

Property **O**verseas **G**roup



SPANISH PROPERTY LEGAL GUIDE

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1. PURCHASING A RESALE PROPERTY IN SPAIN

COSTS OF PURCHASING

There are various taxes and costs associated with the purchase of property which will add approximately another 10% to the purchase price. The various charges are:

Transfer tax

The transfer tax, called “Impuesto de Transmisiones Patrimoniales” in Spanish, is levied at 8% of the purchase price when it is lower than 400,000 euros, 9% when the purchase price is from 400,000 euros to 700,000 euros and 10% from 700,000 euros onwards.

Plusvalia

The other tax to be paid on a property purchase is the “arbitrio sobre el incremento del valor de los terrenos”, which is the municipal tax charged on the increase in the value of the land since its last sale, using the official value of the land as the taxable base which tends to be always lower than the market value. The land is officially revalued periodically for this purpose. This tax is normally paid by the vendor, but agreed between the both parties.

Warning to buyers

Since January 1, 1999, the “plusvalia” tax can be charged directly against the property itself, meaning that should the vendor be liable, and “forget” to pay it, then liability for payment will pass to the new buyer.

Notary Fees

The notary fees are fixed by an official scale and the fee varies according to the size of the land, the size of the dwelling and its value.

Land Registry Fees

This will be a similar amount to the notary fees, and relates to the entry of the property in the land registry (“Registro de la Propiedad”).

APPOINTING A LEGAL REPRESENTATIVE

It is highly recommended to appoint a legal representative as early as possible in the purchase process. Your lawyer will explain to you the legalities involved in the purchase and also carry out the due diligences on the property, including advising you of any debts, provide you with an estimate of the annual running costs of the property and prepare all the documentation required to complete the transaction.

POWER OF ATTORNEY

Should you not be able to be present to sign all the necessary documentation related to the purchase, then you may grant power of attorney to your legal representative or to another third party. The power of attorney would list all the duties that can be carried out by the third party, which may include buying and selling property, opening and administering bank accounts, applying for and accepting a mortgage, representing you with respect to utility companies and the tax authorities etc. The power of attorney would be signed before a notary public in Spain, and should cost approximately 60 euros.

Should you not be able to visit a notary public in Spain and need to formalise the power of attorney in your home country, the procedure is different. Your lawyer will prepare the document in Spanish and English, and this will need to be signed before a notary public in your home country and then provided with the “Hague Apostille” at the Foreign and Commonwealth Office in London. Some notaries will take care of this process too. More information on the procedure can be obtained from their website: www.fcogov.uk

DECIDING ON A PROPERTY

Once you have decided on a property, you will need to pay over an initial deposit/reservation fee to ensure that the property is taken off the market. The fee may be placed with the real estate agency or with your lawyer. A corresponding “offer and reservation document” should be signed on making the payment, indicating the basic terms of the purchase, i.e. the price, details of the vendor and buyer, details of the property, and the date by which the “private purchase contract” should be signed.

THE PRIVATE PURCHASE CONTRACT

The private purchase contract will then be signed approximately 10-20 days after payment of the initial deposit/reservation fee, and once due diligences have been carried out on the property. Normally a 10% deposit would be paid; however, this may vary according to the vendor’s wishes. The contract will stipulate all the terms and conditions of the sale, including the final date by which the title deeds must be signed and final payment made, and this will then give the buyer time either to obtain a mortgage or get together the money required to complete the balance. Should the buyer fail to complete the sale by the final date, the buyer would lose the deposit. On the other hand, should the seller decide to pull out of the sale, or should the seller find another buyer who offers to pay more, then the original buyer has the right to claim back twice the amount of the deposit.

MORTGAGE

It is important to note that should you consider applying for a mortgage in Spain, this will add approximately another 2% to 3% to the purchase costs. For a non-resident buyer, the mortgage is usually limited to around 70% of the valuation of the property. Once the mortgage is approved by the Spanish bank based on your proof of income, the bank will issue a binding offer which can be compared with other bank's offers.

