

BRIEF DESCRIPTION OF THE LEGAL STEPS TO BUYING A PROPERTY IN COSTA DEL SOL

This guide offers a brief explanation of the most important legal & tax aspects of buying a property in the south of Spain (Andalucia):

- the due diligence that should be carried out on the property before signing the purchase deed;
- taxes and costs involved in the purchase, and
- the yearly maintenance costs and taxes thereafter, once the property has been bought.

If you are a non-resident buyer of a property in Spain, the first thing you should do is to apply for a NIE number (Spanish identification number for foreigners), as this is mandatory when you purchase any property, to be able to have access to the land registry. You will need to apply and obtain the NIE number personally in the police station in Spain, in the Spanish Consulate in your country, or you can grant a power of attorney in front of a notary public to your law firm so they can apply for this on your behalf.

Once you have agreed on a deal to buy a property, price and other conditions –always subject to contract, and to verification of good standing- your lawyer will contact that of the vendor, requesting the legal documents to the property (title deeds, property tax, utility bills, licenses, etc.). It is important to check the title deeds of the vendor to confirm, amongst other things, ownership, charges, and that the property is accurately described. We sometimes find out that the reality of the property does not correspond to the registered details, and also with the cadaster (tax office) details, especially with older detached houses or plots. Your lawyer will also check any registered debts, charges, liens and encumbrances in the land registry, and the situation of the property with respect to property tax and community fees, and any other running expenses: water, electricity supply, etc.

Your lawyer should also check in the town hall the planning regulations that apply to the property, assuring that all building and habitation licenses are in place. It is important to check that the property abides to the planning law, as well as any possible extensions or amendments to the buildings.

Once these checks have been satisfactorily carried out, the price has been agreed, and the terms of payment as well, a private contract should be signed with the vendor, and a deposit paid. The amount paid upon signing a private purchase contract is normally 10% of the price. There are different types of private contracts:

- option to purchase contract, where the seller is obliged to sell and the buyer opts to buy, but is not obliged to buy, although he will lose the deposit paid in case he decides not to proceed;
- private purchase contract, which ties both parties, and the seller can oblige the buyer to complete the purchase;
- private purchase contract, where the deposit paid is considered as “*arras penitenciales*”, which means that if the buyer pulls out he loses the deposit and if the seller pulls out (which he can, unlike with the previous contracts), he has to reimburse the buyer with double the deposit paid.

It is important that this private contract includes all necessary provisions to preserve all the buyers' rights. The contract normally provides for a term between one to three months for completion and signing of the public purchase deed in front of a Notary Public, when the balance of the purchase is paid and the vacant possession of the unencumbered property is granted.



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The buyer should open a bank account in Spain, where he will send the funds for the purchase price and expenses. Unlike other countries in Europe, in Spain normally the purchase price is paid directly to the seller, in form of a bankers' draft from your non-resident Spanish bank account. It is not normal to use escrow accounts or accounts of the solicitors or notaries. The funds for the payment of the taxes and expenses of the purchase can be sent to your lawyer clients' account, who will take care of these payments after completion of the purchase.

In order to get registration of the public purchase deed, first all relevant tax forms must be completed and paid into the Spanish Tax Authorities.

The final step will be to change the utility contracts for services and supplies of the property to the buyers name (electricity, water, etc.), as well as the property tax, setting up direct debits of all payments into your Spanish bank account.

Tax implications and costs on purchasing a property

Transfer tax. In Andalucía, transfer tax is a graduating scale from 8% to 10%, depending on the purchase price:

- 8% tax is paid for the first 400.000 €;
- 9% is paid from 400.000 – 700.000 €;
- 10% is paid for the price above 700.000 €.

A special percentage is calculated for garages.

VAT + Stamp duty. VAT is 10% and stamp duty is 1,5%. This applies only to villas - apartments, or garage/s annexed to an apartment, where the vendor is a developer, in the acquisition of newly developed properties. If VAT applies, then transfer tax does not apply.

In the case of purchasing a plot of land to build a house, the tax to be paid is normally 21% VAT, plus 1,5% stamp duty, with certain exceptions.

The minimum tax value for properties purchased in Marbella in 2015 is equal to the cadastral value multiplied by 1,25 (this varies in each municipality). This figure is the minimum value the tax office deems it is worth. The tax office can appraise the purchase price of the property if it is under the tax value.

Example: the cadastral value of the property is 100.000 euros. To calculate the tax value you multiply by 1,25 (coefficient for Marbella in 2015), which gives a tax value of 125.000 euros. If you are buying for less than 125.000 euros, you will most probably get a tax rebate, requesting the extra tax, plus interest. This obviously can be challenged by your lawyer, in case there are sufficient grounds for it.

Notary and land registry fees. This should be approximately between 2.000-4.000 euros in total. This will depend on the value of the purchase, the number of pages and complexity of the notarial deed.

"Plusvalía municipal" tax. This is a tax paid by the vendor. It is a local tax, based in the increase of the land value. In case the vendor is non-resident in Spain, as the property responds of the payment of this

tax by the vendor, it is advisable for the buyer to withhold it from the purchase price and pay it into the tax office on account of the seller.

3% withholding tax. *This is not a tax or cost for the buyer, but to be taken into account when buying from a non-resident in Spain.* If the vendor is non-resident in Spain, the buyer must withhold 3% of the purchase price, and pay it into the tax office within 30 days, on account of the capital gains tax of the vendor. If the vendor has not made a gain, or a lower gain than the amount withheld, he will have the right to claim the reimbursement to the tax office.

Taxes every year as a non-resident

Personal taxes

As a non-resident in Spain, you will pay **non-resident income tax** in Spain.

This is a presumed (derived) income, paid annually before the end of every year, assuming the property has not been rented, for the assets held in the previous year. It will depend on the number of days it has been held in that year. It is equivalent to 2% -or 1,1%, depending when the cadastral value has been last revised- of the cadastral value, at a rate of 19,5% (19% as from 1st January 2016) for tax residents in the EU, Iceland and Norway. For those who are tax residents outside EU, Iceland and Norway, the tax is 24%.

In case you have rented the property, the tax to be paid will be:

- 19,5% of the net income (19% in 2016), for tax residents in the EU, Iceland and Norway;
- 24% for tax residents outside of EU, Iceland and Norway (these will be taxed on gross income, as they cannot deduct expenses derived from renting the property)

In this case of rented properties, this tax has to be paid at the end of every quarter, before the 20th of the following month (i.e. 20th January, 20th April, 20th July and 20th October).

Wealth Tax. This tax was abolished in 2007, but reinstated temporarily in 2011. This tax applies also to non-residents in Spain, for assets held in Spain as at 31st December each year, and only for those who hold assets above 700.000 euros net per person (below that figure, there is no tax to pay). This tax is supposed to disappear as from 1st January 2016.

Capital gains tax. Non-residents pay 19,5% -down to 19% as from 1st January 2016- capital gains tax on the profit made upon the sale of a property in Spain (deducting those taxes and expenses inherent to the purchase and the sale).

Council tax ("IBI"). It is an annual payment –paid in September-, and it depends in the cadastral value of the property.

Rubbish collection fee. It is a small fee normally paid twice a year, and should not exceed 200 euros in total.

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