



Title  
Research

# Entitlement

Summer 2020

## Cross-border estates: The UK and Spain

**Plus:**

- Expert guest articles from Spanish Solicitor, **Roser Coll of Temis & Co International Lawyers**
- Why verification matters: **How shareholdings change over time**
- Everything you need to know about **Federal Transfer Certificates**



# Entitlement

## Contents

---

- Cross-border estates: The UK and Spain.  
10 Frequently Asked Questions** **Page 4 - 5**  
*By Roser Coll, Temis & Co International Lawyers*
- Lasting Power of Attorneys in Spain** **Page 6**  
*By Roser Coll, Temis & Co International Lawyers*
- Why verification matters: **How shareholdings can  
change over time** **Page 7 - 8**
- Everything you need to know about **Federal Transfer  
Certificates** **Page 9 - 10**
- Specialist support for **estate administration** **Page 11**

# Welcome to Title Research's quarterly news digest – **Entitlement.**

It feels like a completely different world since the last edition of Entitlement. We hope you are keeping well and safe in these strange times.

In this issue, we are pleased to welcome not one but two guest articles from Roser Coll, Spanish Solicitor and Partner at Probate in Spain by Temis & Co International Lawyers.

Roser Coll is an expert in administering Spanish elements in UK domiciled estates and writes about how you can deal with Spanish assets in estate administration.

Roser answers ten frequently asked questions about cross-border estates between the UK and Spain. She also explores the Spanish equivalent of a Lasting Power of Attorney, "Poder Preventivo".

As always, we continue to support our Solicitor clients to overcome challenges in estate administration. We are always looking for new services to accelerate the process and are pleased to have introduced a new Financial Asset Search service. The service, powered by Inheritance Data, helps you to find all of the deceased's assets by searching 200 financial institutions and over 350 databases.

Title Research offers fast, fixed fee access to specialist genealogical research and asset repatriation services. The services available to you include dealing with North American and UK shareholdings, locating missing beneficiaries, reconstructing family trees and much more (see a full list of services on page 11).

Our Client Services Team are the first point of contact to discuss how we can help accelerate the estate administration process. Call +44 (0) 345 87 27 600 or email [info@titleresearch.com](mailto:info@titleresearch.com) for more information.

We hope you enjoy this edition of Entitlement!

**Anthony Allsopp**  
Head of Business  
Development



# Cross-border estates: The UK and Spain

## 10 Frequently Asked Questions

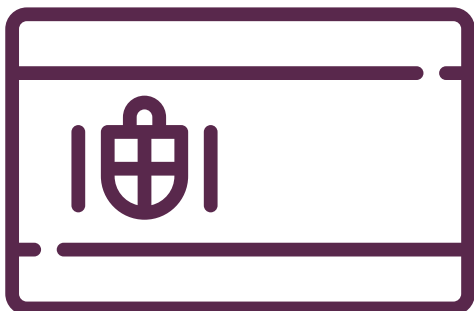
By **Roser Coll**, Partner at Probate in Spain by Temis & Co International Lawyers.

[www.probateinspain.co.uk](http://www.probateinspain.co.uk)

When talking about cross-border estates, we always receive similar questions from our clients, as they are worried about different issues concerning the Spanish side of the estate. The beneficiaries of someone who has passed away with an estate which includes Spanish assets (property, bank accounts, moore, boat, cars, etc.) are usually quite lost about how to sort out their inheritance in Spain. This article will answer some of the most commonly asked questions to help you guide conversations with your clients.

### 1. How can I save on Inheritance Tax in Spain?

It is advisable to make a Spanish Will referring only to your Spanish assets in order to plan in advance who your beneficiaries will be, and how much tax they will be liable for. It should be noted that the exact tax rules depend on each Autonomous Community and Local Council (Ayuntamiento), so each case should be studied separately. When making your Spanish Will, you should ensure you are provided with clear estate planning, advice on tax minimisation and Will writing services in English. This will ensure your Spanish Will is compliant with Spanish laws and fully enforceable in Spain. At Probate in Spain by Temis & Co, we can help you create a Spanish Will.



