



PEREZ
LEGAL GROUP



SPAIN LEGAL BUYING GUIDE

CONTENTS

1. PURCHASING A RESALE PROPERTY IN SPAIN	04
• Costs of purchasing	05
• Appointing a legal representative	06
• Power of attorney	06
• Deciding on a property	06
• The private purchase contract	07
• Mortgage	07
• Due diligence / Legal searches	07
• The title deed and registration	09
• Property values	09
• Complimentary tax	10
2. PURCHASING A NEW PROPERTY – OFF-PLAN	12
3. SELLING YOUR PROPERTY	14
• 3% tax withholding	15
• Capital gains tax	16
• Long-term owners	16
• New Andalusian decree of real estate	17
• Non-resident certificate	18
• Income tax declarations	18
• Taxes and fees	19
• Efficiency energy certificate	19
4. ANNUAL PROPERTY AND INCOME TAXES	20
• Property taxes	21
• Property owner's imputed income tax	21
• Wealth tax	21

• Annual property tax (IBI)	21
• Non-resident rental tax	22
• Your tax & fiscal representative	23
• Non-resident's tax identification number (NIE)	23
• Residents in Spain must declare overseas assets	23
5. TAX ADVANTAGES FOR RESIDENTS	24
• Exemption from capital gains tax	25
• 3% withholding not applicable	26
• 95% reduction in inheritance tax	26
• Resident pays capital gains tax as income tax	27
• Residence permits	27
6. REGISTRATION IN YOUR TOWN HALL (EMPADRONAMIENTO)	28
• Who should be registered?	29
• What are the benefits?	29
• What documents are necessary to register?	30
• Does it need to be renewed?	30
7. SPANISH WILLS & INHERITANCE TAX	31
• Should I have a Spanish will?	31
• Spanish will	32
• Family trust	33
• Power of attorney	33
8. SPANISH BANK ACCOUNTS	34
9. USING AN EXCHANGE RATE COMPANY	36

1 PURCHASING A RESALE PROPERTY IN SPAIN



COSTS OF PURCHASING

There are various taxes and costs associated with the purchase of a property which will add approximately another 13%-14% 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. This tax will depend on the location of the property you are buying. When Andalusia charges 8% of transfer tax up to 400,000 euros property purchase price, Alicante, Valencia and other regions charge 10%.

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 may be paid by either the vendor or the buyer, as agreed between the parties but the norm is that it is payable by the seller.

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 due diligence 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 200 euros.

Should you not be able to visit a notary public in Spain and need to formalize the power of attorney in your home country, the procedure is different. We 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. All notaries will take care of this process too. 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 normally 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 20 days after payment of the initial deposit/reservation fee, and once due diligence has 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 4% to 5% 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 / LEGAL SEARCHES ---

Apart from checking the legalities of the property such as 1) Checking that the property has a license of occupation or responsible declaration certificate which proves that it has been built according to the building license and is duly granted by the Town Hall, 2) Land Registry report confirming that the property is free from any charges and duly registered in the name of the vendors, if the property has any extension which does not appear on the title deed of purchase and 3) we will also check that all running costs and local tax payments are up to date. This will also enable us to advise you of the approximate annual running costs.

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, upon 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.

Due to data protection law, the community office will not be able to provide regulations of the community together with a copy of the minutes of the last AGM but once completion has taken place, please remember to request these documents as they 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 property tax and BASURA is the local refuse collection tax. When purchasing the property, we as 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%.

If the construction of the property is older than 10 years, we should involve an architect (engineer) which is able to confirm the state of the property : subsidence, roofing, state of the structure, water and electricity installation update, etc.

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 title deed 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 first authorized copy, which is then entered in the Land Registry (against the payment of 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
- Tax 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 Land 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 property tax, or IBI, charged by the municipality, will be calculated based on the “valor catastral”.

Tax 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.

COMPLIMENTARY TAX _____

When you buy a **resale property in Spain** you must pay **transfer tax** (ITP). This is currently at 8% of the purchase price.

Even though you have paid transfer tax you can be contacted by the **Tax Authority** up to five years later to pay more.

This is called **complementary tax** and is 8% of the difference between the declared purchase value and what the tax office calculate the **property's real value** to be.