DUE DILIGENCE

Apart from checking the legalities of the property, your lawyer will also check that all running cost and local tax payments are up to date. This will also enable your lawyer to advise you of the approximate annual running cost of the property. These checks will include:

Utility Bills

Utility bills usually refer to electricity, water, gas and telephone. If you as a buyer are faced with unpaid utility bills from the previous owner, you should be aware that these are in fact personal bills issued by private companies. They are not attached to the property so that only the person who signed the contract with the utility company is liable for them. If left unpaid, the company will cut off the services. However, on payment of a reasonable fee, the utility company will conclude a new contract with you for these services. This fee is exactly the same as the charge for changing the electricity contract into your own name, which you would have to do anyway.

Community Fees

These fees are charged by the community of property owners which is the legal body that controls all the elements of the property held in common. This includes the lifts, gardens, swimming pools, roads, etc. Each owner is assigned a quota or percentage of the expenses which must be paid by law.

Your lawyer will request a copy of the rules and regulations of the community, together with a copy of the minutes of the last AGM so that you can ascertain the current situation with respect to any community issues.

Decisions are taken by majority vote of the owners at each year's AGM and these actions are recorded in an official document that you are entitled to inspect when you become the property owner.

IBI (local rates) and BASURA (refuse collection)

The IBI is the municipal real estate tax and BASURA is the local refuse collection tax. When purchasing the property, your legal representative must check the IBI receipts and BASURA for the last 5 years, since you can be liable for five years of back tax. The IBI tax can be as low as 120 euros or as much as 2,000 euros per annum.

It is recommended to have these local taxes paid automatically from a bank account each year, in order to avoid unnecessary surcharges, and also to benefit from discounts for early payment, which can be as much as 10%.

THE TITLE DEED AND REGISTRATION

The “Escritura Publica” or “Title Deed” is the final document of the sale and is signed between the buyer and vendor when the final balance due on the property is paid. The signing takes place in the presence of a notary public, which makes the document legally binding. The notary public is an official of the state, and his duty is to certify that the contract has been signed, monies paid over, and that the buyer and vendor have been advised of their tax obligations. The notary public keeps the original of the document and the purchaser is issued with a second authorised copy, which is then entered in the property registry (against the payment of the stamp duty or transfer tax). This means that if the buyer loses the buyer’s copy, then the notary public can always issue another copy.

PROPERTY VALUES

When going through the purchase process, you will come across different values which are attached to the property. It may be helpful to understand these different values:

- . • Catastral value
- . • Fiscal value
- . • Valuation value
- . • Market value
- . • Declared value/Sales price

Catastral value

The “catastro” office is the second form of property registration, and deals more with the exact location, physical description and boundaries; unlike the property registry which deals more with ownership and title. The “catastro” office is also the source of the “valor catastral”, which is the assessed value of the property used in calculation of local rates. The figure is normally considerably lower than the real market value. If you are purchasing a new property this will not have been assigned a “valor catastral”, it therefore becomes the buyer’s responsibility to register the property at the “catastro” office for this tax. An existing property should already have its own “valor catastral”. The annual real estate tax IBI, charged by the municipality, will be calculated based on the “valor catastral”.

Fiscal value

This is the value assessed by the tax authorities, and is the minimum value that should be declared on the title deed when a sale takes place.

Valuation value

This is the value assessed by a bank for mortgage approval purposes.

Market value

Depending on the market, a real estate agent or property valuer will give an estimate of a property's current market value.

Declared value/Sales price

The declared value is the sales price of the property. All the costs and taxes are based on the sales price.

2. PURCHASING A NEW PROPERTY – OFF PLAN

Purchasing a property off plan in Spain means you pay in advance for a property not yet built. However, you make great savings in the end. This is because the builder gives very favourable terms to the buyer because the buyer is financing the project and the property will have increased in value when it is eventually finished.

The costs associated with purchasing a new property are slightly different to those for a resale. ITP (transfer tax) is no longer applicable since you are purchasing from a developer, and instead you pay 10% of IVA (VAT) and 1.5% of AJD (stamp duty). Both taxes are based on the purchase price.

The “plusvalia”, as previously mentioned, may be payable by the buyer or the vendor, as agreed in the contract. Other costs are the same as the resale property, i.e. the notary and land registry fees.

