

URÍA & MENÉNDEZ Abogados  
Uría Menéndez Abogados, S.L.P.-C/ Príncipe de  
Vergara 187  
Plaza de Rodrigo Uría, 28002 Madrid (España)

Wednesday, 02 January 2013

Estimados Sres.,

Les escribo en relación a unas informaciones aparecidas en la web [www.erva.es](http://www.erva.es), sobre 2 opiniones o informes legales preparados por la entidad Uría & Menéndez Abogados.

Estos informes versan sobre un producto financiero comercializado por la **entidad Rothschild**, con sede en la isla de Guernesey, para extranjeros con viviendas en España, que tenía como principal objetivo el trabar un préstamo hipotecario sobre dichos inmuebles al objeto de hacer creer a la Hacienda Pública española que, al figurar una carga hipotecaria inscrita contra la vivienda, el valor residual a los efectos del Impuesto de Sucesiones era el resultante de minorar del valor real esa carga.

Se observa no obstante, no sin extrañeza, que Vds. entregaron 2 informes al destinatario: uno primero en el que correctamente **advertían de los riesgos** de que esta operación fuera considerada un fraude de ley, al ser una operación jurídica cuya principal función consistía en simular un negocio jurídico con finalidad negocial contraria a la ley, como es la defraudación a la Hacienda Pública, y uno segundo en el que **omitían esta advertencia**, manteniéndose dicho informe idéntico en lo relativo al contenido restante.

A los efectos de comparación, adjuntamos ambos informes a este documento.

Como quiera que **Rothschild ha comercializado varios de estos productos a clientes de este despacho, sirviéndose del informe que no menciona los riesgos**, y que además otro informe que desaconseja esta maniobra, por esta parte se considera necesario que su despacho aclare definitivamente si en su opinión, trabando un préstamo hipotecario sobre una vivienda con el único propósito de reducir la base imponible de esta, a los efectos del Impuesto de Sucesiones, es jurídica y fiscalmente posible deducirse el saldo de dicho préstamo del cálculo del impuesto indicado.

Todo ello se solicita a la vista de los divergentes informes realizados sobre el producto en concreto.

Atentamente  
Antonio Flores Vila  
Abogado/Lawyer LLM (Essex) - Reg. Nº 4712 I.C.A. Málaga



PREMIER SPANISH INHERITANCE PLANNING SCHEME

SPANISH INHERITANCE TAX SUMMARY<sup>1</sup>

**Scope of Tax**

The transfer of property to an individual on the death of the former holder of the property may be subject to Spanish Inheritance Tax ("IHT").

Both Spanish residents and non-residents may be subject to IHT. Spanish residents will be subject to IHT on the net value of all the assets inherited, whether or not situated in Spain, whereas individuals who are not resident in Spain may only be subject to IHT on the net value of assets inherited which are situated in Spain. There is no exemption from IHT in circumstances where the beneficiary is the spouse of the deceased.

For UK residents, the property which is subject to IHT is likely to be a holiday home and, perhaps, funds in a bank account opened to pay local taxes and other outgoings. In such cases, the Spanish tax authorities will only be concerned with assets in Spain.

**Amount and Rate of Tax**

The amount of tax payable by a beneficiary will depend upon the "net value" of the property received; that is to say, the actual value of the asset less deductible charges, debts and expenses.

A debt secured by a mortgage over a property in Spain will be deductible for IHT purposes as long as: the debt is in favour of an independent third party and is located or exercisable or must be fulfilled in Spain; and the mortgage is governed by Spanish law, is granted by public deed before a Spanish notary public and is duly registered as a public deed in the appropriate Spanish Real Estate Registry.

A careful analysis should be made on the deductibility of the debt. It may not be discarded that the Spanish Tax Authorities may try to challenge the deductibility of a loan granted to a non-resident for IHT purposes under the arguments that either (i) the debt has been "simulated" for the exclusive purposes of reducing the Spanish IHT liability or (ii), because of the lack of connection of the debt transaction with Spain, the Spanish elements of the debt have been artificially incorporated to the debt in order to qualify it as "located, exercisable or fulfilled" in Spain.

URIA & MENENDEZ  
SAYS NO  
TO EQUITY  
RELEASE

As well as being dependent upon the net value of the estate, the rate of tax payable and the availability of tax free allowances will also vary according to the closeness of the family relationship between the deceased and the beneficiary.

<sup>1</sup> This is a summary of certain tax issues in the context of Spanish Inheritance and Gift Tax and it should not be identified or used as a comprehensive analysis of the tax. Any taxpayer with a specific tax issue should seek further Spanish legal advice on the matter.

**Winding up the Estate**

There is normally a period of six months for the estate of a deceased person to be reported to the Spanish tax authorities, but application may be made for that period to be extended. This may be done provisionally or after determining the net asset value of the estate and distributing it among the beneficiaries.

IHT is normally paid on the basis of a self-assessment when the documents relating to the estate are filed. The tax authorities then have a period of four years within which to review the self assessment and impose an additional tax bill if they consider it appropriate. Penalties apply if no tax payment is made or tax declaration filed within the "voluntary period" of six months.



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WHERE IS THE OMITTED PARAGRAPH?

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*Abogados*

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Día/Hora : 01-02-2013 11:47 AM  
Nombre del modelo : CLX-9250  
Número serie del equipo : Z4DJBIDB600217N  
Línea 1 : 952861695  
Nombre línea 1 : Lawbird  
Línea 2 : no disponible  
Nombre línea 2 : no disponible

Trabajo	Destino	Hora inicio	Duración	Modo	Trabajo	Pág.	Usu.	Resultado
22232	1077915860403	01-02-2013 11:45 AM	01'41"	ECM	H-Tx	6/6	LocalUser	Aceptar

**FAX**



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Fax: 915 860 403                      Pages: 5 + 1  
Phone: 915 860 400                    Date: 02.01.2013

H-Rx: host recep.      M-S: guardar memoria P-Rx: sondeo recep.      D-Tx: retraso trans.  
H-Tx: host trans.      S-Rx: proteger recep.      P-Tx: sondeo trans.      BC-Tx: envío trans.

# FAX



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