered a gift (*inter vivos* or *mortis causa*). Inheritance and gift tax does not exist in Andorra; consequently, the beneficiary does not have to pay any taxes on this kind of capital gain.

Finally, Andorran residents usually plan their estate through unit-linked insurances or collective investment vehicles, since the tax treatment is much more favourable.

12 Does your jurisdiction recognise private foundations?

Law 11/2008, of 12 June, on foundations recognises private foundations and public foundations. These legal entities must be focused on legal objectives of general interest and activities that benefit society. Private interest foundations, as a wealth vehicle for preserving private assets, are not regulated in Andorra. However, Andorran residents can create them or be beneficiaries from this kind of foreign private foundation.

At the time of incorporating assets to the foundation, founders could have a capital gain when they transfer their assets to the foundation.

During the lifetime of the foundation, the founders and beneficiaries will not incur any tax if they do not receive any income from the foundation. Andorran tax authorities recognise the foundation as a legal entity separated from the founders and beneficiaries.

Distribution of the assets or any income reception by the beneficiary will be considered a gift (*inter vivos*). Inheritance and gift tax

does not exist in Andorra; consequently, the beneficiary does not have to pay any taxes on this capital gain.

Same-sex marriages and civil unions

13 Does your jurisdiction have any form of legally recognised same-sex relationship?

Same-sex civil partnerships are permitted and recognised in our jurisdiction. However, same-sex marriages are not permitted and recognised in Andorra. In recent years, Andorra has intended to adapt its laws to the neighbouring jurisdictions. Therefore, marital status between same-sex civil partnerships (*de facto* marriages) and different-sex marriages is the same.

14 Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

The Qualified Law of couples on stable union (Law 4/2005, 11 February) recognises the legal implications of a stable union. The stable union has the same effect as marriage for tax and succession purposes.

Succession

15 What property constitutes an individual's estate for succession purposes?

The estate for succession purposes will be the total net wealth of the deceased, calculated as the difference between assets and liabilities. In the case of co-ownership affecting an estate, participation in undivided co-ownership will be included in the net wealth.

16 To what extent do individuals have freedom of disposition over their estate during their lifetime?

In accordance with Andorran law, if the spouses have not entered a pre-nuptial agreement, the general matrimonial property regime recognised in our jurisdiction is the separation of goods. On the other hand, spouses can enter a system of community of goods, but this must be requested and granted before a local public notary.

Additionally, Andorran law provides a specific rule relating to clawback of gifts on death, in order to enforce the forced heirship rules.

17 To what extent do individuals have freedom of disposition over their estate on death?

Testamentary freedom restrictions in Andorra are regulated by Act 46/2014 Law 46/2014 *de la successió per causa de mort*.

Basically, there are two important restrictions on testamentary freedom.

A quarter of the estate (calculated by the difference between assets and liabilities of the deceased) must be transmitted to children compulsorily. The children of the deceased or, failing these, their ascendants, will have equal rights to this part.

At a maximum of one quarter of the estate (calculated by the difference between assets and liabilities of the deceased) is an unavailable part named *quarta vital*. A surviving spouse without sufficient economic resources to maintain his or her economic standard of living has a right to this part.

In conclusion, rules exist that restrict testamentary freedom and these restrictions apply to no more than half of the total estate.

18 If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

The successor legislation of the Principality of Andorra follows the constitutional principles, which recognise the right of citizens to private property and inheritance, determining that the death of a person does not extinguish the set of rights and duties that were part of their heritage, nor are they directly attributed to the state.

In this sense, at the moment of an intestate death, intestate succession is opened, and correlatively, the following Andorran tax-resident relatives do not have any tax incentive to donate money to charities:

- in the first place, the children inherit in their own right, and their descendants by right of representation;
- when there are no children or other descendants of the deceased, the widowed spouse inherits. In this case, the parents of the

deceased have the legitimate right, but the rest of the descendants will not have this right;

- when there are no children, descendants or spouse, the parents inherit equally; and
- when the previous assumptions are not fulfilled, the collateral relatives of the deceased inherit.

Lastly, the Andorran state will accept the inheritance for the benefit of inventory. In this case, the state must allocate the goods or their value to the establishment of social assistance or cultural institutions in the population where the deceased had his or her last residence.

19 In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

Adopted children are treated as equal to natural legitimate children. In accordance with Andorran regulations, the adoption causes kinship between the adopting family and the adoptee. According to the inheritance law, adoptees have the same rights as legitimate children in the adoptive family, both in the intestate succession and in relation to the legitimate offspring. On the other hand, a comparison between adoptive and biological filiation cannot be applied in the case of testamentary succession, because the discrimination of adopted children with respect to biological ones is possible if it derives from the private will manifested in a disposition of the last will.

20 What law governs the distribution of an individual's estate and does this depend on the type of property within it?

The distribution of assets after the death of the deceased is Law 46/2014, of 18 December, on succession following a death. This law applies regardless of the type of asset, as the estate of the deceased is transferred as a *res universitas* (ie, a single patrimonial set).

21 What formalities are required for an individual to make a valid will in your jurisdiction?

The main requirement to grant a will is to be over 14 years old and have full capacity to act at the time of the event. Andorran inheritance law allows a will to be made before a notary (it can also be closed) as well as a holographic testament.

22 Are foreign wills recognised in your jurisdiction and how is this achieved?

Andorran international law recognises foreign wills when (i) the personal law applicable at the time of death is Andorran law; (ii) the deceased had his or her domicile and residence in Andorra at the time of death; and (iii) he or she held property or rights located in Andorra.

23 Who has the right to administer an estate?

The deceased may appoint any person with legal capacity to administer an estate.

The interested parties, the heirs, the legatees and others favoured by the inheritance have the right to administer the estate.

