



Matthias Jahnel, LL.M.
(Abogado)
(Senior Executive)

LexJahnel - Abogados - Legal Talks (for further information please visit: www.lexjahnel.com).

With this information leaflet we would like to sum up the main points of our legal in-house training given to our clients in 2007. All fact mentioned refer to the recent tax reform of 2007, which came into effect on the 01.01.2007

The world of taxes is very complex. Therefore, this paper is far from being a complete compilation of all tax issues involved in a property transaction in Spain. Most taxes can be avoided legally or reduced to a minimum level. They should not be the reason to be put off a property investment. In most cases simple adjustments are sufficient to avoid taxes. In other cases complex schemes are used. The aim of **LexJahnel - Abogados** is that the employed tax saving plan is cost effective, comprehensible and fits in, or works with the scheme the client has already in place in his home country. We do not work nor offer nor advice to work with trustees or any kind of intermediary who the client does not know or cannot control effectively.

Point I - Preparation

Once the legal and tax Due Diligence has been carried out

Legal Training Taxes on Sale – Purchase transactions of property in Spain

Author: Matthias Jahnel, LL.M. (*)

on the purchase object seller and buyer are ready to enter into a binding pre contract under Spanish law.

At this point and not later both sides should have been made aware of the legal and tax implications of a property transaction.

In terms of taxes there are two sides to be looked at.

- a) buyer's taxes, and
- b) seller's taxes.

Point II - Purchase & Sales taxes A) BUYER'S TAXES

Below we have listed some examples of property purchases and the taxes payable by buyer:

a - a) Resale property (urban or rustic) sold by a non trading individual

- 7% purchase tax (ITP)
- professional fees (lawyer, notary, land registry)

plus

- 1% mortgage tax on the secured capital as well as bank charges in case the purchase is financed.

a - b) New built or off plan property after finalisation sold by a trading individual or company

- 7% VAT
- 1% Stamp duty (ADJ)
- professional fees (lawyer, notary, land registry)

plus

- 1% mortgage tax on the secured capital as well as bank charges in case the purchase is financed.

a - c) Urban plot, new built, or off plan property

BEFORE finalisation and sold by a trading individual or company

- 16% VAT
- 1% Stamp duty (ADJ)
- professional fees (lawyer, notary, land registry)

plus

- 1% mortgage tax on the secured capital as well as bank charges in case the purchase is financed.

B) SELLER'S TAXES

In case of a sale seller may pay:

b - a) Sale of urban or rustic property by an individual

- 18% CGT
- PLUSVALIA
- professional fees (i.e lawyer)

b - b) Sale of urban or rustic property by a resident company (S.L., S.A., or resident foreign company)

- up to 32,5% Company tax (in 2008 - 30%)
- PLUSVALIA
- professional fees (i.e lawyer)

b - c) Sale of urban or rustic property by a non resident individual or a non - resident company

- 3% withholding tax of the purchase price paid by buyer on behalf of seller towards the Inland Revenue (*Hacienda*) as a (refundable) deposit of the CGT payable
- 18% CGT
- PLUSVALIA
- professional fees (i.e lawyer)

All non residents have the obligation to declare the CGT within four months of sale! There are wide tax allowances available. Thus, the tax declaration may lead to a

partial or full refund of the 3% retention incurred.

As for the very effective exchange of information procedures in place within the European Union, it is strongly advisable to make the required tax declaration after the sale has been completed. A "run and hide" tactic may lead to legal proceedings for tax evasion in Spain and the home country of the EU resident.

Further, please be aware of the large number of Double taxation treaties Spain has entered into. Almost all of them include exchange of information clauses.

Point III - After purchase taxes

After the purchase the buyer will incur annually:

- income tax for benefit in kind (own use of the property) up to 2% of *valor catastral*
- wealth tax of up to 2,5% of deed value (can be avoided!)
- local and town hall taxes and fees.

Further, buyer may also incur:

- inheritance taxes up to 81% (can be mitigated!)

LexJahnel can help you and your clients to legally avoid or mitigate almost all above mentioned taxes.

(*) LexJahnel – Abogados
Matthias Jahnel, LL.M.
Rechtsanwalt & Abogado

C/Can Arboç, nº 1 - bajos
E - 07002 Palma de Mallorca

Tel.: ++34.971.105.511
Fax: ++34.971.495.390
WWW: www.lexjahnel.com
E-Mail: info@lexjahnel.com