

THE PROCESS OF PURCHASING OF A PROPERTY IN SPAIN

The acquisition of properties in Spain implies a number of legal obligations.

If you decide to purchase a property in Spain, which legal processes must be followed?

1. QUESTIONS PRIOR TO THE PURCHASE

1.1. OBTAINING A N.I.E. NUMBER (tax identification number for foreigners)

The N.I.E. (Número Identificación Extranjeros) is an identification number for foreigners for fiscal purposes, necessary to carry out any economic activity in Spain. It must be provided to the Notary and is necessary for any tax payment. In order to obtain the N.I.E. number, the application (form EX15) must be duly completed and submitted at the National Police or Bar Association, accompanying the original passport or notarized copy. The presentation of the proof of payment of the prescribed fee is essential. The NIE is then issued within two or three weeks, depending on the season. After having obtained the NIE, it is important to register in the Tax Agency (Agencia Tributaria).

1.2. GRANTING OF A POWER OF ATTORNEY

If you want to simplify the legal processes related to purchasing a property, or you may not be present to sign all the documents related to purchase yourself, it is recommendable to grant a Power of Attorney to your legal representative. This document should contain a list of capabilities which s/he is permitted to carry out from the beginning of the purchase/sale.

You can grant the power of attorney before a public notary in Spain, before a notary in your country of origin, or in the Spanish Consulate (it is necessary to set an appointment). If the Power is granted in front of a Notary in your country of origin, it must be translated into Spanish and the signature of the notary has to be legalized with the “Apostille of The Hague”. If it is granted by a Spanish Consul, neither translation, nor legalization is necessary.

1.3. EXAMINATION OF THE LEGAL STATE OF THE PROPERTY

Once you have chosen the property you wish to purchase, ILLESLEX carries out its due diligence with regard to the property, especially with respect to its legality.

Considering that the purchase of a property on rural plots, in many cases, poses the problem of housings built without municipal license, a study of the legality of the home is carried out. Should the building have been constructed without municipal license, an examination of whether or not legalization could be possible is carried out.

In addition, we carry out a study of the documentation to be required from the vendor for the completion of the purchase, in granting the public deed of purchase. We also investigate as to whether any liens or encumbrances are present on the property.

We advise our customers to commission this survey to Illeslex Abogados before signing any private contract, and especially before handing over any amount, because there is always the possibility that the purchase is not advisable.

2. PRIVATE CONTRACT

To acquire a property in Spain, it is not necessary to sign a public deed (notary formalization), although it is necessary to register that property in the Property Registry. As we will explain later, the registration in the Registry is very important, although optional.

Once the vendor and the buyer have agreed on the price, conditions of payment, and other specifics they consider appropriate, an **option contract** or a **private purchase contract with deferred payment** is

signed. This contract may be subject to suspensive or resolutive conditions, in guarantee that the transferred property will be completely legal.

In cases where both parties are in agreement and the buyer is already in possession of the necessary financing of the purchase, the public deed can be directly granted in front of a Notary, chosen by the buyer.

Nevertheless, an **option contract to purchase** is signed in the majority of cases; less common is the **private purchase contract** with deferred payment of the price.

2.1. OPTION CONTRACT OF PURCHASE

The **option contract** is a private contract. In signing this contract, the vendor is obligated to sell the property to the purchaser. Usually, upon the signature of this contract, TEN PERCENT (10%) of the purchase price is paid as an option rate, though the percentage or amount of the option rate may be freely discussed and agreed upon by the parties, based on the temporary reservation established in the contract.

This option rate can be paid either directly to the vendor or deposited in the bank account of a third party, which is usually that of the lawyer involved in the purchase, or that of the estate agent, who carried out the operation, or an escrow account of the Notary. The buyer is granted a time limit between one and three months to exercise the option, which means that the purchaser notifies the vendor that s/he wishes to buy the property and grant the public deed of purchase, communicating the date and time of the appointment at the notary to sign the public the purchase deed.