### 2. Do I need a Spanish Will?

If you own Spanish property, we strongly advise you to make a Spanish Will referred to your Spanish assets only. If something happens to you without having a Spanish Will in place, the execution of your inheritance in Spain can be time-consuming, complicated and expensive. Moreover, it will leave your heirs on their own to handle an additional difficulty: dealing with Spanish bureaucracy.

### 3. How do I know if there is a Spanish Will?

In Spain there is a centralised system for registering Wills which are to take effect over Spanish assets: the Last Wills Registry (Registro General de Ultimas Voluntades). All Wills are registered, whether they have been signed in the UK before an English Notary (provided registration in Spain has been arranged), or in Spain before a Spanish Notary. Custody of the Wills is therefore secured against loss or destruction. When making a request to the mentioned institution, we will always know if a Spanish Will was made.



#### **4. What happens if I die Intestate?**

If you do not have a Will in place defining the applicable law, according to European Union rules that entered into force on 17 August 2015, the applicable law for estates in Spain is the law of your habitual residence. This means that your assets would be distributed based on the intestacy rules of the Spanish Law in the region where you have established your residence. For example, if you have your residence in Mallorca, it brings into play a combination of forced-heirship rules and life tenancies for spouses. Again, this is why it is highly advisable to make a Spanish Will if you own property in Spain.

#### **5. Can I sell the Spanish property in the estate?**

As a beneficiary of an estate with Spanish assets, prior to selling a Spanish property, you must accept the inheritance in Spain before a Spanish Notary in a Public Deed, and pay the Inheritance Taxes to the Spanish Inland Revenue and Local Council (Ayuntamiento). As a Treaty of Double Taxation between the UK and Spain applies, you will pay Inheritance Tax (IHT) over Spanish assets ONLY to the Spanish Tax Authorities, and NOT to the Inland Revenue for UK Inheritance Tax purposes.

#### **6. Can I inherit the 50% property from my husband/wife/civil partner, as I have joint tenancy in Spain?**

In Spain, the property ownership differs from the UK. When a spouse owns half of the property each in joint ownership, if one passes away it does not mean that the surviving spouse will automatically inherit all the property. According to Spanish Law, before one can become the owner, the inheritance proceeding has to take place in Spain.

#### **7. Do we need to pay taxes in both countries, UK and Spain?**

The response is no. As there is a Double Treaty agreement between the UK and Spain, the lawyers of both countries will be coordinated to avoid paying Inheritance Tax twice.

#### **8. Is there any tax discrimination between Spanish residents and non-residents?**

In 2015, the EU courts decided that Spain was discriminating other EU nationals and overcharging Inheritance Tax from heirs who had their residency in other EU countries outside of Spain; since these heirs could not benefit from the same deductions as the Spanish residents could.

#### **9. What are the taxes of executing an inheritance in Spain?**

Apart from the Inheritance Tax (depending on the Atonomous Community where the asset is located), the heirs shall pay a local tax called "Plusvalía" Tax. This is based on the increase of the value of the land from the day the deceased acquired the property up to the date of the death.

#### **10. What are the costs related to an inheritance in Spain?**

The costs to claim the inheritance are:

- i. Notary fees: approx. 1.000 euros
- ii. Registry fees: approx. 800 euros
- iii. Bilingual Power of Attorney and Apostille: approx. 250 sterling pounds
- iv. Legal fees: estimated 1% of the inheritance. Minimum fee: 3.500 sterling pounds

**If you have any questions about Spanish Wills, estate planning and the administration of estates with Spanish assets, contact Roser Coll by emailing [info@probateinspain.co.uk](mailto:info@probateinspain.co.uk).**

# Lasting Power of Attorneys in Spain

BY ROSER COLL, TEMIS & CO INTERNATIONAL LAWYERS

Lasting Powers of Attorneys (LPAs) are well known legal documents in the United Kingdom: they are used when a Donor decides to appoint someone as his/her Attorney. This appointment will allow the Attorney to make decisions for the Donor in case of a loss of mental capacity. LPAs come with an important number of responsibilities for the Attorney, who can end up making difficult decisions about a person's finances or health and welfare. For example, moving the Donor into residential care.

