

TRANSFER OF MONEY TO A CHILD RESIDENT IN SPAIN: IS IT CONSIDERED A DONATION AND WHAT ARE THE TAX IMPLICATIONS?

It is common for individuals resident in Spain to receive money transfers from their parents who live in Italy. This type of transaction raises a very frequent question: whether the donation of money to children in Spain is considered a donation for tax purposes and whether there is an obligation to pay taxes.

Below, we analyse this issue in a clear and accessible manner, based exclusively on the applicable regulations.

WHEN IS THE DONATION OF MONEY TO CHILDREN IN SPAIN CONSIDERED A DONATION?

For a transfer of money to be considered a donation, certain elements must be present. In particular, it must be a transfer made **without any obligation of repayment**, on a voluntary basis and out of **pure generosity**.

That is, there must be no consideration or other cause justifying it, as would be the case with a loan.

When a parent transfers money to their child without any expectation of repayment, the transaction has, from a tax perspective, the nature of a donation.

TAXATION OF DONATIONS BETWEEN PARENTS AND CHILDREN IN ITALY

In Italy, gift tax on donations between parents and children applies only when the value of the donation exceeds **one million euros**, with the excess taxed at **4%**.

As a result, in many cases, donations made in Italy are not subject to taxation.

However, this circumstance is **not decisive** when the beneficiary of the donation is resident in Spain.

THE RESIDENCE OF THE BENEFICIARY: A KEY FACTOR

It should be recalled that the double taxation treaty between Italy and Spain does not regulate inheritance and gift tax [1], which is why each State applies its own domestic legislation.

Furthermore, each State is free to adopt its own tax regulations and, therefore, the criteria for the application of the tax may differ. Thus, although it is true that both in Spain [2] and in Italy [3] the taxable person for gift tax purposes is the beneficiary of the donation, the principles on the basis of which gift tax becomes chargeable differ.

For this reason, it is advisable to rely on Spanish legislation and not to place excessive confidence in knowledge of Italian tax practice.

ASSETS AND RIGHTS SUBJECT TO TAX

Spanish legislation establishes that donees resident in Spain are taxed under **personal tax liability**. This implies that they must declare and pay tax in Spain on all assets or rights acquired [4] by way of donation, regardless of where they are located or the country of origin of the funds.

Consequently, a person resident in Spain must declare the donation received from abroad and pay the corresponding tax in Spain, even where taxes have been paid in the country of origin, unless there is a specific provision in an international treaty.

If the beneficiary is not resident in Spain, they will be taxed under **real tax liability**, only in respect of assets or rights located, exercisable or enforceable within Spanish territory. [5]

IS THERE A RISK OF DOUBLE TAXATION?

Although there is no specific treaty governing donations, Spanish legislation provides for a mechanism that allows the tax paid abroad to be deducted in whole or in part, thereby preventing the taxpayer from bearing an effective double tax burden. [6]

ABSENCE OF A TAX-FREE THRESHOLD IN SPAIN

Unlike what happens in Italy, Spanish state legislation does not establish any minimum threshold below which a gift is excluded from taxation. Therefore, any transfer of money may be considered a donation for tax purposes, regardless of the amount.

Even contributions of small amounts may be subject to the tax if the requirements inherent to a donation are met.

AMOUNT OF GIFT TAX ACCORDING TO THE AUTONOMOUS COMMUNITY

The final amount payable will depend on the Autonomous Community in which the donee resides, as inheritance and gift tax is devolved to the Autonomous Communities, which may regulate their own reductions and allowances.

Thus, for example, in the Community of Madrid, certain donations from parents to children, formalised in a public deed and intended for specific purposes, may benefit from a **100% reduction** up to certain amounts.

In Catalonia, by contrast, a donation for the acquisition of a first habitual residence may benefit from a **95% reduction**, but only up to **60,000 euros** and provided that very strict requirements are met regarding the acquisition period, the age of the beneficiary and their level of income. In addition, in this Autonomous Community, the donee's pre-existing wealth must be taken into account for the calculation of the tax.

DEADLINE FOR DECLARING AND PAYING THE TAX

As a general rule, the deadline for filing the self-assessment of gift tax and making the corresponding payment is **30 working days** from the date of the donation, excluding Saturdays and public holidays.

However, some Autonomous Communities establish a period of **one calendar month**, in which case non-working days are not excluded. It is therefore essential to check the applicable regional regulations in each case.

CONSEQUENCES OF FAILING TO DECLARE THE DONATION

Failure to declare a donation may give rise to significant consequences. First of all, the bank may block the funds received if it detects the receipt of a substantial amount that cannot be justified and may require explanations from the account holder.

In addition, failure to file the self-assessment may lead to an inspection procedure by the Tax Agency, with the imposition of penalties that may amount to up to **150% of the tax**, in addition to payment of the tax due and the corresponding interest.

STATUTE OF LIMITATIONS FOR THE TAX

Article 25.1 of the Inheritance and Gift Tax Act (ISD) refers to the limitation rules provided for in the General Tax Law (Articles 66 et seq.), meaning that the limitation period is **four years** from the expiry of the statutory deadline for filing the tax return.

Consequently, the total limitation period will be **four years and 30 working days (or one month)** from the date on which the donation was received.

ALTERNATIVES TO DONATION: THE FAMILY LOAN

It is possible to transfer money to a child resident in Spain without the transaction being taxed as a donation, for example, by means of a loan.

However, in order to prevent the Tax Administration from reclassifying the transaction as a donation, it is essential that the loan be properly structured and formalised from the outset.

Otherwise, the Tax Agency may consider that it constitutes a concealed donation and require payment of the corresponding tax, together with the applicable penalties.

This article is for informational purposes only and does not constitute legal advice. For the analysis of a specific case, it is recommended to consult a specialised professional.

References

[1] Law of 29 September 1980 No. 663. Ratification and implementation of the convention between Italy and Spain to avoid double taxation, signed in Rome on 8 September 1977.

[2] Article 5. Law 29/1987, of 18 December, on Inheritance and Gift Tax (LISD). Taxable persons. Natural persons shall be liable for payment of the tax as taxpayers: (a) in *mortis causa* acquisitions, the heirs.

[3] Article 5. Consolidated Text of 31/10/1990 No. 346 – Consolidated text of the provisions relating to inheritance and gift tax (TUISD). Taxable persons. 1. The tax is due by heirs and legatees in successions, by donees in donations and by beneficiaries in other *inter vivos* gifts.

[4] Article 6. LISD. Personal tax liability. 1. Taxpayers who have their habitual residence in Spain shall be required to pay the tax under personal tax liability, regardless of where the assets or rights forming the taxable increase in wealth are located.

[5] Article 7. LISD. Real tax liability. Taxpayers not included in the immediately preceding article shall be required to pay the tax, under real tax liability, on the acquisition of assets and rights, whatever their nature, that are located, exercisable or enforceable within Spanish territory, as well as on the receipt of amounts deriving from life insurance contracts when the contract has been entered into with Spanish insurance entities or has been concluded in Spain with foreign entities operating therein.

[6] Article 23 LISD.