It is very important to appoint a legal representative when purchasing “off plan” so that this representative can check that all the necessary licences are in place. The good news is that a new Andalusian decree has been introduced to protect the consumer. Since February 2007, all developers are obliged to supply a complete information package to a prospective buyer. The documents include papers identifying the builder, the planner, the project manager and the developer and any other intermediary involved in the sale. It also includes the floor plans, building specifications, dimensions, delivery date, terms and conditions of the sale, property registration details, and information on the building insurance that protects the buyer should the builder not complete the project.

Spanish law requires that the purchase contract must contain the delivery date with a penalty clause, specifying that the property must be handed over within “x” days of the first occupation licence being issued.

The developer must also provide bank guarantees for the payment made when private purchase contracts are signed and any further payments made during the construction period.

Your lawyer or property consultant will request and check the following:

- . • The construction specifications
- . • The specifications of the materials used
- . • Details of the communal areas
- . • Bank guarantee details
- . • The contract
- . • Whether the developer or purchaser will pay the plusvalia tax
- . • Whether the developer can offer a mortgage
- . • If the 10 year insurance policy covers defects on the property.

The developer is responsible for attending to defects at the moment the property has been handed over:

- . • Up to 1 year for any snagging defects
- . • Up to 3 years for any minor defects
- . • Up to 10 years for any structural defects

3. SELLING YOUR PROPERTY

When you find a buyer for your property, you will first receive a reservation fee, at which time you must take the property off the market. The private purchase contract is then signed within a specified time frame and you will receive a full 10% deposit on signature of the contract. The private purchase contract will stipulate all the terms and conditions of the sale, including the final date by which the balance of the sales price must be paid and title deeds signed before the notary public.

3% TAX RETENTION for a non-resident vendor

Up until January 1, 2007, all buyers of Spanish property from non-resident owners were required to withhold 5% of the total purchase price and pay it to the Spanish tax authorities due to the non-resident seller's capital gains tax liability. The new law has cut this retention to 3%. Non-resident sellers and persons who buy from non-resident owners must remember that they are required to make this retention and declare it to the tax authorities by filing tax form 211. If they do not do this, the tax authorities can charge the retention to the property itself.

As a seller, once the sale has been completed, you will therefore need to file your capital gains tax form 212, indicating the capital gain payable, within 30 days of the sale taking place. Should this amount exceed the 3% deposit, then you will be entitled to a refund of the difference, or alternatively if the capital gains tax is more, you must pay the difference within the 30 days.

CAPITAL GAINS TAX

On November 28, 2006, the Spanish parliament passed law 35/2006, modifying the 2007 regulations, with the outcome that, as of January 1, 2007, a non-resident owner pays 21% of the profit made when selling a Spanish property. The resident owner's capital gains tax has been raised to 21% from 0 to 6,000 euros of gain, 25% from 6,000 euros to 24,000 euros and 27% from 24,000 euros onwards.. The non-resident tax cut comes in response to a ruling from the European Union that the former rate of 35% discriminated against non-resident EU property owners in Spain, while residents were taxed at only 15%. These rates have now been made equal. Since January 2010, the new rate of 21% applies to all sellers, resident and non-resident, even if they are not EU citizens.

Until January 1, 2007, all buyers of Spanish property from non-resident owners were required to withhold 5% of the total purchase price and pay it to the Spanish tax authorities because of the non-resident seller's capital gains tax liability. The new law has cut this retention to 3%. Nonresident sellers and persons who buy from nonresident owners must remember that they are required to make this retention and declare it to the tax authorities. If they do not do so, the tax authorities can charge it to the property itself.

As a vendor, you will need to file capital gains tax form 211 on which the non-resident declares his capital gain or loss when he sells his Spanish property. On this form the non-resident seller applies for a refund, if the deposit of 3% is greater than the tax, or makes an extra payment, if the deposit is less than the tax due.

LONG-TERM OWNERS

Long-term owners are no longer exempt from capital gains tax when they sell their Spanish property. Until 2007, owners who bought before December 31, 1986 were able to apply a reduction factor and had no capital gains tax at all.

This total exemption was cancelled with effect of January 20, 2006. Now the long-term owners are also required to pay this tax. The original reduction is still in force, so they will pay only for the percentage of profits generated after January 20, 2006; however, they must pay something.

