

# THE REAL ESTATE SALES PROCESS

## 1. BUYING A PROPERTY IN ITS INITIAL TRANSFER

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When buying a new home we can find ourselves faced with two possibilities; one, that the property is still under construction or two, that it has already been built. Both are business transactions, that is, a direct sale to the developer. In these kinds of transactions, the most important detail is that the tax payable is 10% VAT while the Stamp Duty Tax must be paid as well. Regarding second transfers however, the tax payable will be Transfer Tax.

### 1.1 Taxes on the sale of a new property

When the sale regards a new property, that is, an initial transfer of a property made by the developer/builder to the buyer, the taxes payable are the following:

#### 1.1.1. Value-added tax (VAT)

In accordance with article 1 of the Law 37/1992, VAT is a tax on consumption and is applied to, amongst other things, the transfer of goods and the provision of services carried out by businessmen or professionals. From the second transfer onwards the transaction is exempt from VAT and the applicable tax is Transfer Tax.

There are three VAT rates: 21%, the general rate, 10%, the reduced rate and 4%, the super-reduced rate. The more basic the need for a product is, the less the tax burden will be.

Pursuant to the Royal Decree-Law 20/2012, dated 13th July, in measures taken to guarantee budget stability, the general (21%) and reduced (10%) tax rates have been modified.

- 10% for housing
- 21% for premises and garages.

#### NOTE

At the time of buying a property, the purchase of garages and storerooms, which can be detachable or integrated annexes, is sometimes included. This is due, as a general rule, to taxation matters given that, for example, for a new property the VAT payable is 10% of the tax base, which also includes the storeroom and garage. If we choose to register the latter separately from the residence, the tax that would be accrued would be 21% of the value attributed to the storeroom and garage, which means that the saving could be significant. Garages are always taxed at 21%, unless they are bought in the same Deed of Sale as the residential property.

#### 1.1.2. Stamp Duty Tax (IAJD)

It is one of the three taxable transactions that are taxed by Transfer and Stamp Duty Tax. It taxes the formalisation of certain legal, commercial and administrative documents either in Spanish territory or abroad with effect in Spain.

It is established that all real estate transfers that are taxed by VAT (initial sales by property developers) and that are documented will be subject to the variable fee. Stamp Duty Tax is applied whenever a developer sells newly-constructed housing. In this case, if the property costs, for example, 210.000 Euros, the buyer will have to pay 10% of the value by way of VAT, that is, 21.000 Euros and 1.5% by way of Stamp Duty Tax, that is, 3.150 Euros.

The tax base on purchases is the total price and, regarding mortgages, it is the total amount of the mortgage liability.



## 1.2 Property taxes and expenses

### 1.2.1. Property tax

Every owner of a property, for the mere fact of being the owner, has to pay an annual council tax, which is calculated on the assessed value of the property. This tax is called Property Tax but is commonly known as “urban contribution”.

The person liable to pay the Property Tax is the person who is the owner of the property on 1st January, although for practical purposes, such payment is shared between the buyer and the seller.

If there are any unsettled preceding invoices, in accordance with the state regulations as much as with the municipal regulations, the housing that is bought assumes responsibility for the payment of such. This implies that the local government can seize the purchased property to cover the amount of the invoices if the previous owners do not pay them and are insolvent. Consequently, it will be to one’s advantage to be assured of the payment of such invoices by the liable party or, in default of payment, to deduct the amount of the unpaid urban contribution invoices from the selling price.

The payment of the Property Tax in the Municipality of Marbella is annual and its voluntary period is from June until September, approximately.

### 1.2.2. Waste disposal rate

The person liable for the payment of the waste disposal is the person who owns the property on 1st January although, for practical purposes, the payment of such is shared between the buyer and the seller.

The waste disposal payment is biannual in the Municipality of Marbella.

### 1.2.3. Electricity

Every owner who has homeownership should register their housing and take out an electricity contract for the property. Depending on the size of the property and on the electrical appliances that one owns, more or less power will be contracted. The logical thing to do would be to continue with the same amount of power as the previous owner and modify it in the event that the fuses blow.

Previously, electricity bills were issued monthly however, in accordance with the Royal Decree 1718/2012, dated 28th December, which determines the procedure for carrying out the reading and billing of low voltage energy supplies, they are now bimonthly.

#### 1.2.4. Water

The water bill will be monthly or bymonthly, according to the company that provides it. It must also be taken into account that some housing developments include the water bill in the Community of Owners payment.

#### 1.2.5. Community of Owners

In a Community of Owners there coexists a single and exclusive right of ownership over certain elements of the property, known as private elements, and a right of inseparable joint ownership over other elements or communal services which are available to all of the owners. Included within the communal elements are: the land, the roof, the foundations, the structural elements of the building, the facades, the entrance hall, the courtyards, the lifts, the gardens, the swimming pools, etc.