Similarly to the Lasting Power of Attorney, there are legal documents under Spanish Law with equivalent purposes, which can be granted by a Donor who owns property, bank accounts or other assets in Spain. These are known as "Poder Preventivo", or Preventive Power of Attorney.

This document must be granted before a Public Notary in Spain. The Preventive Power of Attorney

will become effective when the Donor is declared incapacitated by a Doctor, and it will allow the appointed proxy to deal with the financial affairs of the Donor with immediate effect. This means that if the Preventive Power of Attorney contemplates the faculty of selling assets, the proxy will have the legal authority to do so, should the Donor need the proceeds of the sale for its maintenance and care.

A very common case is that of a father who suffers from a degenerative disease which impairs his mental capacity. Selling his holiday home in Spain may be the only solution in order to be able to afford the costs of placing him into home care in the UK. Ideally, the property should have been sold before the father's loss of mental capacity.

However, this is often not the case and once this has occurred, the father is now no longer able to proceed with a sale or delegate such transaction over property via Power of Attorney to a relative or lawyer in Spain.

Should there not be a Preventive Power of Attorney signed when Donor is in full capacity, then the only option left for the family to convey the property would be to enter into a two-level court proceeding that would ultimately result in a court order allowing the family to deal with the sale. Needless to say, this is a long, time-consuming and expensive proceeding before Spanish courts which can take up to 2 years, during which, the property is off the market and the Donor's critical needs not catered.



# Why verification matters: How shareholdings change over time

By Title Research

The world of business never sleeps and companies are constantly changing. Companies may rebrand, merge, be acquired or even cease to trade which can result in shares changing over time. In estate administration, if the deceased owns shareholdings, it's important to verify them to ensure they are correctly declared on the Inheritance Tax return. Additionally, verification will ensure that you can still sell or transfer the shareholdings today.

As an example, in this article, we will look at what has happened to British Gas shares over the last twenty-four years, and explore why old share certificates for 100 shares in British Gas no longer exist as 100 shares in British Gas.

Let's take a look at the timeline of company changes that have impacted British Gas shareholders...



## 1980s

British Gas shares were a popular choice for investors in the 1980's who wanted to take advantage of the newly privatised energy companies. Interest from potential shareholders was encouraged by a British Gas sell-off TV advert campaign which urged the public to 'Tell Sid' about the good deal he could get. British Gas initially floated on the stock market in 1986.



## 1990s

The first significant change to the shareholding was when Centrica demerged from British Gas in 1997. Therefore, shareholders in British Gas also owned shares in Centrica plc. At this time, British Gas also rebranded as BG Group.



## 2000s

In 2000, Lattice demerged from BG Group. Following this in 2005, Lattice rebranded and became known as National Grid. So as of 2005, the original British Gas shares have now become shares in BG Group, National Grid and Centrica.

As we can see from this example, for Inheritance Tax returns it would be incorrect to declare the original 100 British Gas shares as date of death assets for a shareholder that passed away after 1997. Instead, if that person has passed away after 2016, their estate will have shares in Centrica, National Grid and Royal Dutch Shell.

Additionally, it would not be possible to sell British Gas or BG Group shares today, as they are no longer traded on stock markets.

Title Research offers a Probate Verification and Valuation service. From the provision of a list of shareholdings to investigate, Title Research will verify the number of shares currently held, as well as the number held as of the date of death. We will provide a date of death valuation for the shares so that you can accurately declare the value of assets held as of the date of death in the Inheritance Tax return.

For the purpose of a sale or transfer, Title Research's Probate Verification and Valuation service will confirm the total number of shares held and that any share certificates that are held are valid and represent the full shareholding. This means that you can be confident that the full shareholding is being dealt with.

**If you'd like to find out more about our Probate Verification and Valuation service, call our Client Services Team on +44 (0) 345 87 27 600 or email [info@titleresearch.com](mailto:info@titleresearch.com).**



## 2010s

Royal Dutch Shell acquired BG Group in 2016. BG Group shareholders were given a cash payment and shares in Royal Dutch Shell as a result of the acquisition. The original British Gas shareholding has now become shares in Royal Dutch Shell, National Grid and Centrica.





