The Spanish mission

ALBERTO PEREZ CEDILLO EXPLAINS WHY SPAIN'S DEMOGRAPHICS, COMPLICATED DOMESTIC TAX REGIME AND REGULATION OF PRIVATE CLIENT PRACTITIONERS PROMPTED THE ESTABLISHMENT OF A STEP CHAPTER IN THE COUNTRY

Why was STEP Spain formed?

Spain has a complicated internal taxation system due to the combination of national law and the law of the 17 autonomous communities. The country also has a high percentage of foreign residents: approximately 10.7 per cent of the population are foreign residents.[1] There was a need for information about the interaction of the communities and central government and cross-border estates in particular. There was also a need to standardise best practice, and provide education and support for practitioners, as continuing education is not compulsory for Spanish private client professionals. Moreover, there was a gap in the market for STEP, as there are no international associations in Spain that cover this area of practice.

What is on the agenda for STEP Spain?

We held the launch of STEP Spain on 22 January at the Madrid Bar Association (*Ilustre Colegio de Abogados de Madrid*). Our first seminar will be held on 12 May at the Madrid Bar Association and will cover the forthcoming Brussels IV [*Regulation (EU) No.650/2012*, also known as the EU Succession Regulation]. Ana Fernández-Tresguerres, Counsel and Advisor in Private Law at Spain's Ministry of Justice, will be speaking on the subject. Ana was part of the Spanish delegation that took part in the negotiation process for Brussels IV.

We are also planning a seminar in Barcelona and Malaga for June. In addition, we are investigating if other national associations of professionals, such as the Spanish Tax Advisor Association (*Asociación Española de Asesores Fiscales*), local Bar associations and notary publics might be interested in joining STEP.

What is the profile of your members?

We currently have two kinds of members: those with a high profile internationally, who are already very much involved in international taxation and international associations, such as the International Bar Association, and those who are looking for opportunities to expand into the market.

What is your background?

I work for one of the largest Spanish firms operating in the UK. We cover the full range of civil and commercial practice for business and private clients. We act on behalf of clients at the interface between the English and Spanish legal systems. Providing clients with legal advice on Spanish law is at the heart of our business. International consultancy and agency work for other lawyers is a significant part of the practice. Most of our clients are referred by law societies, embassies, consulates and other lawyers.

What are the main issues that STEP members in Spain are concerned about?

Education is one of the main concerns. Spanish practitioners are unfamiliar with common-law concepts such as trusts and offshore companies, and how those companies are operated abroad. We also need to see how the EU Succession Regulation will be implemented in the different EU countries. Brussels IV aims to simplify cross-border inheritance; however, there are a number of practical implications to consider before it comes into effect in August 2015.

What effect has the Spanish economy had on private client practitioners?

Unemployment is very high in Spain and the property market has collapsed. Spanish firms have had to reshape as a consequence of the financial crisis and this has taken its toll on the profession. The tax authority has been aggressive in response to these conditions and extreme measures have been taken to increase the amount of money coming into the state. The consequences have been drastic and, in terms of structures, people are looking to other markets, and not necessarily the Spanish market, from a tax point of view.

Do you feel the compromise reached on the EU's *Fourth Anti-Money Laundering Directive* as to public registers was fair?

We were amazed at what was happening during the negotiations, but I don't think we were distressed by the situation. I think the greater concern for Spain at the moment is tax evasion and the effect of this on the amount of revenue coming into the country. In 2013, new reporting laws were introduced

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To find out more about STEP Spain, visit the chapter's page: **www.step.org/spain**

BRUSSELS IV

The following extract is from 'Imperfect harmony' by Sangna Chauhan TEP and Michael Wells-Greco TEP (*STEP Journal*, volume 22, issue 5). Find out more at **www.step.org/imperfect-harmony** and watch Richard Frimston TEP and Michael Parkinson TEP's webinar at **www.step.org/webevents**

Introduction

The EU Succession Regulation (*Regulation (EU) No.650/2012*), also known as Brussels IV, marks a major change in cross-border succession law. The Regulation's effects will be felt worldwide – not just within the EU.

