

New tax rules and formalities in real estate and property law

The good news: On the 1st January, 2007 disadvantaging of non-residents that was in place up until now contrary to European law, has been abolished on account of a complaint by the European commission against the Spanish government. Further to this, the corresponding tax law has also been amended.

Up to now, non-residents, when acquiring real estate after 1996 and on its subsequent resale, were subjected to a 5% withholding tax (Retención) as a partial payment on 35% of a speculation tax of the purchase price, while legal residents and Spaniards did not have to do this.

Now, from 1st January, 2007, it is compulsory for everybody to be treated equally so all non-residents must reckon with only a 3% tax in the case of property sale. This means in plain English, that the buyer pays 97% of the purchase price to the seller and has to pay 3% as withholding tax (Retención) directly to the tax office. After this payment, a uniform speculation rate of taxation of 18% applies to everybody, namely, legal residents, non-residents and Spaniards alike. In this case the situation has improved.

The bad news: Much worse, however, is the increasing bureaucracy in Spain, in particular the "little numbers" with which one finds it hard to imagine without in everyday life. Now, since 12/1/2006, anybody who turns up for a escritura (notarial document), no matter whether it concerns a purchase, sale, an acceptance of inheritance or setting up a company, must have a Spanish tax number. Without this "little number" one simply is non-existent.

If one could receive this tax number quickly and without the bureaucracy, then this wouldn't be so bad. But in Mallorca, regarding the time between application and receipt of this number, applicants must reckon with a 2-month delay, in rare cases less, in many cases even longer. One requires a legally notarized copy of the identity card or passport, a request form which may only be filled out in typescript and in the Spanish language and this must then be signed personally.

Everyone now must pay careful attention to acquiring such a Spanish tax number in time and through their lawyer or other representative. So now, the only way to guarantee sellers and buyers legal certainty in bridging the time between a decision to purchase and conclusion of the notarial property acquisition contract (escritura), is to make a deposit or option contract.

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