The option contract contains the agreed-upon consequences of failure to fulfill the contract, in case the vendor or the buyer finally does not appear to grant the public deed of purchase in the notary. In case the purchaser fails to appear, normally, the parties agree that the option rate will be withheld by the vendor and the contract is cancelled. If it is the vendor who fails, the buyer is enabled to choose between requiring from the vendor to grant the public deed of purchase, and requiring the refund of the received and deposited option rate, plus another amount of the same quantity as indemnity.

This purchase option contract does not assign ownership of the property; it only grants a right to purchase for the buyer and imposes an obligation to sell for the vendor.

2.2. PRIVATE PURCHASE CONTRACT

The private purchase contract is the less common option, and is signed when the buyer wants to purchase the property from the moment of signature. In this type of contract, the deferred price, form of payment, date of the granting of the public deed and the circumstances of default and cancellation of the contract are all agreed to and listed.

3. PUBLIC DEED OF SALE

The granting of the public deed of sale is indispensable for the registration of the acquired property in the name of the buyer in the Property Registry. Once registered, the property no longer appears in the name of the vendor in the Property Registry. As a result, no liens stemming from debts owed by the vendor or registration of charges on the property can be implemented, and the property cannot be sold by the initial vendor. The public deed is granted in front of a notary, and the legally required documentation, such as proofs of carried out payments and the last receipt of the Municipal Property Tax (IBI), must be presented.

In addition, the energy efficiency certificate and other documentation will be required from the seller, depending on the specific circumstances (i.e. rural or urban land, joint ownership, etc.). We would like to specifically mention the requirement of the seller to hand over the current occupancy certificate, in accordance with Law 5/2018 on housing on the Balearic Islands. If the occupancy certificate is not available, this must be expressly stated in the contract / deed. Breach of this obligation, which is classified as minor, may result in a penalty payment of € 60 to € 30.000, although a reduction of up to 80% may be applied if the offense is rectified. Also, it must be borne in mind that such a minor offense prescribes after two years, starting from the day on which the offense was committed. It should be noted that the absence of the occupancy certificate will render it impossible to obtain a holiday rental license from the Tourism Authority.

Before the granting of the public deed, a detailed estimate of costs for all services until the registry of the title Deed of Sale in the Property Registry will be sent to the clients. The rates are different for the vendor and the purchaser.

These costs consist of: Notary expenses, Property Registry fees, attorney fees, and purchase taxes.

4. COSTS ASSOCIATED WITH THE PURCHASE *FOR THE BUYER*

4.1. NOTARY AND PROPERTY REGISTRY FEES

After the granting of the public deed, the Notary fees must be paid, whereby the original of the deed is provided for its registration in the Property Registry. Before this occurs, both the taxes related to the operation and the municipal tax have to be paid.

It is advisable to change the bearer of all the bank direct debits regarding the supplies related to the property, in order to avoid default of payments and the related problems.

Thus, the vendor has to provide the last bills of the utility companies (water, gas, electricity, telephone, etc.) to the purchaser. Our office provides this change of owner service.

4.2. TAXES LINKED TO THE PURCHASE

Once formalized the deed of sale in front of the Notary, the following taxes must be paid:

REGIONAL TAXES (ITP / AJD) – NATIONAL TAXES (VAT)

The acquisition of a property may be subject to payment of the ITP, or the VAT (and in this case also AJD Tax), depending on whether the sale is of first transmission or of successive transmissions and the condition of the selling party being a promoter or an entrepreneur. We explain it below:

A) REGIONAL TAX: ITP - PROPERTY TRANSFER TAX

ITP (Property Transfer Tax) levied on the acquisition of "second hand" or successive transmissions. In this case, **the tax rate** will vary depending on the Autonomous Region and the calculation basis is the purchase price appearing in the deed.

Currently in the Balearic Islands, an 8% of ITP is paid for the acquisition of a property up to € 400,000. Exceeding this amount, the tax rate will increase depending on the amount of the purchase.

The parking spaces not attached to the housing are taxed at 8% up to a value of € 30,000; from this amount, the rate increases progressively.

Term: The deadline for the settlement and payment of this tax is one month from the date of the granting of the public deed.