Why did complementary tax arise?

During the **property boom** in Spain purchasers and sellers sometimes came to an agreement to pay some of the purchase price 'unofficially'.

The amount **declared on the deed** was below what had actually been paid. By doing this, purchaser and seller could avoid higher capital gains tax and **Spanish transfer tax payments**.

As a result the Tax Authority began to **check the amount** the property had been sold at against their own valuation.

Complementary tax represents the difference between what tax they **consider should have been paid** and what actually was.

The drop in the market value of most property sold today has meant that many people are, genuinely, selling their property below what it might be valued at. This makes the purchaser **vulnerable to complementary tax**.

How much might it be?

This is one example of an **actual demand** that Ábaco are currently dealing with:

Purchased property price	74,500€ (8% tax paid: 5,960€)
Tax Authority valuation	116,403€ (8% tax calculated: 9.312,24€)
	-41,903€ (8% tax outstanding : 3.352,24€)

In this case, the new owner will have already paid 5.960€ in transfer tax when they bought the property.

The difference in the actual price paid and the valuation by the Tax Authority means that an additional 3.352,24€ has to be paid as **complementary tax**.

Total tax demand with interest = 3.352,24€

2

PURCHASING A NEW PROPERTY - OFF-PLAN



ALBERT

Purchasing a property off-plan in Spain means you pay in advance for a property not yet built. 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 even though by law it should be paid by the vendor.

Other costs are the same as for a resale property, i.e. the notary and Land Registry fees. The good news is that a new Andalusian decree has been introduced to protect consumers. 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 designer, 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.

We 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 in 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 SPANISH PROPERTY



THIS INDENTURE, made as of the _____ day of _____, 20____, by and between _____, ("Mortgagor"), and _____, ("Mortgagee").

WITNESSETH:

AMOUNT OF LIEN: "NOTE" _____ sum of _____



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.

DOCUMENTS REQUESTED FOR THE SALE OF YOUR PROPERTY

- COPY OF TITLE DEED OF THE PURCHASE
- UTILITY BILLS OF YOUR PROPERTY SUCH AS IBI (LOCAL PROPERTY TAX RECEIPT), RUBBISH COLLECTION TAX, ELECTRICITY BILL, WATER BILL AND COMMUNITY FEES INFORMATION. COPIES WILL BE SUFFICIENT.
- CEE (ENERGY EFFICIENCY CERTIFICATE) to be issued by an Architect/Engineer. (explained under letter G).
- COPY OF NIE CERTIFICATES & PASSPORTS.
- UPDATED LAND REGISTRY HISTORY OF YOUR SPANISH PROPERTY

3% TAX WITHHOLDING 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 on account of the non-resident seller's capital gains tax liability. The new law has cut this withholding to 3%. Non-resident sellers and persons who buy from non-resident owners must remember that they are required to make this withholding and declare it to the tax authorities by filing tax form 211. If they do not do this, the tax authorities can charge the withholding to the property itself.

As a seller, once the sale has been completed, you will therefore need to file your capital gains tax form 210, indicating the capital gain payable, within 30 days of the sale taking place. Should this amount exceed the 3% withholding, 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 19% 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 19% 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 on account of the non-resident seller's capital gains tax liability. The new law has cut this withholding to 3%. Nonresident sellers and persons who buy from nonresident owners must remember that they are required to make this withholding 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. In general, 24% for non EEA/EU-residents.

For EU-residents the newly enacted tax laws progressively reduce the burden of CGT as follows:

- Up to 31st December 2014: 21%.
- As from 1st of January 2015 till end of 2015: 20%.
- As from 1st January 2016 onwards: 19%.

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 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. Address of the property.
2. General description of the property and of the building or development.
3. Price of the property.
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 search note, or “nota simple”.
5. Date of construction, if available.
6. Percentage of the communal elements allocated to the property.
7. Note of the presence of electricity, water, telephone or gas supplies.
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. 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 the local 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). Infringements 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 previously 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 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 form 210 in which the imputed income tax has been declared. If your annual non-resident tax returns are not up to date, these taxes may be deducted from the 3% withholding amount by the tax authorities.

