

# We analyse the latest developments in the taxation of large fortunes and wealth



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## Let`s talk

### **Lucía Coto González**

Director, Private Wealth and Family Business area at PwC Tax & Legal  
[lucia.coto.gonzalez@pwc.com](mailto:lucia.coto.gonzalez@pwc.com)

### **Fernando Romero García**

Tax specialist, Private Wealth and Family Business area at PwC Tax & Legal  
[fernando.romero.garcia@pwc.com](mailto:fernando.romero.garcia@pwc.com)

On Thursday 10 November, the PSOE and Unidas Podemos presented their amendments to the Bill for the establishment of temporary taxes on energy and on credit institutions and credit financial establishments.

Among other aspects, these amendments refer to two issues within the scope of wealth taxation; on the one hand the expected introduction of a new Temporary Solidarity Tax on Large Fortunes and, on the other, albeit closely related to the above, the amendment to the Wealth Tax Law in relation to the taxation of non-resident individuals on the indirect ownership of property in Spain.

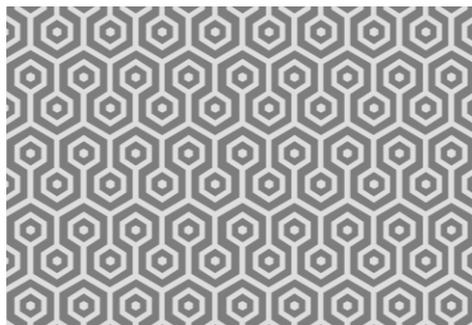
According to the text presented, the Tax on Large Fortunes is configured as a direct personal tax supplementary to Wealth Tax and may not be transferred to the Autonomous Communities, the taxable event for this tax being the ownership by individuals of net worth exceeding 3 million euros.

This tax will be applied throughout the whole of Spain, without prejudice to the

regional systems of the Basque Country and Navarre – the modification of which will be agreed by the Government and respective Commissions – or the international treaties and conventions that form part of the Spanish legal system.

The justification for the creation of this new tax lies in two main aims, one related to tax collection within the framework of the current energy crisis and inflation, and the second related to harmonization, aimed at limiting differences in wealth taxation between the Autonomous Communities.

With regard to harmonization, it should be borne in mind that this was already introduced in the White Paper on the Tax Reform prepared by the Committee of Experts and commissioned by the Secretary of State for Finance, although the legislative technique used in this case differs from the proposals made at the time. In this respect, if the new tax is finally approved, the questioning of its adaptation to the distribution of powers between the State and the Autonomous Communities is likely to generate a high level of litigiousness.



### Main aspects of the Tax on Large Fortunes

- According to the tax published, the configuration of the new tax refers to the current Wealth Tax as concerns the determination of taxable persons, asset measurement standards, ownership rules and exemptions.
- In this respect, the reduction for exempt minimum of 700,000€ for taxpayers resident in Spain, as well as the habitual dwelling exemption of 300,000€ and the exemption in respect of family businesses are maintained in the same conditions and with the same requirements as those established for the purposes of the Wealth Tax Law.
- In relation to the rate, the following progressive rates are established with a first band at 0 rate up to 3 million euros:

Tax base	Tax rate
Up to 3.000.000 €	0%
Between 3.000.000 and 5.347.998,03 €	1,7%
Between 5.347.998,03 and 10.696.996,06 €	2,1%
Thereafter	3,5%

- A joint limit “Personal income tax – Fortunes – Wealth” similar to the current joint limit “Personal income tax – Wealth” is regulated so that the sum of tax payable in respect of the three taxes does not exceed 60% of the personal income tax base. In the event of excess, tax payable in respect of the tax on Large Fortunes will be reduced by a maximum amount of 80%.
- Taxes paid abroad will be deductible

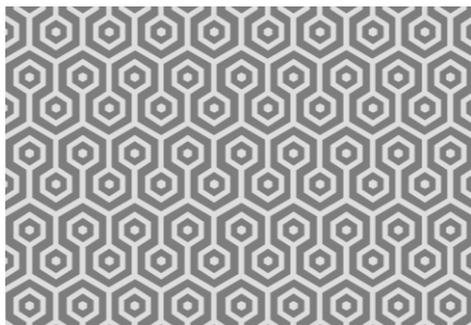
in the case of resident taxpayers. Additionally, the tax payable in respect of Wealth Tax may be deducted in order to avoid cases of double taxation. Evidently, the introduction of the new tax will directly affect resident taxpayers in Communities in which there are rebates in respect of Wealth Tax, as in the case of Madrid or Andalucía.

