

Spanish capital gain tax for tax residents year 2020

If you are a tax resident in Spain, on your Spanish tax return you must remember to declare your capital gains and losses originated from sales, both in and outside Spain, such as sale of real estate and securities.

When is there a capital gain or loss?

A capital gain or loss may arise in connection with the sale of, for example, a secondary home in Scandinavia or securities deposited with a Scandinavian or other non-Spanish bank, and you must include this on your Spanish tax return and pay Spanish tax on the capital gain.

What is not considered a capital gain?

There are a number of transactions that are not considered to generate a capital gain or loss in whole or in part, including:

- Seller of primary residence is over 65 years old. In this case, the capital gain is considered exempt.
- Real estate in urban zone purchased in the period 15.05.2012 - 31.12.2012. On sale, 50% of the capital gain is exempt.

Ownership period

It generally applies that there is no loss, if a sold asset is repurchased within the following year.

For listed securities, as defined in the EU directive on financial instruments, no equivalent / homogeneous securities may have been purchased 2 months before or after a sale.

In relation to unlisted securities in the same EU directive, the same applies, however, with a period of 1 year.

Calculation of capital gain and loss

Capital gains and losses are calculated as the difference between acquisition value and disposal value.

Acquisition value: The acquisition value consists of the purchase price plus costs associated with the acquisition as well as subsequent improvements and depreciation.

Disposal value: The disposal value consists of the sales price less costs associated with the sale.

Property purchased before 31.12.1994: A special deduction is given in the part of the capital gain that can be attributed to the period before 20.01.2006.

Other special rules: There are also special rules for calculating capital gains, including the sale of securities, futures and options, investment funds, etc.

Documentation

Without proper documentation, an otherwise deductible loss is not recognized and the loss can therefore not be deducted in a capital gain.

In order to be considered as savings income, a capital gain must be duly documented, as otherwise it will be taxed as ordinary income.

Capital gain tax rates

Capital gains and losses can be either ordinary income or savings income, *renta del ahorro*, depending on whether the asset has been owned for more or less than 1 year when it is sold.

Tax rates savings income year 2020 and 2021		
Euro	2020	2021
0 - 6,000	19%	19%
6,001 - 50,000	21%	21%
50,000 - 200,000	23%	23%
> 200,000	23%	26%

Tax-free capital gain on reinvestment

A capital gain can be tax-free, when it is reinvested. This applies in the following cases:

- **Capital gain is reinvested in new primary residence.** It is primary residence when the tax-payer has continuously lived in the dwelling for 3 years. There is a deadline of 2 years before and after the sale of the previous primary residence to reinvest the capital gain in whole or in part in a new primary residence.
- **A start-up capital gain is reinvested in a new start-up.** Among other, it is a condition that the shares sold have been acquired after 29.09.2013, and that the taxpayer has used the start-up tax deduction at the time of acquisition. The deadline to reinvest is 1 year after the sale, and this must be done in a new start-up on similar terms as those who qualify for the regular start-up tax deduction.
- **Capital gain is reinvested in insured annuities.** This option is only given to persons older than 65 years. The tax-free profit can amount to a maximum of 240,000 euros and the deadline for reinvestment is 6 months. There are certain requirements for the content of the policy.

Deferral of capital gains tax

Capital gain from the sale of investment certificates that are reinvested in other investment certificates are taxed only at the time when a reinvestment no longer takes place, if the investment certificate has been

offered and traded through a provider or intermediary registered in Spain with *Comisión Nacional del Mercado de Valores*.

It must be an investment fund, *fondo de inversión*, or a company with a ownership of at least 500 shareholders and an ownership interest in it for the taxpayer of less than 5% during the last 12 months prior to the date of a sale.

Unproven capital gain

Ownership, declaration and acquisition of assets and rights that do not match taxable income and assets declared on the tax return are considered unproven capital gain and are added to the ordinary taxable income in the income year in which the relationship is discovered by the tax authorities, unless it can be documented that the ownership has existed at a time prior to the latest obsolete income year.

This is particularly relevant in relation to the submission of form 720 disclosing assets outside of Spain.

Spanish exit tax

When moving from Spain, a non realized capital gain may be taxable when the tax-payer meets the following:

- Tax resident in Spain 10 years out of last 15 years.
- Ceases to be a tax resident of Spain.
- Owns shares with a total value of more than 4 million euros, or owns more than 25% and the value thereof is more than 1 million euros.

Exploitation of losses

Losses, that are considered savings income, can only be deducted in capital gain that is savings income. A loss can be carried forward for 4 years, however, with a maximum of 25% per year for deduction in capital gain considered savings income.

Losses, that are considered ordinary income, can only be deducted in ordinary income. A loss can be carried forward for the following 4 income years at 25% per year for deduction in the same type of income.