They should be filed for the first time one year after you have completed your property purchase. If you bought your property in January 2016, you will pay for the first time before the 31st of December 2017.

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 ITP transfer tax, notary fees and Land Registry fees are payable by the buyer. Other costs, however, may include legal fees and estate agent’s fees 4.

ENERGY EFFICIENCY CERTIFICATE

As part of the documents mentioned, you as a seller should provide to the buyer an **Energy Efficiency Certificate**.

Spain has introduced a new law (Real Decreto 235/2013) obliging property owners to obtain energy efficiency certificates before they can sell or rent their homes, in line with other European countries. This FAQ provides basic information on the energy efficiency certificate, and will be followed up with another article on how to take advantage of the certificate and improvements in home energy efficiency.

The decree establishes the requirements to make an energy efficiency certificate available for buyers and tenants providing objective information on the energy characteristics of the existing building. This allows the public and potential buyers or lessors to assess and compare the energy characteristics of different buildings in their decision prior to buying or signing a lease.

The certificate must be registered by the owner with the Regional Administration. The Regional Administration may keep a record of these certifications in its territory and it is anticipated they will take into account the energy efficiency rating of the existing buildings in its jurisdiction to regulate a greater, or lower, tax burden based on the energy rating of the individual properties.

4

ANNUAL PROPERTY AND INCOME TAXES

Attorney at Law

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 property 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 presumed 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 _____

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

ANNUAL PROPERTY 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 property tax receipt, the IBI, when you sign the sale contract.

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 returns in order to save paperwork.

Spanish income tax is due on any profits arising in Spain.

If you are non-resident, you are liable to pay 24.75% if you are NON EUROPEAN member, from the very first euro of rental income. For EU members the tax will be applied at a rate of 19% since 2016.

You cannot take advantage of the 50% reduction 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 return.

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 them against tax.

YOUR TAX & FISCAL REPRESENTATIVE _____

The non-resident property owner of only one property is no longer required by Spanish law to appoint a tax 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 tax 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 tax representative.

NON-RESIDENT'S TAX IDENTIFICATION NUMBER (NIE) _____

If you are a non-resident property owner, you must pay the above-mentioned taxes and may have to name a tax 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 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 tax 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



estate planning
probate
legal
trusts
Law Office
advice
wills
guardianship

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 principle 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 it 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 principle 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% WITHHOLDING 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.

95% REDUCTION IN INHERITANCE TAX _____

Official residents of Spain who leave their principle residence to a wife or to children who are also official residents, may be eligible for a 95% reduction in their tax base under the national law. This is 99.9% in Andalusia.

Three conditions apply to be eligible for this reduction:

1. You must have held an official residence permit for at least three years.
2. The home you bequeath must be your principle residence and you must have lived in it for at least 3 years.
3. The heirs must undertake not to sell the property for 10 years, or for 5 years in many regions. If they do, they are subject to taxation.

This reduction applies only up to a maximum of 120,000 euros. For example if the inheritance is a property worth 120,000 euros, you can reduce this total by 95%, deducting 114,000 euros, and therefore only paying tax on 6,000 euros, i.e. no tax at all.

This reduction is also available for a principal dwelling left to a brother or sister over 65 years of age who has been living with the testator for the previous two years. The reduction does not apply to any other assets, such as cars, yachts or shares in companies, only to the home itself.

RESIDENT PAYS CAPITAL GAINS TAX AS INCOME TAX _____

A resident pays CGT as part of income tax, so if you sell in 2015, you do not declare the tax until May of 2016 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 22,000 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 IN YOUR TOWN HALL (EMPADRONAMIENTO)



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 “padron”, 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.

Please note that you should not be registered in the “Padrón” if you have not decided to become resident in Spain for tax purposes.

WHAT DOCUMENTS ARE NECESSARY TO REGISTER? _____

1. Original passport and photocopy/NIE or Certificate of Registration with the National Police Foreign Office and photocopy
2. Proof of ownership of property (either your title deeds or a rates receipt in your name and a photocopy).
3. If you do not own a property and are renting, your rental contract in Spanish and photocopy will be necessary.
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 AND 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 property.

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.** 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.** 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.