The long-term owners applied a reduction factor of 11.11% per year of ownership, i.e. after 10 years, they had no capital gains tax at all. This reduction factor was cancelled in 1996 so that only those who owned their property for 10 years before 1996 had a total exemption. Buyers between 1986 and 1994 had partial reductions. Even when the factor was cancelled, the early buyers retained their right to exemption.

They retain their reductions up to January 20, 2006. After that they face capital gains tax of 21% on the portion of their profits generated after January 20.

All sellers, both resident and non-resident, still have the right to use the inflation correction factor which helps to reduce their taxable profit.

NEW ANDALUSIAN DECREE ON REAL ESTATE

The Andalusian government enacted the Decree 218/05 to support consumers in buying and selling properties. Briefly, the decree imposes the obligation on real estate agents to have one “data sheet” for each property on their books which must include the following data (Article 10) which you as the vendor must make available to the estate agent:

1. 1. Address of the property.
2. 2. General description of the property and of the building or development.
3. 3. Price of the property.
4. 4. Owner, land registry charges or encumbrances, possible rights of way, residential and constructed size, i.e. all of these backed up by a recent (no older than 3 months) land registry “nota simple”.
5. 5. Date of construction, if available.
6. 6. Percentage of the communal elements allocated to the property.
7. 7. Note of the presence of electricity, water, tele- phone or gas supplies.
8. 8. When visiting the property, there is a period of time during which the buyer will be able to process the required paperwork for completion.
9. 9. Declaration as to whether the vendor can or cannot provide the following documentation: copy of by-laws of the community of owners, certificate indicating that there are no debts with the community, available insurances and guarantees, the property book (only provided by developers).
10. Certificate proving that council tax IBI is paid up to date.

Article 12 provides for a mandatory document containing the right of the consumer to be given a copy of the property data sheet in Spanish.

Articles 14 and 15 relate to enforcement of the obligations and to the fines imposed in the event of non-

compliance, ranging from 200 to 5,000 euros (pursuant to articles 71.4 LEY 13/2003, DE 17 DE DICIEMBRE, DE DEFENSA Y PROTECCION DE LOS CONSUMIDORES Y USUARIOS DE ANDALUCIA). Contraventions which are considered “serious” may be subject to higher fines (5,000 to 30,000 euros) if the agent has deliberately or negligently ignored the obligations, repeats the offence (which is therefore considered habitual) or if such non-compliance affects a large portion of the market.

With respect to developers, it must be remembered that failure to guarantee down payments is subject to a fine of 5,001 euros to 30,000 euros, depending on the size and gravity of the offence but fines can be as high as 30,001 to 400,000 euros.

NON-RESIDENT CERTIFICATE

This may be required by the buyer, not by you as the vendor. If the buyer is non-resident and the form of payment is not via a bank cheque which identifies the buyer, as the issuer, and the issuing bank, the buyer must in advance obtain a certificate of non-residence from the Spanish Ministry of the Interior; it can take up to two months for this certificate to be issued.

If payment takes place abroad, by transfer from the buyer’s account in the UK to your account in the UK, this is perfectly legal, but it offers the Spanish tax authorities no control over the transaction for documentation purposes. The tax authorities therefore require the certificate with full details of the buyer and vendor and their respective banks outside Spain.

If the buyer pays through a Spanish bank, a certificate of conversion of the respective currency into euros for the property purchase will have been issued, and the transaction will have Spanish documentation. If the sale takes place in pounds sterling or in any other currency outside Spain, this is also perfectly legal and acceptable as long as the cheque is presented when the deal is completed before the Spanish notary.

INCOME TAX DECLARATION

As a non-resident vendor you will normally be requested to submit the form 210 in which you have declared and paid property owner’s income tax as well as the Spanish wealth tax each year. The buyer may also ask to see the form 210 in which the imputed income tax has been declared. If your annual non-resident tax declarations are not up to date, these taxes may be deducted from the 3% retention amount by the tax authorities.

TAXES AND FEES

As the vendor, the only tax that you may be liable for is the local “plusvalia” tax. However, you can negotiate for this tax to be paid by the buyer. All other costs related to the sale, for example the transfer tax ITP, notary fees and land registry fees are payable by the buyer.