B) NATIONAL TAX: VAT TAX

VAT (Value Added Tax) or IVA: is levied on the first transfer of real estate objects, meaning the tax only is applied on properties of new construction and first transmission. The current applicable rate is TEN PERCENT (10%) on the purchase price. For transfers of other real estate objects subject to VAT (locals, warehouses, garages - which are not transferred together with the housing, plots, etc..) the general VAT of 21% applies.

Term: The buyer must pay this fee to the vendor at the time of the transmission of the property. (VAT is a Governmental Tax).

In this case, as VAT is a national tax, you have to pay a regional tax to the Balearic Government:

The IAJD (Certified Legal Documents Tax or Stamp Duty Tax) levied on the purchases of properties subject to **VAT (value added tax)**, in other words, the first transmission of the property (houses of new construction or first occupation). In these cases, the buyer must pay this regional Tax, and is generally 1.2 % of the purchase price of the property.

Term: The deadline for the settlement and payment of the IAJD is one month from the date of the granting of the public deed.

**NOTE: AFTER THE PAYMENT OF THE MENTIONED EXPENSES AND TAXES
THE PURCHASE IS COMPLETELY SATISFIED AND FINISHED.**

5. COSTS ASSOCIATED WITH THE SALE *FOR THE VENDOR*

A) MUNICIPAL TAX

“PLUSVALIA MUNICIPAL” - Tax on the increase in urban land value.

As result of the transfer of ownership of a property, or the provision, or transfer of property rights, the Tax of Increase of Value on Urban Land must be paid, also known as “Plusvalía municipal” (Municipal added value).

In the case of sale of a property, **the payment of the tax is the responsibility of the selling party**, be it a person, company or entity, because the value of the plot increased during ownership.

If the vendor is a non-resident natural person, company or entity in Spain, the purchaser is responsible for the payment of the Municipal Tax, but does so on behalf of the vendor, who is the person obliged to pay this tax. In this case, it is advisable to retain the amount of the purchase price.

Terms: The payment must be completed **within 30 business days**, beginning from the date on which the transfer of ownership was finalized (the public deed).

Location: In the respective town hall, providing a copy of the deed.

Quote: The amount varies depending on the Cadastral Value (listed on the receipt of ground tax - IBI) and the number of years the property has been in the assets of the vendor (the years between the initial purchase and sale of the property).

**It is mandatory to provide the proof of payment of the municipal tax as condition to register the purchase in the Property Registry. However, if, for any reason, the payment cannot be proven, the Registry is enabled to carry out the registration of the property, and has authorization to communicate the legal act to the town hall, so that it is informed about the operation.*

B) INCOME TAX

It is necessary to distinguish between sellers residents in Spain and non-residents in Spain.

B.1 INCOME TAX (CAPITAL GAINS) FOR RESIDENTS FOR THE TRANSMISSION OF THE PROPERTY

The **resident vendor** must declare the transmission of a property in his personal income declaration of capital gains before June 30th of the year following the transfer.

*Gains or losses are calculated based on the **difference between the purchase price** (composed by the real price the property had been acquired, plus the amount of expenses and taxes inherent to the acquisition, exclusive interests and adjusted by applying the annually coefficients published in the Law of General Public Estimates) and the **value of the transfer** (which is the real amount, for which the transmission has been executed, less the amount of expenses and inherent taxes of the transmission charged to the vendor).*

The valid rate is 19% on the gains up to 6.000 Euros, 21% on gains between 6.001 and 50.000 Euros and 23% from 50.000.01 Euros.

B.2 INCOME TAX FOR NON-RESIDENTS FOR THE TRANSMISSION OF THE PROPERTY

This tax does not depend on the nationality but on the **effective tax residency**.

If the vendor is a non-resident, in the transmission of a property, he/she must also pay the personal income tax regarding the capital gains. The tax rate is 19% on the **capital gain** of the sale of the property in the case of a European resident and 24 % for the rest of residents.