3. There are a few ways around 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.

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 175,000 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.

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 day of expiry.

8

SPANISH BANK ACCOUNTS

• BANCO DE ESPAÑA •

17

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 is not withheld from the non-resident account.

If you are a resident, a % 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 payer 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 to be applied.

Client's account escrow service: By using an escrow account facility you can avoid high bank charges imposed by most entities on non-resident accounts and save up to 0.5% of the transferred sum. Any escrow account will yield 0% interest to clients on all funds held on behalf of clients.

9

USING AN EXCHANGE RATE COMPANY



When you're sending money overseas, it is so important to consider your options. Currency exchange rates fluctuate by the second and can have a significant effect on the amount you need to send to make your overseas payment – and if you are sending a large amount of money, to purchase property for example, the difference that you need to pay could be significant.

If you use your local bank to make your overseas transfer, you will need to use the exchange rate that the bank set that morning, and will usually pay an (often-high) fee on every transfer you make. Another option for your international money transfer is to use a currency exchange specialist. Unlike the banks, these companies are specifically focused on navigating the world of fluctuating currency – meaning they can offer you a much more dedicated service than your local bank.

This dedicated service includes a number of benefits that will help you ensure you make the most of the money you send internationally:

- Bank-beating exchange rates that save you up to 4% on every transfer you make, compared to your local bank
- Your own personal account manager who can discuss everything you need to know about your currency transfer and help you choose the best time to send your funds
- No fees on any transfers more than £3,000
- A fast, efficient and safe service that is authorised by the Financial Conduct Authority
- Numerous products and resources to help you protect your money and minimise any risks

For any information contained in this guide, please contact us on info@perezlegalgroup.com or raquel@perezlegalgroup.com and we will be able to help you.

PEREZ LEGAL GROUP has helped thousands of British clients to make their dream come true. Over 20 years of experience in property law, non-resident taxation and legal conveyance (sale and purchase), we have performed a professional and second-to-none service tailored to our clients' needs.

We will represent clients buying in ANY PART OF SPAIN with no limitations in any area, as we have done throughout all these years.

PEREZ LEGAL GROUP

Raquel Pérez

Tel. +34 952 833 169

Mobile +34 699 456 697

www.perezlegalgroup.com

Title photo: www.bigstockphoto.com

Depósito legal: MA 1255-2010

A current version of this book is available for download at www.perezlegalgroup.com

Disclaimer:

The information contained in this booklet is for general information purposes only. The information is provided by Perez Legal Group and while we endeavor to keep the information up to date and correct, we make no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability with respect to the booklet or the information in the booklet for any purpose. Any reliance you place on such information is therefore strictly at your own risk.

TAX, ACCOUNTS & FISCAL ADVISE FOR COMPANIES AND SELF-EMPLOYEES

CONVEYANCE & LITIGATION LAWYERS

INHERITANCE SERVICES FOR FOREIGNERS – SPANISH WILLS

BUYING & SELLING YOUR PROPERTY

NON RESIDENT TAXATION

SPANISH WILLS & INHERITANCE TAX

TAXES ON PROPERTY

LEGAL CONVEYANCE OF LAND, PROPERTIES & PREMISES

NIE & RESIDENCIA APPLICATIONS

SPANISH COMPANY PROPERTY HOLDERS (DORMANTS)

SPANISH COMPANY WITH BUSINESS ACTIVITY

DIRECT DEBIT OF UTILITY BILLS AND RUNNING COSTS OF A PROPERTY

WORKING & STARTING A BUSINESS

REGISTRATION OF ANY DEEDS & POWER OF ATTORNEYS

ACCOUNTING & FISCAL SERVICES FOR INDIVIDUALS & BUSINESSES



www.perezlegalgroup.com

COSTA DEL SOL OFFICE

Avda. Ricardo Soriano 4 - 1º
29601 Marbella (Malaga) Spain
Phone: +34 952 833 169
Email: info@perezlegalgroup.com

COSTA BLANCA OFFICE

C/ Maria Parodi 8-3º
03181- Torrevieja (Alicante) Spain
Tel : +34 952 833 169
Email: info@perezlegalgroup.com

UK FREE LINE: 02036 952330