**TITLE RESEARCH SHARES**

# Everything you need to know about Federal Transfer Certificates

Did you know that if you want to sell or transfer a shareholding, or close a bank account in the USA that was worth over \$60,000 at the date of death, you will first need to obtain a Federal Transfer Certificate?

**CONTINUE READING ON THE NEXT PAGE**

## What is a Federal Transfer Certificate?

The Federal Transfer Certificate (FTC) is a document issued by the USA tax authority, the Internal Revenue Service (IRS). It is also sometimes referred to as Form 5173. The FTC is proof that Inheritance Tax clearance has already been obtained in the UK and therefore the assets held in the estate are exempt from Inheritance Tax in the USA.

This is possible because there is a double taxation treaty in place between the UK and the USA which means that if the assets have been included in the Inheritance Tax return in the UK, they do not also need to be declared in the USA. For this reason, a Federal Transfer Certificate is not required if a Grant of Probate has also been obtained within the USA.

## How do I obtain a Federal Transfer Certificate?

To obtain the FTC, an application must be submitted to the IRS along with full UK Inheritance Tax return paperwork. For UK citizens, Title Research can assist with preparing and submitting the application documents. We can also assist with any queries that may be raised by the IRS whilst the application is being processed.

## How long does a Federal Transfer Certificate application take?

The current standard timescale for the IRS to process an FTC application is 9 to 12 months. The processing of the FTC application is subject to Federal Government opening times. Timescales are still being affected by the Federal Government shutdown that took place between 22nd December 2018 and 25th January 2019.

**Title Research can navigate the often complex process of selling and transferring US shareholdings. If a Federal Transfer Certificate is required to obtain tax clearance from the IRS, let us take on this tedious task for you. We can complete this work as part of the share sale process or if you're currently administering foreign shareholdings, we can offer it as a standalone service.**

**To find out more, call our Client Services Team on +44 (0) 345 87 27 600 or email [info@titleresearch.com](mailto:info@titleresearch.com).**



## How does this impact the UK Inheritance Tax return?

Because the FTC is evidence of tax clearance in the UK, it is essential that the American assets have been included in the UK Inheritance Tax return at the time of filing. The American assets must be identifiable in either the IHT205 or IHT400, depending on the return that was made for the estate.

If the American asset was not declared in the UK Inheritance Tax return, it will be required that you submit a corrective account to HMRC to include the asset, prior to being able to apply for the FTC.

One Executor will need to be nominated as the lead Executor for the estate and it is to their name and address, as declared on the initial application, that the resulting Certificate will be issued.



# Specialist support for estate administration

**At Title Research, we provide trusted genealogical research and asset repatriation services to legal professionals.**

The experience we've gained over five decades means that we know where to find the people you need to trace and how to navigate even the most complex international processes. We believe it's our task to remove uncertainty so that you can complete your job with confidence.

A commitment to clarity runs through everything we do at Title Research and helps us provide legal professionals with the best possible service. Our fees are transparent, our processes straightforward and our reporting unambiguous.

Everything we do is designed to streamline estate administration, to take the effort out of locating the correct people or assets, and to mitigate against the risk of future dispute or complications.

- Locating missing beneficiaries
- Reconstructing family trees
- Verifying family trees (FamilyChecker™)
- Probate valuation and verification
- Missing beneficiary insurance
- Worldwide bankruptcy searches
- Financial asset searches
- Locating Wills, addresses and missing documents
- UK share sales with a nine-day turnaround
- Obtaining overseas grants and resealing UK grants overseas
- Dealing with North American assets
- Administering foreign shares and funds
- Research for a Statutory Will
- Currency transfers

Our proven expertise can help you with any estate administration challenge – at home or overseas. Call one of our team today on **+44 (0) 345 87 27 600** to find out more.

**Ensuring accuracy, eliminating risk**

## Connect with us

Stay up-to-date with our latest news, events and services by connecting with us.

[LinkedIn](#) | [Facebook](#) | [Twitter](#)

**Call** +44 (0) 345 87 27 600

**Email** [info@titleresearch.com](mailto:info@titleresearch.com)

**Web** [www.titleresearch.com](http://www.titleresearch.com)



Title  
Research