Furthermore, there are many Autonomous Communities with maximum marginal rates lower than the 3.5% contained in the new tax (see Asturias, the Balearics, Cantabria, Catalonia and Murcia). This means that, although it is possible to deduct the autonomous tax payable, taxpayers with large fortunes will end up paying additionally in the new Tax on Large Fortunes.

- As concerns its temporal scope, it is indicated that the new tax will apply in the first two years in which, as from its entry into force, the tax accrues. That is to say, if the measure is approved before 31 December 2022, the tax will be applicable in the years 2022 and 2023. Otherwise, it will have effect for the years 2023 and 2024.

However, a review clause is introduced to assess the results of the tax and assess whether to maintain or eliminate the tax at the end of its envisaged term. This leaves the door open to the temporal nature of the measure becoming permanent as already occurred at the time with Wealth Tax.

- The tax will accrue on 31 December and the relevant self-assessment must be filed when it results in tax payable. However, non-residents will not be required to file a return unless the tax results in an amount payable.



- The obligation to appoint a representative resident in Spain before the end of the filing period is established, for the purpose of their relationship with the Tax Administration, in the following cases:

- a) Taxpayers not resident in Spain who are not resident in another EU or EEA Member State, in this last case if there is legislation on mutual assistance in relation to the exchange of tax information and collection in the terms of the General Tax Law.
- b) Taxpayers resident in Spain who leave Spain after the occurrence of the taxable event for a third country that does not belong to the EU or EEA (in this case, again, if it has legislation on mutual assistance in relation to the exchange of tax information and collection, if they are going to return to Spain after the end of the filing period for the tax.

The appointment of the representative must be communicated to the competent territorial office in order to file the return, with a notice of acceptance by the representative.

**Amendment to Wealth Tax in relation to the indirect ownership of property in Spain of non-residents.**

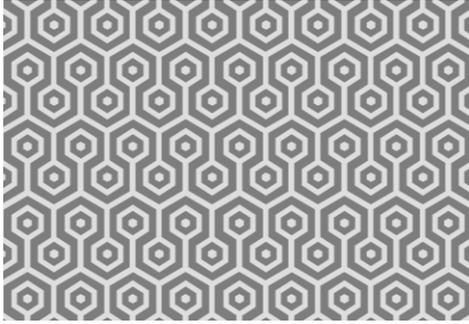
Lastly, reference should be made to the introduction of a specific amendment relating to Wealth Tax which, as a result, will also affect the tax on Large Fortunes.

The novelty refers to situations in which a non-resident individual indirectly owns property located in Spain through foreign companies.

Although numerous Double Tax Treaties, including amongst others the Treaties concluded with France, Germany and the UK, empower Spain to tax the indirect ownership of property, under the current wording of the Wealth Tax Law this possibility is not envisaged. This is in line with the understanding of several courts, including the DGT in its recent decision V1947-22 of 13 September.

In the light of the current situation, an amendment is introduced aimed at modifying Article 5 of the Wealth Tax Law relating to taxpayers subject to Wealth Tax, with the following content:

- In the case of non-resident taxpayers, securities representative of equity holdings in entities, not traded on organised markets, whose assets consist, at least 50%, of property located in Spain, shall be understood to be located in said territory.
- For these purposes, in order to determine the calculation of the assets, the net book value of all the assets recorded in the accounts must be replaced with their market value on the accrual date.
- In order to determine the actual value of the property it is established that the values that determine the tax base pursuant to Article 10 of the law will be applied, i.e. the higher of the cadastral value, the value determined or verified by the Administration for the purposes of other taxes or the price, consideration or acquisition cost.



- Lastly, it should be emphasised that the amendment presented does not envisage a proportional taxation of the shares according to the value that the property in Spain represents on the balance sheet of the non-resident company. Therefore, the liability to Wealth Tax (and consequently, the Tax on Large Fortunes) can also extend its effects to assets located outside Spain.

In the light of the foregoing, we must remember that in an uncertain environment, like the one we are in now, it is essential to perform an agile and adequate diagnosis of the wealth situation of taxpayers who might be affected by future tax reforms. Said diagnosis must always be carried out considering each individual case and from a global perspective so as to avoid making any rash decisions.