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## **GENERAL FACTS FOR NON RESIDENTS CONSIDERING THE PURCHASE OF REAL ESTATE**

If a non Spanish resident has the intention of buying a property in Spain, more specifically in Mallorca the steps to consider in a simple informative way, so that you have a general idea about your investment and possible economic implications such as the following:

### **1. Choosing of the property**

On this point, we would always advise you to go to a real estate group or a strongly established Estate Agency in Mallorca, (like Engel & Völkers for example) and this way, you will be able to find the type of property you are looking for, in the desired location.

### **2. Private purchase/Sale contract or Option to purchase contract**

Once the property is chosen, we would advise you that apart from the advice that the Real Estate Agency can give you, that you also contact a lawyer who specialises in Real Estate, so that you have all the legal and fiscal security necessary that the investment requires, and to be completely reassured of acquiring the real estate without any last minute problems.

Before drawing up any contract, the Agency/Lawyer will obtain a copy of the sellers deeds; and the Property Register Information, which will effectively confirm that the seller is the actual owner of the property, and that, the property, is free of any charges and taxes (mortgages, embargos....etc); and duly registered in the land Property Register, and to obtain a copy of the last I:B:I – Impuesto Bienes Inmuebles receipt (Yearly Property Tax)... and take care of all the necessary information to reassure a good end to the contract of sale.

The property can be legally acquired in the following way;

#### **2.1. By means of a private contract of sale and purchase.**

With this contract the property is transferred. This contract is governed by the goodwill of both parties and in principle can only be resolved by a judge.

#### **2.2. By means of an Option Contract**

For this type of contract, which is also governed by the goodwill of both parties, the future buyer generally hands over 10% of the agreed price as a non-refundable deposit and in this way reserves the property, until the end of the period agreed for the option. The seller is bound by the contents of the contract, and legally cannot sell the property until after the end of the option period.

Generally the option period can vary between 1 and 3 months, although it can be longer. The length of time would be fixed and agreed upon by both parties, and if it is a longer period, the down payment would usually be 20% instead of 10%.

This is the type of contract that is generally used. So that it allows the buyer to have time to arrange his financial affairs (application for mortgages.....etc), and for the seller to have a potential buyer.



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With this type of contract, when the option period has expired and if the (**buyer**) does not exercise his right, and therefore, doesn't buy, he automatically loses the 10%-deposit (or the amount that was handed over) in concept of the option price and the seller retains it as compensation for damages incurred; If on the contrary, it is the **seller**, who does not adhere to the sale (for example, if in the meantime he has received a higher offer) then, he would be legally bound to return the 10% deposit to the option buyer (or, whatever amount was handed over) including an extra amount to the same value that was handed over (this means, that double the quantity of the option contract would have to be paid to the buyer so that he would be satisfied in concept of the option price).

Generally, the price of the option is (10%) it is usually deposited into the "clients holding account" of the Real Estate Agency, or into the account of the client's lawyers which has to be agreed by both parties.

Obviously, if the sale takes place later, the amount handed over as the option contract fee will be deducted from the agreed final price.

### **3. Register of the property. Granting of the public deeds of sale**

In Spain, it is fundamental to register the title of the real estate in the Property Register, since this is public, and from the moment of its registration, it is legal before any third party. This fact is of great importance, because, if we don't register our property in the Register, embargos could occur or there could be other charges for the said property, if the property is still in the previous sellers name, the buyer could later find himself deprived of his real estate, if it has been left with the debts of the seller (without damages from previous legal action which could be subsequently protected).

The Property Register can only accept notary documents or Judicial Resolutions. Therefore, it is fundamental to grant the corresponding deeds of sale in the Notary, as this is the most official part of the buying and selling procedure.

