

# CLUB NORDICO DE JAVEA

Schematic summary of the comments made in the legal-fiscal talk of

November 12, 2019.

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## QUESTIONS DISCUSSED AT THE CONFERENCE

- 1- Purchase and sale of real estate. Legal and fiscal matters to take into consideration. Taxation relating to both purchase and sale.
- 2- Legal and fiscal rules regarding Donations and Inheritance. The tax of inheritance and donation tax (ISD) in the Valencian Community.
- 3- Taxes payable by residents in Spain on pensions and income from a Nordic country.
- 4- Documentary aspects of driving Licences and the cars of a Nordic national resident in Spain.
- 5- Requests and questions.

# **1.- Purchase and Sale. Considerations**

## **- A.1 - Purchase of Real Estate in Spain**

- A.1.- Expenses and taxes. When buying a property in Spain you have to keep in mind the expenses to bear. The documentation and registration of that property in the land registry in favour of the person who purchases entails the following economic disbursements, which depend proportionally on the purchase price:
  - Notary Fees. For a purchase for a price between 50,000 euros to 500,000 euros would mean amounts between 500 euros and 1000 euros. Although the law establishes a payment distributed between buyer and seller, in our area it is an ingrained custom that the buyer assumes them in full, which is logical because it is the buyer who is most interested in having the documentation completed correctly.
  - Land Registry Fees. That depends on several factors, but would mean an average amount between 250 euros and 400 euros.
  - Transmission Tax. (10% in our area) It is the most important outlay. It is a tax regularized by the autonomous governments. The taxes vary from 6% to 10%, that is the case of the Valencian community. Keep in mind that the tax authority may consider that the property purchased has a value greater than the price declared in the deed and send a requirement for a complementary payment. Logically, this additional claim can be challenged and very often the courts estimate the appeals of individuals.

## **- A.2.- Other aspects to be considered.**

- Check Land Registry (No recorded charges, debts, rights of way...) Sometimes you have to ask the seller to make a previous deed to declare the works that are not registered in the land registry, or to cancel a mortgage with the bank before your deed to purchase.

- Check catastro (fiscal registry) records (extension and configuration of plot and buildings).

- Check the urbanistic circumstances of the property, so that there are no sanctioning files for property infringements, and what are the urban conditions of the plot in which the property is located, in case you have to bear economic burdens for future development (urbanize streets or support transfers of land ...)

- Check the local taxes are paid.

- Request from the seller the last utility bills to prevent past debts from preventing the change of contract holder, which is cheaper and more practical than making a new contract. In addition, it is advisable to ask the seller for the licence for occupancy of the home (habitability certificate) since sometimes the supply companies can request it for the contracts to be registered.

- Request from the seller the Energy Efficiency Certificate, which indicates the quality of the facilities and the measures to improve energy savings.

- Request from the seller the Community of Owners Certificate, for possible pending debts to be settled before the deed.

- (Non resident and first investments in Spain: Obtain NIEs, open Bank account)

- **A. 3.- Tax payments every year.** Regular fiscal payments for the ownership.

- a.- As a value in the patrimony, the property acquired must be declared in the annual income tax. If the property is not rented out, it represents a symbolic tax to pay in the annual declaration tax.

- b.- The local taxes must be paid annually. The Town Hall (or SUMA, which exists in some towns) send the bills to the property or, if it is domiciled at a bank account, the tax bill is sent directly to the account for payment. The rubbish tax is sent Spring-time and IBI tax, in August-September.

## B.- Sale of Real Estate in Spain.

- Taxes to pay.-
  - Municipal Plusvalia Tax.- The municipal capital gain (Tax on the increase in the value of the land, commonly named Plusvalia), which is a tax independent of the price declared for the sale, since it takes into account the tax value of the land and applies a percentage that varies according to the years of ownership of the land property in the patrimony of the seller. It must be borne in mind that recent judgments of the Spanish courts have considered that if there has not been an effective gain (due to the difference in price between purchase and sale) this tax cannot be demanded, although to date it was considered that there was an objective imposition, because the fiscal value of the land is always increasing by the governments.
  - Capital Gains Tax
    - Residents.- The tax on capital gains, to be declared as income tax. Here the price paid to buy and sell is relevant, because on its difference you have to pay approximately 19%. The acquisition and sale values for taxation are harmonized by the expenses and taxes incurred in purchase (transfer tax, notary, registration, lawyer ...) and for sale (capital gains, real estate agency ...).
    - Non Residents .- If the seller is not a tax resident in Spain, the buyer must withhold 3% of the price to pay it into the Treasury account within one month from the public deed, as payment on account of the seller's income tax, who will have three months to present the declaration and, as the case may be, pay the additional amount of the tax for their gain, or request a refund of the amount of the price that was withheld.
- Other aspects to be considered

- Registral regularization.- If the property is not registered correctly (due to its extension or description of the constructions), you must make a deed of declaration of

building, before selling, which implies paying the notary, the registration and the tax of 1.5% of the value of the undeclared works .

- Cadastral regularization, to ensure that the plot and buildings are correctly registered, because, if not, you have to make the appropriate corrections.

- Last municipal taxes paid.

- Utility bills paid. (i.e. electricity, water, gas etc)

- Energy Efficiency Certificate. The seller must provide the buyer with the energy efficiency certificate, which is mandatory to obtain even if not requested by the buyer, since it may otherwise be sanctioned.

- Occupancy certificate. (or habitability Licence) which, if you do not have it, you will have to request it at the Town Hall with an architect or similar technical report.