Other costs, however, may include legal fees and estate agent’s fees.

4.ANNUAL PROPERTY AND INCOME TAXES

PROPERTY TAXES

All property owners in Spain are liable to pay three separate taxes every year.

These taxes are:

- Property owner's imputed income tax
- Wealth tax
- Annual real estate tax (IBI)

Property Owner's Imputed Income Tax

Spanish property owner's imputed income tax is not charged on a resident owner's principle residence; however, a second home would be taxed. In the case of a non-resident, since this property will not be considered to be the principle residence, the tax must be paid on a yearly basis.

The tax payable is 2% of the rateable value of the property attributed to the property owner as a fictitious income on rental. This is reduced to 1.1% if the rateable value has been raised since 1994 – and many of the values have been raised. Residents pay tax on this notional income by having it added to their other income as if it were more earnings. Lower incomes pay 15% tax and higher incomes 30% or even 40%. A non-resident is always taxed at the flat rate of 24% on any income arising in Spain.

This tax of 24% on income must not be confused with the capital gains tax of 21% which applies to profits from the sale of assets, such as a house or shares in a company.

Wealth Tax

The wealth tax will now only affect properties with a property purchase price higher than 700,000 euros.

Annual Real Estate Tax (IBI)

This tax is based on the "valor catastral" and can vary widely from town to town for the same type of property because it is a municipal tax. This real estate tax is called the IBI, the "Impuesto sobre Bienes Inmuebles". The tax is increased every year in line with inflation. For a non-resident, the best solution is to have the tax paid by standing order from a bank account. The bank will provide a form which authorises them to pay the tax, and a copy of the form is deposited with the local council. This ensures that taxes are paid when they are due, just as with the other utility bills of your property. In addition to the assessed value of your property ("valor catastral"), the IBI also lists your referencia catastral number, which will identify your property at the "catastro" office together with its officially documented size. This can be important in buying and selling property because sometimes the physical description does not agree with the description given in the property title.

These three taxes cannot be avoided as the Spanish tax agency, "Hacienda", will audit the books at the time of the property sale. They will be holding your deposit of 3% of your total sale price, which is a guarantee against your imputed income tax and wealth tax obligations for the previous four years, as well as against your capital gains tax liability. You will also be required to present the current real estate tax receipt, the IBI, when you sign

the sale contract.

SPECIAL TAX ON OFFSHORE COMPANIES (3%)

There are thousands of offshore tax havens used for the sole purpose of owning a property in Spain. Tax exempt companies formed in Gibraltar to own Spanish property are no longer recognised since the end of 2010.

The strict controls on tax havens and money laundering have made these changes necessary.

There is a new form of non-resident company that offers many of the same advantages. The special tax on properties owned by offshore companies is 3% of the “valor catastral”. For companies registered in Gibraltar or other tax havens there are no exemptions.

NON-RESIDENT RENTAL TAX

It is legal and acceptable for you, as either a resident or non-resident property owner in Spain, to rent out your property. However you must remember that you must declare your rental income to the tax authorities. You are actually required to declare the income within 30 days of receiving it, but can instead apply to make quarterly tax declarations in order to save paperwork.

It is true that almost all owners who let their properties do not declare this income to the Spanish tax authorities and the chances of getting caught are slim. Nonetheless, Spanish income tax is due on any profits arising in Spain.

If you are non-resident, you are liable to pay 24,75% from the very first euro of rental income. You cannot take advantage of the reduction of 50% for resident landlords.

If you are a resident, you should include your rental income with your other income when you make your annual Spanish income tax declaration.

If you register your property as a tourist letting operation, you can charge the maintenance expenses of your property as a business expense and offset it against tax.

BUSINESS INCOME

If you are a non-resident, but own and operate a business in Spain, such as a restaurant, or a bar etc., you are also liable for Spanish tax on your profits.

YOUR FISCAL REPRESENTATIVE

The non-resident property owner of only one property is no longer required by Spanish law to appoint a fiscal representative who is resident in Spain. Owners of two or more properties, however, must do so – under penalty of fines that can go as high as 5,000 euros in the event of noncompliance.

The fiscal representative guarantees to the Spanish tax authorities that they have a reliable contact inside Spain for the non-resident tax payer. Most non-residents appoint their tax consultant or legal representative as their fiscal representative.