C) OBLIGATION OF RETENTION OF 3% OF THE PURCHASE PRICE

Should the vendor be a non-resident, the buyer (resident or not) **is required to withhold and pay the Public Treasury 3% of the agreed price in the time limit of one month** from the date of sale. If in the public deed, if the purchase price has been split into the price for the housing and the price for the furniture, it must be taken into account that the retention of 3 % only needs to be applied to the total of the purchase price of the housing.

This retention has, for the vendor, the character of **a payment on account of taxes** regarding the gains derived from the transmission. Therefore, the buyer has to furnish the non-resident vendor with the tax form 211 (with this form the retention has been paid), so that the vendor may subtract the amount of the retention from the rate which results from the profit statement.

If the withheld amount exceeds the amount to be paid, a refund of 3 % of the amount of the exceeded amount can be requested. In this case, the vendor is obliged to present the tax form 210 **within a time limit of three months**, beginning from the end of the term of payment of the purchaser (one month). Therefore, after 4 months of the date of purchase.

In the case that this retention is not paid, the property will be burdened with the payment of the amount for either the retention or the corresponding tax, whichever is lower.

NOTE: AFTER THE PAYMENT OF THE MENTIONED TAXES THE SELL/TRANSMISSION IS COMPLETELY SATISFIED AND FINISHED FOR THE VENDOR

6. COSTS ASSOCIATED WITH THE TENANCY OF THE PROPERTY

Once the property has been acquired and the buyer already figures as the owner thereof in the Land Registry, the following taxes must be paid annually.

A) PERSONAL INCOME TAX FOR RESIDENTS/NON RESIDENTS (IRPF) FOR THE TENANCY OF THE PROPERTY

If the property is of proper use, the rate to be declared determined by applying a 2% on the cadastral value of the property (in general) or 1.1 % (for properties with a cadastral value revised after January, 1st 1994). On top of this rate, a 19% is charged (24% for UE Non Residents) and the deadline for settlement will be one complete year following the date of accrual.

B) INCOME TAX FOR NON-RESIDENTS IN CASE OF LEASES

If the property is purchased directly by a non-resident, an annual tax declaration has to be presented, accruing on December 31st every year.

The income to declare depends on the classification given to the property:

1st. - Imputed rents on urban real estate objects of proper use.

If the property is of proper use, the rate to be declared determined by applying a 2% on the cadastral value of the property (in general) or 1.1 % (for properties with a cadastral value revised after January,

1st 1994). On top of this rate, a 24% is charged and the deadline for settlement will be one complete year following the date of accrual.

This tax will be paid proportionally to the time of possession in the year of the purchase of the property.

2nd. - Income from leased properties.

If the property is rented, the rate to be declared is the full amount obtained from the tenant, without deduction of any expenses. However, if the taxpayer is a resident in another country of the European Union, the costs foreseen by the Law of Income Tax may be subtracted in the established terms and conditions: IBI, Garbage Tax, repair and maintenance costs, community costs, depreciation, interest on loans for the purchase of the property.

The income is understood as received when payment is required by the landlord or on the day of the payment (whichever is earlier), and its statement is on quarterly basis. A 19% will be paid on the declared performances.

The deadline for settlement depends on the result:

- If the result is a payment: The deadline is within the first twenty days of the months of April, July, October, and January, regarding the income obtained in the previous calendar quarter.
- If the result is a quote zero: The deadline is from the 1st to the 20th of January of the year following the accrual of income.
- If the result is a return: The deadline is February, 1st of the year, following to the accrual of income.

If the property is not leased year-round, two declarations (MOD. 210) must be submitted:

- **Imputed incomes:** a Mod. 210 in the concept of income imputed (for own use) by the period that the property was not leased. Its accrual is on the Dec 31st each year and will be presented a unique Mod. 210 during the year immediately after the declared exercise.

- **Rental income:** a Mod. 210 in the concept of income derived from the rental of the property. These incomes shall be declared on a quarterly basis, as it has been explained above.