Cross-border conflicts

For many mobile families, there has long been a conflict between the principles of free movement within the EU, and the realities of the expensive and complicated succession issues to which these principles can give rise.

The historic conflict stems from the entirely different succession laws that apply across the EU (and, in fact, throughout the world). These differences do not simply boil down to the perennial clash between testamentary freedom (broadly applied in common-law jurisdictions) and forced heirship (found in many civil-law and Nordic jurisdictions); they are more involved. Examples include the multiple variations of forced heirship within civil-law jurisdictions and the lack of a common, EU-wide succession law language.

As such, it is inevitable that conflicts arise. And this has increasingly been the case as families and their assets have become more mobile. When more than one jurisdiction is involved, which system takes precedence? Often we are faced with the thorny question of *renvoi*: does a reference to the law of a particular jurisdiction mean its domestic laws only or does it also include its private international laws, which may, in fact, pass the question on to another state entirely? Can the laws of different jurisdictions apply to different assets?

In one fell swoop, the Succession Regulation is meant to fix the problem. But it does so only partially, across the participating states (all EU member states other than Denmark, Ireland and the UK).

The Succession Regulation's solution

The Succession Regulation has many nuances but, for our purposes, we will generalise them under two headings:

Jurisdiction and applicable law

The main purpose of the Succession Regulation is to ensure that succession to a given estate is treated coherently. Ideally, the courts of a single jurisdiction will apply a single law to the entire estate. Generally speaking, the courts and governing law will track each other and will be those of:

- **the jurisdiction of habitual residence;**
- **unless there is a jurisdiction to which the deceased was more closely connected;**
- **unless the deceased elected for the law of their nationality to apply.**

Provided the law that governs succession falls within one of these categories, it does not need to be that of an EU member state. This means that assets (including real estate) held in a participating state could pass in accordance with the law of another jurisdiction entirely.

In many cross-EU situations, *renvoi* will be disapplied and so only the domestic succession laws of the relevant jurisdiction will be applied. In theory, this will reduce the possibility of conflicts. But, of course, matters are never so straightforward.

European Certificate of Succession

The second major change is that the parties interested in an estate will be able, though not obliged, to apply to the courts in the relevant jurisdiction for a European Certificate of Succession (ECS). In cross-EU cases, an ECS may replace the usual national post-death certificates or instruments. It is envisaged the ECS will set out the details of the deceased, any applicable marital regime, the relevant succession law, and the heirs and legatees, so it can then be used in each participating state in order to transfer and dispose of the estate assets. Essentially, there should be no need for separate post-death procedures in each jurisdiction in which assets are held.

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under which Spanish residents must declare assets worth more than EUR50,000 that are held abroad. If that money isn't declared, the penalty applied can reach up to EUR150,000.

The European Court of Justice (ECJ) recently ruled that an aspect of Spain's inheritance tax regime discriminated against non-residents. Has Spain brought its legislation in line with the ruling?

Some of the Spanish communities had been charging extra inheritance tax on gifts and legacies left to non-resident beneficiaries of an estate. The ECJ ruling gives EU and European Economic Area residents an opportunity to claim a refund of the excess tax paid.[2] Nobody knows what's going to happen now. Everybody who has paid the tax is contacting lawyers and tax advisors, and so there are now a lot of people fighting for refunds. Many think that a procedure to recover the tax will be introduced, and that the tax itself will be modified.

This brings us back to the constitutional structure of Spain: several autonomous communities and one central government. The communities may legislate and give their relief for the tax, but the government at a central level does not legislate in this area. It's very, very complicated and hopefully STEP Spain will be able to provide some clarity in this area.

1 Spanish National Institute for Statistics (*Instituto Nacional de Estadistica*), 2014

2 For more information on the ECJ ruling, read Carlos Gabarro's article 'Non-resident evil', *STEP Journal*, volume 22, issue 9, also available at www.step.org/non-resident-evil

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