NON-RESIDENT'S FISCAL IDENTIFICATION NUMBER (NIE)

If you are a non-resident property owner, you must pay the above-mentioned taxes and may have to name a fiscal representative. In order to pay these taxes, you must apply for a NIE (Numero de Identificacion de Extranjero), which is your Spanish tax identification number. Non-Spanish residents of all nationalities also have such a number.

You should apply for this number when you purchase your property. The number identifies you to the Spanish authorities and is required when you pay taxes or have any dealings with "Hacienda". To obtain it, you need to make an application at the nearest police station, or "comisaria", which has a foreigner's department and to submit a photocopy of the relevant pages of your passport. If you are an EU citizen coming to live in Spain, you will be assigned your NIE number when you obtain your new certificate of registration which has replaced the residence card.

Alternatively, you can appoint a legal representative to apply for it on your behalf by means of a power of attorney.

Residents in Spain must declare overseas assets

Since February 2013, all residents in Spain must declare their overseas assets worth more than 50,000 euros. Severe fines will be awarded for failure to comply with the new law. Tax residents have until 30 April to present their declaration for 2013 and 30th of March of the following years.

The new legislation regarding the disclosure of overseas assets by all fiscal residents and businesses in Spain has now fully come into force (since 1 February) and declarations, made by filling out Model 720.

5. TAX ADVANTAGES FOR RESIDENTS

Foreigners sometimes believe that taking out an official residence permit in Spain will cost more money and expose them to Spanish taxes which non-residents can avoid. The reverse is actually true. The resident property owner has a number of tax advantages over the non-resident.

EXEMPTION FROM CAPITAL GAINS TAX

(Under the following circumstances)

Residents over 65

An official resident of Spain aged 65 or more who has lived in a principal residence for three years is not subject to CGT when selling the residence. If you are 65 or over and hold a Spanish residence permit or the EU certificate of registration, you can buy a principal residence this year, live in for three years and sell it on with no capital gains tax to pay.

Residents reinvesting profits in a new home

An official resident of Spain who reinvests all the proceeds of a house sale in the purchase of another Spanish residence as a principal residence will have complete relief from CGT. If a portion of the total amount of the house sale is used, a percentage of relief up to the amount invested will be granted. However, the seller must have lived in the home for three years to qualify.

Holders of usufruct

These are people who have the right to live in a property until their death. A person of 65 or older who has a contract with a company to sell a principal residence in exchange for a lifetime right to inhabit the property and a monthly stipend will not be subject to tax. This makes such deals to turn home ownership into lifetime income more attractive for older persons of modest means. The right to inhabit the property is called “usufructo”.

3% RETENTION NOT APPLICABLE

If you are a resident and you sell your property, you are not subject to having 3% of the total purchase price withheld and deposited with Spain's tax authorities as a guarantee against your capital gains tax liability. Also, any tax payable on the sale will not be due until the following year. A non-resident must however declare and pay within 30 days.

INHERITANCE TAX

From 2018 the inheritance tax rules in Andalucía will undergo radical changes as the new regulation on inheritance and gift tax comes into force. The new rules will, effectively, exempt many estates from Spanish inheritance tax as well as meaning that, in certain circumstances, gifts from parents to children are not taxable.

The new regulation will mean that the vast majority of estates in Andalucía, including those of British citizens with assets in Spain, will be exempt from inheritance tax in Spain. The new inheritance regulation in Andalucía will mean that those beneficiaries included in Groups I and II, that is, spouses, children, grandchildren and parents of the deceased, will benefit from a nil rate band of €1,000,000.

Gifts between parents and children of up to €1,000,000 will also go untaxed provided certain criteria is met (gift for the purpose of job creation or to set up a company). Exact details to be specified by further regulation.

ANNUAL IMPUTED INCOME TAX NOT APPLICABLE

Spanish property owner's imputed income tax does not apply to the owner's principal residence. A resident of Spain also has an exemption, which ended in 2007, on the first 108,000 euros of valuation for Spanish capital assets tax.