Generally, the lawyers of all parties, in collaboration with the Real Estate Agency, make all the preparations to formalize the deed of sale. Besides the necessary information to prepare the deeds (e.g. description of the property...etc), the buyer's lawyer should request from the seller the last receipt of payment of the I.B.I. (Yearly Property Tax Payment), which will be incorporated into the deeds, along with, should the property form part of a building that is subject to Horizontal Property regulations, a certificate must be obtained from the administrator of the Community of Property Owners stating that the property is up-to-date with the Community payments This certificate will also be incorporated into the deeds. In this way, the buyer is totally reassured that these two very important concepts are met with satisfaction.

On the agreed day all parties are to appear before the Notary, who will testify the purchase/sale, formalizing the corresponding public deeds (title of the property). It is very practical, especially for non residents, that the buyer and the seller, in the event that they are not on the island very often, grant a **power of attorney** to their lawyer so that he may attend, in their name and representation, the act of the signing in front of the Notary. This way it avoids any unnecessary journeys. The presence of the Real Estate secures accurate translation of the documents which are in Spanish.

The Public Deed of Sale may also be signed by a representative who has been orally appointed by the buyer who is unable to be physically present at the signing of the deed. However, in this

case, in order to subsequently register the purchase as soon as possible in the Land Registry, the absent buyer must ratify the purchase made in his/her name before a notary.

The deeds contain the personal details of the buyer and the seller, the description of the real estate, registration details, the price, form of payment, and all other terms and conditions that are considered necessary for all parties.

During the act of the signing of the deeds, the Notary reads the deeds, the parties approve the contents, the price is paid that was pending (incase this has not already been completed abroad) and the deeds are signed by both parties.

From 30th November 2006, documents justifying any advance payments made towards the purchase price must be provided upon signing the public deed of sale, to be included in the same.

It is advisable if the buyers lawyer or the Estate Agency requests the most recent receipts of payment of (for example, electricity, telephone, gas....) from the seller, since they are necessary to be able to make the corresponding ownership change; Also with the intention of avoiding any unpaid bills, we advise that the new owner pays any bills through his own bank account, the Estate Agency or their lawyer usually takes care of these administrative duties.

#### **4. Procedure of the purchasing of the deeds up to their inscription in the Property Register. Payment of taxes**

Generally, the inherent expenses to a purchase are the following;

- **Value Added Tax:** In Spain, if the seller is a property developer the sale is subject to Value Added Tax. With regard to the sale of new dwellings, 7% of the purchase price is applied, and for plots of land and premises the applicable rate is 16% of the purchase price. Upon signing the contract of sale (or the option to buy contract), the amount of V.A.T. is stipulated in said contract, which the seller charges and subsequently pays to the Tax Office.  
If this tax does not apply or if the seller is not a property developer (it is a private sale), then the sale (of the dwelling, plot of land or premises) shall be subject to the corresponding Property Transfer Tax.
- **Notary Fees:** These will be according to the price of the property, and will be applied according to the previously established tariffs.
- **Real Estate Tax:** At the moment the tax is 7% on the price of the public deeds. It should be paid in the Consellería of Hacienda of the Balearic Govern in one month from the day following the signing of the deeds, by means of the Model 600.
- **Stamp Duty:** If the V.A.T. is paid in accordance with the provisions of the previous section on V.A.T., the buyer must also pay the Stamp Duty, which is currently 1% of the purchase price.
- **Municipal tax on the Increase of the Value of the Land of Urban Nature (known as Plus Valía):** As its own name indicates, it is a tax that is paid at the council level, this means to say, in the Town Hall where the object of sale is located. This tax is levied on the increase in the value of the land. It is calculated by considering the number of years that pass between the date on which the seller acquired the property and the date of the current transfer. The basis for calculating said tax is the land value that appears on the local Property Tax bill, and each town hall subsequently applies its own set of percentages.



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In accordance with current legislation, the seller is responsible for paying this tax however, on occasions, it is paid by the buyer (this is common in Majorca).