#### 1.2.6. Other expenses

Depending on the property, there may also be other expenses such as gas, security, services, telephone, internet, etc. These services basically depend on the type of housing and on the personal requirements of the clients.



### 1.3 Taxes on property ownership by non-residents

#### 1.3.1. Non-Resident Income Tax

Every non-resident property owner in Spain will have to pay Non-Resident Income Tax on an annual basis. In accordance with legislation, any returns derived, directly or indirectly, from property located in Spanish territory or from rights in relation to such property are considered as income obtained in Spanish territory.

Generally, the tax base will be constituted from the gross amount, that is, without any kind of deduction of any type of expense. However, in matters that concern taxpayers who are residents in another Member State of the European Union, when determining the tax base, they will be able to deduct the expenses under the Personal Income Tax Law, as long as they prove that the expenses are directly related to the yields obtained in Spain and that they have a direct and inseparable economic link with the activity carried out in Spain (Community of Owners expenses, Property Tax, etc.). When expenses are deducted, a certificate of fiscal residence in the corresponding State, issued by the fiscal authorities in that State, must be attached to the tax return.

In the case of rented properties, the gross amount that the landlord receives (excluding VAT) shall be counted as income. Contrastingly, if the property is not rented, the 1.1% of the property value shall be computed as income (2% if the property value has not been modified subsequent to 1st January 1994).

In the event that the property has been rented for only part of the year, the tax will be calculated taking into account the two situations. This means that for the time that it was rented, the tax base will be taken as the rental income and for the time that it was not rented, it will be taken as 1.1%/2% of the property value.

Also, if the property has been acquired during the year, the new owner will only assume responsibility for the tax for the time corresponding to when they have been the owner, prorating the amount according to the days in which they have owned the property.

The tax rate is 24%.

### 1.3.2. Wealth Tax

With effect from January 2008, in accordance with the Law 4/2008, dated 23rd December, which abolishes the levy of Wealth Tax, the monthly VAT refund system has been extended and other changes in tax legislation have been introduced; Wealth Tax has been abolished.

The tax still exists, however through the introduction of a 100% discount of the whole tax liability and the repeal of the obligation to file the tax return, the tax was finally abolished for fiscal residents in Spain (who are taxed by personal obligation) as well as for non-residents with assets in Spain (who are taxed by real obligation). Therefore, nothing will be paid in relation to this tax and, moreover, there is no obligation to file a tax declaration.

## 1.4 Other expenses

### 1.4.1. Notary

When a property is purchased or sold, the visit to a Notary is obligatory in order to legally register the transaction. This assumes specific costs to be borne by the buyer, which should be considered at the time of planning the purchase or the sale.

The fees charged by notaries and registrars (the two professional figures that act in this case) are determined through tariffs approved by the Spanish government.

The fees charged by the Notary for the execution of the Deed of Sale vary according to the price of the sale reflected in the Title Deed and the extension in the number of pages thereof. As mentioned above, the Notary fees will be paid as agreed by the parties, (normally by the buyer), and in the failure to reach an agreement, the seller will pay for the original Title Deed and the buyer will pay for the issue of a copy.

### 1.4.2. Registry

Inscription in the Land Registry represents a second form of security as it provides a legal effect of great practical importance, which is the effectiveness of acquisition regarding third parties. This implies that the buyer will not be affected by charges or legal problems that were not reflected in the Land Registry at the time of registering the purchased property in their name.

The registry expenses are the fees of the Registrar for the registration of the purchase in the Land Registry. In the same manner as the Notary expenses, those of the Registry vary according to the sale price to which the registration fees, accrued by the presentation entry and the marginal notes, must be added.



The registration of a Deed of Sale is cheaper than the registration of a mortgage, as the basis of calculation varies in each case (mortgage liability for a loan and the value of the sale for a purchase). However, in the case of a 'normal' sale, the Registry price is approximately 80% of that of the Notary.

### 2.4.3. Management or processing costs

These are the fees for carrying out procedures after the signing of the Deed of Sale, such as:

- Paying the Notary bill for the signing of the Deed of Sale.
- Collecting the Title Deed and making the tax payments.
- Presenting the Title Deed at the Land Registry for its registration.
- Processing the capital gain (if appropriate).
- Changing the ownership of the property in the Land Registry.
- Collecting the Title Deed from the Registry, etc.

### 2.4.4. Procurement of supplies

These are the fees for the procurement of supplies and the direct debit of bills, to which the client will have to add the procurement costs themselves.