UNLIMITED STAY

If you actually live most of the year in Spain as a non-resident, then you are breaking the law as it says that your tourist stay, even as a European Union citizen, is limited to 180 days per year. You can be fined 300 euros if you over-stay this limit.

RESIDENT PAYS CAPITAL GAINS TAX AS INCOME TAX

A resident pays CGT as part of income tax, so if you sell in 2012, you do not declare the tax until May of 2013 when you file for Spanish income tax. In Spanish, the capital gains is called "incremento de patrimonio". Until 2007, the resident had his capital gain taxed at a maximum rate of 15%. Under the new law, this is 19%, i.e. just under 20,000 euros on a profit of 108,000 euros.

RESIDENCE PERMITS

The Spanish Royal Decree 240/2007 went into force in 2007 ending the need for EU citizens to obtain a residence card in Spain. EU citizens are now issued with a certificate of registration which also contains the EU citizen's NIE number. Only citizens of the EU are entitled to this certificate (including the European Economic Area and Switzerland). All other nationals must apply for cards as before and this also applies to non-EU family members of an EU citizen.

6. REGISTRATION AT YOUR TOWN HALL

The “Padrón” is the list of all the people who live in a certain town. “Empadronarse” is the act of registering yourself on this list at your local Town Hall.

Who should be registered?

Officially all residents in Spain are required by law to register on the padrón, yet many still have not done so. The “Padrón” is the way the Town Hall knows how many people live in their area without having to make any investigations as to a person’s official residence status or financial affairs.

The information provided at registration is confidential and protected by data protection laws and will not be provided to any other official or private entity.

What are the benefits?

Better public services

The Central Government allocates money to the different municipalities according to how many people are on the “Padrón”. Therefore, if you are not registered, your Town Hall is losing money for the provision of health centres, doctors, police officers, firefighters and schools.

Access to benefits and social care

You must be on the “Padrón” for a certain period of time to take advantage of some income-related benefits and other aspects of social care available through social services at your Town Hall. Those on the “Padrón” can enjoy discounted courses, leisure and cultural activities run by the Town Hall.

Voting rights

In order to register for local or European elections, you must first be registered on the “Padrón”, as this is where the Census Office in Malaga collects the data when preparing the electoral roll. When you register, you should also ask for the form to register for the vote in these elections.

Day-to-day life

Because this document is your official proof of address, you will need your “Padrón” certificate to carry out almost any administrative task such as registering for healthcare, registering your car with Spanish number plates or any procedure carried out at the Traffic Headquarters, enrolling your children in Spanish schools, etc.

What Documents are necessary to register?

1. 1. Original passport and photocopy/NIE or Certificate of Registration with the National Police Foreign Office and photocopy
2. 2. Proof of ownership of property (either your title deeds or a rates receipt in your name and a photocopy).
3. 3. If you do not own a property and are renting, your rental contract in Spanish and photocopy will be necessary.
4. 4. If you do not own a property and you are not renting, you have to come with the owner of the dwelling in order for him to sign the registration form, authorising you to register at his property.
5. All family members over the age of 18, have to sign the registration form.

This certificate is valid for three months but can be issued again upon request.

Does it need to be renewed?

The Town Hall will send you a notification at the address on the “Padrón” if and when renewal becomes necessary.

7.SPANISH WILLS & INHERITANCE TAX

SHOULD I HAVE A SPANISH WILL?

If a non-resident dies in Spain, without a will, the estate in Spain will be distributed according to the Spanish laws of inheritance.

Let us take as an example a man who dies leaving 3 children and a spouse. The only property is the house they are living in. If the widow's name is in the title as half-owner, she continues to own half the house. The other half of the house constitutes the estate which is divided equally between the 3 children. When the estate is settled, each child will own one third of the title in half of the house, i.e. each of them owns one sixth of the house, and the title deed has four names on it (the widow and each of the three children). The widow is, however, entitled to hold a usufruct (lifetime use) of the children's share. This means she can stay in the property until she dies.

However, all parties must then agree and sign the deeds if the house is to be sold. It is this provision of inheritance law that causes the situation frequently seen in the Spanish countryside and villages where six brothers are part-owners of a finca.

Dying without a will can give rise to time-consuming and expensive legal procedures for your heirs, so if you really want to look after them and if you have definite ideas about how you want your estate to be apportioned, you should make a Spanish will. It is a simple procedure and you will feel more secure.