- **Fees for the Registration of the Property:** The Registration of the Property charges some fees for the inscription of the deed of sale, fees that can vary in value depending on the price of the property.
- **Lawyers Fees;** It is common practice (as a general rule, although it is not binding) that the law firms that dedicate to real estate transactions charge between 0,5% and 1,5% calculated on the real price paid for the property. However, as there is no fixed rule, this scale can vary, and it will depend on the individual policy of each law firm, to reduce the said percentage, generally, when it concerns a sale of significant importance, or for specially recommended clients.

In short, these are the expenses which the buyer will encounter, to be paid personally, for Real Estate in Mallorca. Generally the clients' lawyer – or admin/accountants – will take care of all these details, until the effective registration of the deeds of sale in the Property Register, unless they have requested a mortgage, in which case it would be the Banks admin/accountant that would transmit the deeds. The normal time for this procedure, from the signing of the deeds up to the registration in the Property Register is usually 1 to 2 months maximum.

### 5. Taxes and yearly charges for the ownership of the Real Estate

We have already seen the steps and payments required in order to buy a real estate.

The non resident owner will also have to pay three types of annual taxes. Just to keep you informed, the said taxes are as follows;

**a) Real Estate Tax:** This is a council tax (from the Town-Hall where the real estate is located). This is paid by everybody, residents and non residents. It is calculated on the basis of the value that the Town-Hall grants the real estate (property value), and every Town Hall applies their own rate.

The term to make the payment varies in each town, so for example in Calvia it is in July, and in Andratx it is in October, approximately. We advise that you make this tax payment through a bank account, this will ensure that it is paid within the fixed time, and will avoid any surcharges.

**b) Income tax for Non Residents** When the real estate is the property of a couple or of various people, each one is classified as an independent taxpayer, therefore they should each present separate tax declarations. The difference from the previous tax is that Hacienda does not send out any invoice, so therefore it is not possible to pay it direct through a bank account within a specific time limit.

Depending on the location of the Real Estate, the incomes subjected to taxation are:

1. Interest charges to urban properties of PERSONAL USE: the amount to declare can be calculated by applying 1.1% to the property value that appears on the receipt of the Real Estate Tax (I.B.I), if this value was revised before January the 1st 1994 ( this is what usually happens in the majority of cases); Otherwise 2% should be applied.

Based on this amount a tax rate of 25% should be applied, which will give us the final amount to be paid.



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2. Income obtained on RENTED Properties: the amount to declare is the total sum that the tenant is charged, without deducting any expenses. The said quantity is taxed with 25%. There are various models of declaration (Model 210 and Model 210 and Model 215), with their own special features, whether they are ordinary declarations or collective.

**c) Taxation on the Assets of Non Residents** Just the same as in the previous case, when the property belongs to a couple or various people, each one will carry out their own tax declaration, for their corresponding share. The non residents should make their declaration of this tax of their assets situated on Spanish territory of which they are the owners on the 31st of December of each year, whatever the value is. In this case, the Tax Office also does not send out any bill, therefore it is not possible to pay it direct through a bank account within a specific time limit.

For the purposes of calculating this tax, the value of the real estate is taken from the highest of the following values: the property value, the value checked by the administration for other taxes, the value declared on the deeds of sale. From the highest of these amounts the charges or the taxes should be deducted that affect the real estate, for example like debts for money invested in the same (mortgages).

Finally, to the remaining quantity a tax rate should be applied which gradually corresponds, and which fluctuates between 0, 2% up to 2, 5% maximum.

\*In the event of having a single property, you could settle jointly the Income Tax and the Tax on assets with a simplified declaration of the Model 214.

We will now see, in general, what happens when the non resident wants to sell his property, and the form of taxation.

## **6. Earnings derived from the sale of Real Estate in Spain**

In general, the profit will be determined by the difference between the purchase and transfer values.

The purchase price will be calculated by taking as a basis the real price for which the property, object of the transfer was acquired, to which will be added the total of the expenses and inherent purchase taxes, excluding the interest, which would have been settled by the transferee. Depending on the year of purchase, this value will be corrected by way of applying some updated rates which are established, annually, by the General State Budget Law.

