

DONATIONS OF REAL ESTATE IN SPAIN

Giving with warm hand. The early transfer of assets offers the possibility to pass large assets to family members during your lifetime. This kind of donation is known as anticipated inheritance and plays an important role in many families.

Donations are subject to specific legal and tax regulations in Spain that require thorough examination. The compliance with these rules is crucial to ensure that the early transfer of assets can be realized without undesirable tax consequences.

In this article you will find the essential aspects of donations in Spain and examines the advantages and disadvantages of this early transfer of assets.



Legal aspects of donations in Spain

In Spain, donations are regulated by the „Codigo Civil“ (Civil law). The donation process requires a clear declaration of intent and have to be accepted by the recipient without having to provide anything in return, especially without a financial payment. In addition, the involved parties must be of

age and legally competent to make a legally binding gift.

Donations have to be done in written form in the notary to ensure its legal validity. This is particularly necessary for the transfer of real estate in order to be able to get the donation entered in the land register in accordance with the legal rights.

Advantages of a donation of real estate

Gifting real estate is an effective strategy that gives numerous benefits to both- the donor and the recipient. A key advantage is the ability to transfer assets in an orderly manner and during your lifetime. This practice is particularly important in families as it helps prevent future inheritance disputes. So the assets can be distributed according to the donor's wishes, reducing potential conflicts after death.

Another key advantage is the tax efficiency. From tax perspective a donation of real estate can be cheaper than transferring it through inheritance. The early and careful planning of the donation of real estate reduce the tax burden and make the transfer more efficiently. In the valencian community, for example, the tax free allowance of 100.000 Euro per child gives a significant tax advantage. So a couple of parents can pass on 200.000 to each of their children saving a lot of taxes.

Another advantage is the immediate transfer of property rights. Unlike inheritance, which is often a lengthy and complex process, the

donation gives a quick and direct transfer of ownership. This allows the recipient to benefit immediately from the property, whether through use or rental.

In addition to these practical aspects, the emotional component also plays an important role. The donor can experience the joy of seeing their assets used and appreciated during their lifetime. This can be a fulfilling experience that strengthens family bonds.

In summary, donation of real estate offers an efficient, emotional and tax-advantageous method of transferring wealth. Not only does it promote family harmony, but it also ensures that the wealth is distributed and preserved according to the donor's wishes.

New tax advantages for donations in the valencian community

The gift tax known as "Impuesto sobre Sucesiones y Donaciones" depends on several factors. These include the value of the gift, the relationship between the donor and the recipient and the respective exemption amounts. Closer family members, such as children and spouses, benefit from higher tax allowances compared to people outside of this close family circle. In addition, the tax varies depending on the autonomous community in Spain, which means that the specific tax rates and allowances may vary regionally.

The gift tax in the valencian community has changed significantly as a result of the new

law of November 22, 2023. According to this law, the exemption amount for gifts to children or spouses is 100.000 euros. Additionally, there is a significant tax reduction of 99%, meaning that the actual amount of tax payable is reduced by 99%. For example, if a gift tax of 10.000 euros were due based on the gift value and taking into account the exemption amount, the person would have to pay just 100 euros due to the additional reduction of 99%.

Disadvantages of a real estate gift

The transfer of assets through gifts a part of an anticipated inheritance is a significant decision that should be carefully considered. A key aspect here is that a gift is typically irrevocable. This means that assets once given away are permanently transferred to the recipient and are no longer available to the donor. Such a loss of property involves risks, especially if the donor would later be dependent on the assets, for example in the event of need for care. The high costs of nursing facilities can quickly deplete the donor's remaining assets. Therefore it is important to ensure that after a donation there are sufficient assets left for your own needs.

Overall, the decision to make a gift should be carefully considered and not based solely on the expectation that the recipient will take care of the donor when needed. Once given away, it cannot be taken back and consideration should be given to whether long-term security and needs are being met.

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Lifelong right of residence as a precautionary measure

Particularly in the case of real estate, it is recommendable to grant the donor a lifelong right of residence. This gives him the right to use the property free of charge. Residence and usufruct rights enable the use of real estate while the assets ultimately remain within the donor's family.

Apart of this a lifelong right of residence helps to reduce the required minimum certificate value (reference value) of the property. This enables potential savings on gift taxes, especially if the minimum notarized value exceeds the tax exemption amount.

Profit tax on real estate donations

A common mistake is that the profit tax is not taken into account when making a gift. The tax is calculated on the difference between the purchase value and the gift value of the property. When calculating the profit tax, certain costs, such as notary and land registry fees as well as real estate transfer tax, can be deducted. Investments to increase the value of the property are also deductible, provided the relevant evidence is available.

An important exception is the transfer of the primary residence of a donor, who is older than 65 years. This donation is completely free of profit tax. These regulations show that the tax consequences of a gift in Spain are complex and depend on various factors.

Plusvalía on real estate donations

In addition to the profit tax, there are another tax implication to take in mind as the plusvalía. This local tax records the increase in value of the land since the last change of ownership. It is based on the assumption that the value of the land increases over time and is calculated accordingly based on this assumed added value. The amount of the plusvalía varies depending on various factors, such as the time the property has been owned, the cadastral value of the land and local regulations. As a rule, the longer the property has been held, the higher the tax burden will be. IN the case of a gift, the tax liability lies with the recipient.

Conclusion

Please note that this article is not a substitute for professional legal advice. Donations in Spain offer numerous possibilities, but are characterized by complex legal and tax conditions. In order to ensure a legally correct donation the use of professional advice from tax experts is essential. A careful consideration of the advantages and disadvantages, individual adaptation to the family situation and legal protection through professional advice are essential. Early wealth transfer can be a sustainable and intergenerational strategy if carried out taking all relevant aspects into account.

In summary, donating real estate offers an efficient, emotional and tax advantageous method of transferring assets.

Our team of experts offers comprehensive and highly qualified advisory services in all legal and tax matters relating to the transfer of real estate through donation. We ensure complete and professional handling of the entire process by accompanying and supporting you from the beginning to the successful completion of the transaction



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ALLES AUS EINER HAND

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