- Community of Owners Certificate, if applicable.



## 2.- Legal and fiscal rules for Inheritance and Donations

### ■ Legal considerations.-

- The habitual residency of the deceased as the point to establish the inheritance civil law applicable. By application of Regulation 650/2012 of the European Union, the Law applicable to the succession will be that of the habitual residence of the deceased.
- However, it is possible that it is stated in a Will (notarial Testament) that it is desired that the succession be governed by other regulations with connection, such as that of the nationality itself.
- This is important when laws that limit the possibility of disposing of inheritance may come into play, as is the case of the Spanish Law, which mandatorily establishes that a part of the inheritance goes to the closest relatives (for example, children and parents ahead of the spouse).
- To avoid this limitation, and taking into account that other laws provide for the absolute freedom to dispose, it may be advisable to grant a Will in Spain in which it is established that, despite the habitual residence in this country, it is desired that the succession of the testator must be governed by the law of his/her nationality. In Norway, Finland and Sweden there are also limitations on the free Will, available to the spouse and children. For this reason it is recommended to make a Will choosing the law that you want to apply, according to the intention of the testator to avoid restrictions at the time of being applied.

### ■ Fiscal Considerations.-

- Tax percentages regulated by the Autonomous communities, so that in our area different rates apply to those of Madrid, Andalusia or Catalonia ...
- Fiscal Law applicable for inheritance, if Spanish resident, habitual home of the deceased. In addition, if the heirs are not tax residents in Spain, even if the autonomous community rate applies, tax returns must be made through the National Spanish Treasury.
- More habitual reductions in Valencian area.
  - Close Family . (children, parents and spouse) enjoy a partial exemption for their relationship. In the Valencian community,

the first 100,000 euros of each direct family member are exempt.

- The habitual home of the deceased is among the assets of the inheritance, the next of kin may apply for an additional reduction if they undertake to not sell it for a period of time. In the Valencian community, this reduction is equivalent to 95% of the value of the habitual home, with a maximum of 150,000 euros, undertaking to not sell it in 5 years.
  - The tax rate varies so that the more you inherit, the more tax percentage you pay. The Scale of percentual tax, is from 7,65% to 34%.
  - In addition, once the quota to be paid is obtained, in the Valencian community a 50% bonus is applied to the next of kin. In other communities this bonus is much higher and in others there is no such bonus.
  - Non Family= taxed twice.
- Fiscal Law applicable for **donations**, the legislative competence belongs to the autonomous community of the donated assets, and in its taxation it shares the table of percentage of the tax rate with the inheritances, the family reductions are similar, but there are no reductions such as those of habitual housing and in the same way if there is no kinship, the taxation doubles

### **3. - Taxes payable by residents in Spain on pensions and income from a Nordic country**

- Pre-Declaration. Initially, it is necessary to make a declaration of registration of all Universal income (bank accounts, properties, shares/investments) that together, of each type, exceed 50,000 euros with a specific model (called model 720) that must be presented during the first quarter of the annual year for the previous year. If there is an increase of more than 20,000 euros in these forms of income, in the following year it should be declared with a new 720 model.
- Annual Income tax. Subsequently the annual income declaration to be presented between the months of April and June of each year
- All the income must be declared in Spain. Pensions, interest, dividends, property income, capital gains ... are subject to taxation in Spain. Only those that come from ex-workers for the government or for town halls of the country of origin are excluded from taxation (with some exception, for example, for Norway), although they must be declared as exempt.
- In the case that the income must be taxed in the country of origin, reductions are applied to avoid double taxation, which are regulated by international agreements between countries (Spain with Sweden, Finland, Norway ...), for example, dividend and interest income earned in Sweden will be taxed in Spain but will have a limited taxation.
- The sections of the income tax scale in Spain are those that appear in the presentation. There are exemption minimums in income tax, which, this year, are the first 15.947 euros, and a series of reductions depending on your personal and family situation.
- For this reason it is important that your legal-tax advisor studies each specific case to apply the most convenient one.



#### **4.- Documentary aspects of driving Licences and cars of a resident in Spain**

- You can keep the car with foreign registration for the duration of your visits, but if you spend more than 6 months in Spain (difficult to control because there are no borders) you must change the car to Spanish registration.
- If the car is permanently in Spain, the police could seal the car and demand the change of registration.
- In the process of change of registration there is a value that is the most important, economically, called the IEDMT (special tax for certain means of transport) commonly called registration tax (It is paid based on CO2 emissions) types from 0% to 16%.
- If the import is made by change of residence, the rate is 0% (that is to say, exempt), but to obtain this exemption from the Tax office, you must justify it within a maximum period of one month from the date of registration to show that you have been the owner of the vehicle in your country, at least 6 months before obtaining the withdrawal from your country (that is demonstrated with the documentation of the foreign car that sets the date) and that you have resided in your country at least 12 months before the transfer. The documents that are needed are: In addition to the application form, the residence permission (registry certificate), car documentation, etc. and the certificate of consular withdrawal detailing the time you have resided in your country before the transferTransport tax (0-16%)
- 0 % Tax for change of residence (6 months)
- The foreign driving license must to be exchanged for a Spanish one once the non-resident becomes resident in Spain. To exchange it, a form must be presented, with the document of origin; two photographs, a qualified medical certificate, and a fee of approximately 30 euros are paid.

**The report provided is very generic and within each case there are specialities which must be dealt with by your lawyer and/or tax advisor. IF you do not have a specific lawyer or tax advisor, Rogelio Jardón and his team of Arcea Abogados will be pleased to assist you in every way.**