The transfer price will be the amount which appears on the public deeds of sale, from which the total of the expenses and inherent transfer taxes which will have already been settled by the present seller will have to be deducted. (p.e. Estate Agents fees). Furthermore, if the property which is now being transferred was purchased before the 31.12.96, some legally established reductions exist, which can vary depending on how long the property has been owned, according to the aforementioned date.

Nevertheless, if 10 years have passed between the date of purchase of the property and the 31st of December 1996, there exists neither patrimonial gains nor obligation of presenting a declaration. The share that is taxed will be the calculated benefit according to the 18% previously explained.



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## **7. Deduction at source of profits from the sale of a property**

When the seller is a physical or a legal entity non resident in Spain, the buyer, irrespective of whether he is resident or not, **must deduct 3%** of the price which is included in the public deeds of sale, and deposit it, within a month ( from the date of said deeds) in the Tax Office.

This deduction has for the seller character of a down payment on account of the taxes which he could be due to pay on the profit obtained by the sale of the property. Therefore, the buyer will subsequently hand over, to the seller, model 211 which proves that he has paid the 3% to the tax office, so that the seller can then deduct said quantity from the amount which he could be liable to pay for the profit obtained from the sale of the property.

If the quantity retained and deposited in the tax office (3%) is more than the amount that should be deposited by way of the profit obtained through the sale of the property, there exists the possibility to request a refund for any excess deducted.

## **8. Acquisition of property by a public or private limited company.**

In the previous sections we have explained, in broad terms, the procedure to follow for non-Spanish residents buying property in Spain and the corresponding tax implications. The non-resident may also wish to set up a Spanish public or private limited company which would subsequently purchase the property in question.

A company must be incorporated by means of a public deed executed by a Notary. The first step that is necessary is to obtain a name from the Spanish Central Mercantile Registry. This must be a company name that is not already in use or similar to an existing company name in all of Spain.

Incorporating a company implicitly involves a series of costs; Notary fees, tax (1% of the share capital), Mercantile Registry costs and Solicitor's fees.

To avoid problems with the Public Tax Administration and subsequent inspections, the company share capital should at least be equal to the purchase price of the property, plus acquisition costs, since otherwise the company would not be able to justify its investment. Mortgages or other types of loans (with regard to the latter, it is advisable that said loans be documented by a notary) may also be used to justify the outlay made by the company in order to buy the property.

Upon incorporating and registering the company, if the company acquires a property it must follow the same steps and pay the same taxes that we analysed earlier regarding the acquisition of property by non-residents.

## **9. Some important concepts**

Before closing this report, it may be interesting for the reader to have some brief information of the following concepts that are very useful in the field of purchasing a property.

- **Fiscal Identification Number (N.I.F.);** In Spain each person (if he is resident or not) is assigned a Tax Identification number that he must provide during tax declarations and in any communication concerning the Tax System. The same happens with any type of company.



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In general, in reference to people of Spanish Nationality, the N.I.F coincides with their National Identification Document (D.N.I); and in reference to people with foreign nationality, the NIF is the Foreigners Identification Number (NIE). Nowadays the obtaining of the NIE is very long and tedious (it takes between 3 or 4 weeks) and the first thing we advise is that, once the contract of sale or option is signed, you should go to the Notary in order to make a certified copy of the buyer or buyers passport, an essential requirement in order to be able to request later the corresponding N.I.E. and whenever there is a finance involved a N.I.E. is needed before the notarial date.

- **Regular Resident in Spain;** Legally you are considered a regular resident in Spain when you have stayed longer than 183 days in a year on Spanish territory or the base of your activities or economic interests, in a direct or indirect way.
- **Last Will and Testament:** It is very advisable that a non resident who has purchased a property in Spain should acquire a last will and testament in the Notary with regard to their real estate in Spain. It is a fairly simple procedure, and solves many problems, above all bureaucratic, in the event of the death of the owners.

Palma de Mallorca, May 2007

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