24 How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

To transfer the assets and rights of the decedent to the heirs, the heirs must previously have accepted the inheritance (either expressly or implicitly).

Before acceptance of the inheritance, heirs may only perform acts of conservation, defence and ordinary administration.

All of the heirs are individually legitimised by the acts of conservation and defence of the goods, but for the other acts of ordinary administration, the agreement of the majority is necessary. These acts do not imply acceptance.

25 Is there a procedure for disappointed heirs and beneficiaries to make a claim against an estate?

In the hypothetical case of debts, contingency or conflict in the distribution of the inheritance, parties can mutually agree to submit to mediation or go to the civil jurisdiction.

Capacity and power of attorney

26 What are the rules for holding and managing the property of a minor in your jurisdiction?

Age is very important to be able to carry out legal business with full legal efficiency. The minor must obtain more qualified protection from the legal system, which translates into the consideration of a minor and the limited (rather than full) ability to act. The term minor is defined by the subject not having full capacity to act, or sufficient mental maturity to carry out legal business with full responsibility. The Andorran legal system has developed some institutions aimed at helping children who cannot take care of themselves.

The first and most important institution is parental authority, which is usually exercised by the father and mother. The protection of the child can also be carried out by state institutions and by justice. The second institution would be guardianship, which takes place when the parents have died or have been deprived of parental authority.

Therefore, until their emancipation or until they are 18 years old, the minor's legal representatives are the parents or guardian. In this sense, the person who exercises guardianship or holds the legal representation of the minor manages the assets and the property of the goods under judicial control.

27 At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

The age at which an individual attains legal capacity for the purposes of holding and managing property is 18. In reference to the effectiveness of the minor's actions, without the intervention of his or her legal representative, the following clarifications should be established. The Andorran legal system has always taken into account the fact that carrying out an act with patrimonial transcendence on the part of a minor is not the same as that act performed by a minor close to 18 years. The faculties of perception and understanding are very different in both cases, although neither has full capacity to act. Therefore, in our jurisdiction, contracts awarded by minors without the consent of their legal representative are void, whether it was for their benefit or against their interests. In this sense, the rule of injury has no applicability.

As for the effects of acts performed by minors, when they are acts carried out by minors who do not have sufficient natural capacity to understand, the absolute nullity of said acts shall be declared. On the other hand, with regard to minors, if they have the capacity to understand, the solution must be nullity. In this sense, the validity and effectiveness of the act will be contingent until the challenge by the minor or his or her legal representative is successfully exercised.

28 If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

The affairs of someone who has lost capacity are managed through an incapacitation procedure, which ends with a sentence agreeing on the appointment of a guardian or curator. The guardian or curator must be registered in the corresponding Civil Registry, in the margin of the birth certificate of the person who is incapacitated.

The sentence declaring the incapacitation of a person has expressed the scope of capacity affected by the limitation. The appointment of a guardian or curator is made by the judge who chooses the person he or she considers most suitable. The guardian holds the legal representation of the incapacitated persons and administers the assets under judicial control. In addition, the guardian must care for the incapacitated person and, in particular, must ensure his or her moral and material well-being, and must do whatever it takes to recover capacity, and achieve social reintegration.

Immigration

29 Do foreign nationals require a visa to visit your jurisdiction?

Andorra does not provide any visas to visitors. According to immigration law, foreign nationals do not need a visa to visit Andorra if they stay fewer than 90 days in the country in a one-year period. EU citizens only need a current passport or ID card.

If visitors wish to stay in Andorra for more than 90 days per year, they need an immigration permit according to Andorran immigration law.

30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

See question 29.

31 Is there a visa programme targeted specifically at high net worth individuals?

According to Andorran immigration law, there are various kinds of authorisations with different characteristics and requirements. The two main kinds of permits are 'residence and work permit' and 'residence without work permit'. Non-lucrative residency is a kind of residence without a work permit tailored to high net worth individuals.

The requirements to obtain non-lucrative residency are the following:

- being of age (18 years old) or an emancipated minor;
- having sufficient financial resources for the applicant and his or her dependent family residing in Andorra;
- contracting insurance that covers the applicant's illness, incapacity and old age and that of the dependent family who reside in Andorra;
- having a dwelling in Andorra (ownership or rental);
- establishing his or her principal effective residence in Andorra for at least 90 days per year, without working in the country. However, he or she can perform the necessary operations for the management of his or her own assets; and
- investing in a permanent and effective form with a sum of at least €400,000 in real estate located in Andorra; equity of companies' resident in Andorra; debt or financial instruments issued by public authorities in Andorra; and non-remunerated deposits in the Andorran National Institute of Finance.

Part of the above-mentioned investment must be a non-refundable deposit of €50,000, plus another non-refundable €10,000, for each dependant who resides in Andorra.

32 If so, does this programme entitle individuals to bring their family members with them? Give details.

Yes. Non-lucrative residents can bring their family members as 'dependent residents' if they meet the above-mentioned requirements.

These family members will have the same rights to reside in Andorra as the non-lucrative resident but their authorisation depends on the authorisation of the permit holder.

33 Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

A non-lucrative resident has a right to reside in Andorra during the time allowed according to the residency permit. However, non-lucrative residents can renew their residency if they meet all the requirements. The first authorisation and renovation will be two years. From then on, every renovation will be from three years.

34 Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

Yes, these include a foreign person who has lived during the past 20 years in Andorra and proves his or her integration in Andorra. To obtain Andorran nationality this way, the person has to submit the 'Govern' form to the Andorran government.

In addition, this applies to a foreign person who marries an Andorran national, if he or she fulfils the following requirements: permanent and main residence in Andorra in the past three years, before or after her or she gets married; and (proof of his or her integration into Andorra.

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