C) WEALTH TAX

The wealth tax has temporarily been reestablished for the years 2011, 2012, 2013, 2014, 2015, 2016 and 2017 accruing on December 31st of each year. The deadline for payment of the tax is June 30th of the year following the financial year being declared. In the Balearic Islands, for **residents**, a reduction of the tax base has been regulated, in concept of minimum exempt set at **€800,000**. For **non-residents** that exempt minimum is set at **€700,000**.

Therefore, all persons whose declaration results in a payment of taxes and whose properties and rights are valued in more than 2.000.000, although the quote results negative, are required to declare.

Tax range:

Net Base until Euros	Total Quote Euros	Net Base Residuary until Euros	Percentage %
0,00	0,00	167.129,45	0,2
167.129,45	334,26	167.123,43	0,3
334.252,88	835,63	334.246,87	0,5
668.499,75	2.506,86	668.499,76	0,9
1.336.999,51	8.523,36	1.336.999,50	1,3
2.673.999,01	25.904,35	2.673.999,02	1,7
5.347.998,03	71.362,33	5.347.998,03	2,1
10.695.996,06	183.670,29	onwards	2,5

Only **Natural Persons** are taxed. But it must be taken into account that in the case of the tenancy of a property through a company, the Double Taxation Treaty between Spain and the country should be studied, where the owners have their effective tax residence to check if the tenancy of the shares of the Spanish company are taxable in the Wealth Tax.

D) LOCAL PROPERTY TAX (IBI)

All property owners in Spain (residents and non-residents) are obliged to pay the annual property tax to the Town Hall corresponding to the location of the property.

The amount of property tax is calculated by each municipality, based on the cadastral value of the property and the application of a tax rate, provided by the same Town Hall.

The cadastral reference of the property appears on the receipt, information which is necessary to check the registration status of the property in the Cadastre and the cadastre value of the property, which is the base of calculation of other taxes on the property.

The deadline of payment varies depending of the municipality, although usually it is in September, October or November every year.

E) TAX ON GARBAGE/SOLID WASTE, SEWAGE, ETC.

Every city has its rates and the payment is annual. The deadline for payment also varies according to each city.

NOTE: Both taxes (Local Property Tax and Garbage) have bank direct debit, so that the City annually and automatically charges them through this way, without prior notice of payment to the owner.

E) ECO-TAX (ECOTASA):

Valid in the Balearic Islands since 2016. **Applicable only for holiday rentals.**

Autonomous tax payment applicable to all dwellings which are marketed as tourist accommodation (they are understood as marketed from the moment of which they are advertised through websites or other media).

Who is the taxpayer? The tourist. The tourist has an obligation to pay the eco-tax, but it is the owner's obligation to collect payment and forward it to the Tax Agency (as SURROGATE TAXPAYER).

How? The owner or surrogate taxpayer must register with the Tax Agency through form 017 on the tax on tourist accommodation.

As part of the registration process the applicant must choose a method of payment:

Direct Estimation or Objective Estimation

The direct estimation is obligatory for those individuals who have more than 12.000 authorized tourist places. They must meet a number of obligations:

- receive, keep and number the tourist declarations and deliver, keep and number the proof of requirement and proof of tax payments.

- Manage record books of declarations and proof of payments and keep all documents.

For convenience, OBJECTIVE ESTIMATION is recommended for vacation homes or blocks.

Tax payment in accordance with the OBJECTIVE ESTIMATION:

When and how does one need to pay? The owner of the property makes one annual tax payment, similar to the property tax payment.

If the registration process is completed in 2018, the tax payment becomes due between the 1st of May and the 30th of June of the following year, i.e. 2019. The commencement of the payment period is published in the BOIB and the corresponding Tax Payment Form must be forwarded to the Tax Agency. This way, the payment can be issued and a direct debit can be arranged for the following year to facilitate the payment

This is a generic guide developed to provide general information of the legal procedures in the acquisition of properties in Spain by non-residents, please take into account that every individual case is different, reason why it is advisable to contact a qualified professional. In ILLESLEX lawyers we understand the complexities of any real estate transaction and therefore we are able to give support our customers throughout the process, providing an integral and personalized service.

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