All the tax rates and exemptions refer to national inheritance law, and apply to almost all non-residents. Residents will find regional differences.

SPANISH WILL

There are four points to consider:

1. 1. You should make a Spanish will which disposes of your Spanish property in order to avoid time-consuming and expensive legal problems for your heirs. Make a separate will to dispose of assets located outside Spain.
2. 2. As a foreigner, Spanish law does not require you to be subject to the Spanish law on the statutory division among the heirs according to which you must leave two-thirds of your estate to your children. Most foreigners enjoy free disposition of their estate so that you can bequeath your Spanish property to any person of your choice as long as your own national law allows this. Your estate will, however, be subject to Spanish inheritance tax, which can be high when property is left by a non-resident to non-relatives. The law also states that any foreigner officially resident in Spain is subject to Spanish inheritance tax on his worldwide estate. However, in practice the authorities will not ask the testator if he or she is an official resident or not. The only requirement enforced by Spain is the payment of the inheritance tax on the property or assets held in Spain.
1. 3. There are a few ways around the inheritance tax and these legal ways require advance planning. Spanish law does not allow any large exemption from inheritance tax, as many other countries do where the family home is concerned. Tax is payable after the first 16,000 euros for each beneficiary.
2. 4. If you are an official resident of Spain leaving your property to a spouse or child who is also resident, you may be eligible for a 95% reduction in the value of the property for inheritance tax calculation.

This is not available to non residents, and the reduction applies to the first 120,000 euros.

FAMILY TRUST

Amongst the perfect legal possibilities is the formation of a family corporation or “trust”, in which the family’s assets pass into the hands of the company, with each family member becoming a director of the company. So when one member of the company dies, it involves only a reorganisation of the board of directors and a transfer of some of the company shares, thus ensuring very little tax.

However, in Spain, trust documents do not exist under Spanish law, so instead a Spanish company is used.

EQUITY RELEASE, REVERSE MORTGAGE

A wide variety of plans are now available from Spanish lenders. You may borrow half the value of the property and pay back nothing until the property is sold or you die, at which time the full amount plus interest becomes due. Your heirs can repay the loan and take possession of the property or sell the property and repay the loan, dividing up whatever is left over. As the loan is a charge against the property, the inheritance tax is greatly reduced.

OFFSHORE COMPANY

For non-Spaniards, the constitution of a Gibraltar-based company or other offshore operation in order to own real property in Spain has been another way to avoid Spanish inheritance taxes. When the founder of the company dies, he leaves his shares in the company to whomever he chooses, in a will made outside Spain. As far as the Spanish authorities are concerned, the same company continues to own the property and no transfer has taken place, hence there is no tax or any other costs to pay.

FOUR YEAR LIMIT

The statute of limitations on inheritance tax runs out after four years. The state cannot collect the tax once four years have elapsed. At the end of this time the beneficiary opens the will and applies to register the property, free of any inheritance tax, in his name. Spanish law requires that an inheritance be declared within six months of the death. If not you can be subject to a surcharge of 35% on the tax due. This period of six months is included in the statute of limitations, so in reality four years and six months is the period for prescription.

POWER OF ATTORNEY

Many foreigners have been confused by the reference in English to an “enduring power of attorney”. This POA does not mean that it endures beyond the death of the person who grants it. A POA dies with its maker, in Spain and in the UK. The “enduring” only means that it has no other fixed date of expiry.

8.SPANISH BANK ACCOUNTS

The accounts of residents and non-residents differ in that different regulations apply to money transfers for the resident and the non-resident. The main difference is that Spanish withholding tax of 21% is not withheld from the non-resident account.

If you are a resident, 21% of your interest earnings will be withheld and paid to the Spanish tax authorities in your name, just as for Spaniards.

If you are a non-resident, no tax will be withheld, but you will be liable for tax in your country of residence.

Any bank transaction of more than 1,000 euros requires the payor and the payee of the amount to be identified.

Some banks charge more than 4% when transferring money out of Spain. Other banks charge fees of around 21 euros per 6,000 euros of transfer so make sure you discuss the conditions which apply to your bank account at the time you open it.

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