The electricity company will charge the client a deposit to their bank account, which will be refunded once the supply is withdrawn. However, regarding the water contract the procurement cost will have to be paid directly to the water company.

### 2.4.5. Attorney fees

These are the fees that the lawyer charges for the management of the sale. The corresponding VAT must be added to this amount, which in the case of service provision is 21%.

### 2.4.6. NIE

All clients who are non-residents in Spain and buy a property will need to have a NIE (Foreign Identification Number). The approximate cost of processing the NIE (fees and taxes) is 200 Euros per NIE.

### 2.4.7. Other expenses

There are other costs that can result from the sale of a property such as the signing of a Power of Attorney, for example. Sometimes the client will not assist with the sale in the Notary, but will sign a Power of Attorney to represent themselves on the day of purchase.

Another expense that may arise in connection with a sale is the cost of requesting a Land Registry Certificate (nota simple) to study the situation of the property and the charges it may bear.

## 1.5 Mortgage

### 1.5.1. Mortgage

**A mortgage is a bank loan to finance the purchase of a property. The bank usually grants a non-resident 70% of the value of the property.**

### 1.5.2. Novation and subrogation

When buying a home, it is possible that it will already be mortgaged. In this case the client could choose to buy the property with the said mortgage and either continue with it under the same conditions (subrogation) or renegotiate the said conditions (novation). Alternatively, they could purchase the property free of charges or with a new mortgage, having cancelled the existing one.

The mortgage accrues the payment of Stamp Duty Tax on the mortgage liability, while the subrogation and novation are exempt from Stamp Duty Tax although it will have to bear the payment of bank charges and the Notary and Registry expenses for the Public Deed.

## 2. BUYING A PROPERTY IN ITS SECOND OR SUBSEQUENT TRANSFER

When purchasing a property in its second transfer, that is, a property that is not new, the factor that distinguishes it from properties in their initial transfer is that the taxes payable are different. While in an initial transfer VAT and Stamp Duty are paid, in a second transfer only Transfer Tax is. There are also different sales in terms of documentation and procedures.



### 2.1. Taxes levied on a sale

#### 4.1.1. Transfer tax

Transfer and Stamp Duty Tax is regulated by the Royal Legislative Decree 1/1993, dated 24th September, BOE (official state bulletin) of 20th October and developed by the Royal Decree 828/1995, dated 29th May, BOE (official state bulletin) of 22nd June. Within the scope of this tax is the transfer of assets (the sale of real or personal property, the execution of real rights, leases, etc.)

The tax rate (on the transfer of property) is obtained by applying the following tax rates to the tax base:

- 8%, in general, when pertaining to the conveyance of property or the execution and transfer of real rights relating thereto.
- 9%, the transfer of property will be taxed at 9% for the amount that exceeds 400.000€.
- 10%, the transfer of garages will be taxed at 10% for the amount that exceeds 30.000€.

Base liquidable hasta euros	Cuota íntegra euros	Resto Base Liquidable euros	Tipo aplicable
0,00	0,00	400.000,00	8,00%
400.000,01	32.000,00	300.000,00	9,00%
700.000,01	59.000,00	en adelante	10,0%

Regarding parking spaces (except in the case of attached garages and the property, and with a maximum of two) the tax rate will be the following:

Base liquidable hasta euros	Cuota íntegra euros	Resto Base Liquidable euros	Tipo aplicable
0,00	0,00	30.000,00	8,00%
30.000,01	2.400,00	20.000,00	9,00%
50.000,01	4.200,00	en adelante	10,0%

## 2.2 Taxes and expenses on the property

- 4.2.1. Property Tax: a council tax which is calculated on the assessed value of the property.
- 4.2.2. Waste disposal rate: the rate for the provision of the refuse collection service.
- 4.2.3. Electricity.
- 4.2.4. Water.
- 4.2.5. Community of Owners.
- 4.2.6. Other expenses: gas, security services, Internet, telephone, etc.

## 2.3 Taxes on property ownership by non-residents

- 4.3.1. Income tax. This tax is calculated taking 1.1% or 2% of the property value as the tax base. The tax rate is 24%.

## 2.4 Other expenses

- 4.4.1. Notary: for the execution of the Deed of Sale.
- 4.4.2. Registry: for the registration of the Title Deed.
- 4.4.3. Processing fees: for carrying out procedures after the signing of the Deed of Sale.
- 4.4.4. Procurement of supplies.
- 4.4.5. Attorney fees. Unless otherwise stated, they will charge 1% of the sale price.
- 4.4.6. NIE.
- 4.4.7. Other expenses: request of a Land Registry Certificate (nota simple), Power of Attorney, etc.

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### NOTE

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