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LEGAL GUIDE:

BUYING A PROPERTY IN SPAIN

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Preliminary clarification

With this guide, we do not intend to replace the need for specialised and personalised attention from one of our qualified professionals when buying a property in Spain. Our aim is to provide a general idea to the basic questions which may come up in this important and sometimes delicate process. The information in this guide applies to standard buying and selling procedures; it may be the case that your situation and procedures are different from the situations and procedures described in this guide.

1. THE PROCESS OF BUYING A PROPERTY IN SPAIN

1.1. RESERVATION OF THE PROPERTY

The first step is to formalise your offer on the property and remove it from the market, thus protecting your interest to purchase. Once the terms of the purchase have been discussed and the seller accepts the offer, a binding agreement is born, which is sealed by signing a reservation contract. This includes payment of a deposit of between 3,000€ and 6,000€ to reserve the property prior to the exchange of a private purchase contract.

This reservation fee is fully refundable in case that the checks carried out by our lawyers unveil any legal obstacles which affect the buying process.

The searching process

Whilst the property is 'reserved' in your name, our local lawyer will carry out all the necessary searches and investigations on the property with the relevant authorities to ensure that the property you are purchasing is legal and free from any charges, debts or encumbrances. We will also ensure that the property has the necessary Title Deeds and that the vendors are the rightful owners.

Once the searches have been finalised, we will confirm in writing whether the searching process has been satisfactorily concluded. You will receive an accurate description and explanation about every single aspect of this investigation.

1.2. THE PRIVATE CONTRACT

Once the searches are complete, and we are absolutely certain the property is legally declared in the best conditions to purchase, a Private Contract is drafted and signed by both parties. This private contract sets out all the details of the agreement, payment terms and completion date. During this stage the buyer puts down a non-returnable deposit, which will be a percentage of the purchase price less the holding deposit paid at the reservation.

1.3. COMPLETION (Signing the title deed)

The property sale process is finalised before a Notary, with the buyer and seller signing the Deed of Sale (Title Deed). The Notary is a public official whose role it is to identify the buyer and the seller, and to ensure that all legal requirements have been met, and that the amount due to be paid has been settled.

If you are unable to be present at the signing of the deed, we can carry out all necessary procedures in your name by means of Power of Attorney. In fact, it is common practice of our firm to have a valid power of attorney from the beginning of all buying and/or selling operations.

a) Taking possession of the property

Immediately after the deeds have been signed, the buyer will receive the keys to the property, and can take possession of the property.

b) Title deed and property registration

The property registration procedure entails the payment of all the taxes applicable to the property and the obtaining of the final register stamp for the Title Deed, which guarantees the transfer of the property. This procedure is an important step, and takes place once the Title Deed have been signed and you have taken possession of your property. The title deed usually takes around two to three months to be returned by the Land Registry office. The Notary will give us notice that the deed is available for collection.

c) Utilities

Once the sale has been finalised, we will ensure that all the utility contracts for the property (electricity, water, rubbish collection, etc.) are in the name of the buyer. We will also arrange all bills to be paid by direct debit from your Spanish account if you wish.

2. BASIC NECESSARY FORMALITIES

There are various basic formalities you must take into account when completing your property buying process in Spain:

2.1. POWER OF ATTORNEY

To be your legal representative in Spain, it is essential that you grant Power of Attorney in our favour so we can act on your behalf. With this Power, we are able to sign contracts, deeds and all documentation related to your purchase process. We will draft the Power of Attorney which can be signed, at your convenience, either in Spain or in the country of your preference. Whenever applicable, we will also provide instructions for the Power to be stamped with the Apostille of The Hague or Consular legalization, making the Power valid in Spain.

2.2. N.I.E. (Spanish ID Number for Foreigners)

The N.I.E. is the ID number that foreigners use in Spain, and is issued by police authorities. Without this ID number it is impossible to buy properties in Spain or obtain service contracts for utilities. Applications to obtain a N.I.E. number tend to take certain time to process, so it is very important to present your application for a number at the beginning of the buying process.

2.3. SPANISH BANK ACCOUNT

It is essential to have an account in a Spanish bank in order to contract utility services and to pay them by direct debit. We are able to open a bank account in Spain on your behalf.

2.4. SPANISH WILL

Although it is not compulsory to have a Will in Spain, we strongly recommend you to have one. A Spanish Will usually makes procedures easier and quicker in Spain. Without a Spanish Will, finalising an inheritance procedure can take up to one and a half or two years. Spanish authorities apply tax penalisation if these matters are not dealt with promptly.

According to Spanish law, when a property is jointly owned by two people and one of them dies, their part is not automatically transferred to the other title holder. It will be transferred in accordance with the Will of the deceased, or, if there is no will, in accordance with laws on intestate succession.

3. TAXES IN SPAIN

The purchase of a property in Spain involves, both for residents and non-residents, a series of fiscal obligations which must be met:

3.1. TAXES ON CONVEYANCE OF ASSETS

a) New Properties:

The IVA tax (VAT) is applicable to the purchase of new properties and urban plots (which have never been transferred before). It amounts to 10% of the purchase price, and 21% for the purchase of urban plots. This tax must be paid on each instalment.

In addition, the obtaining of the title deed is also subject to Stamp Duty (AJD Tax, tax on Conveyance of Assets and Documented Legal Procedures) at 1,5%.

b) Resales:

When properties have been already transferred before, the applicable rate is not IVA but ITP tax (transfer tax).

The rate of ITP is between 8% and 10% of the property purchase price.

Note that the total costs associated to a property purchase transaction are normally between 10% and 14% of the purchase price (without a mortgage involved).

3.2. TAX ON REAL ESTATE (IBI in its Spanish acronym)

The IBI tax must be paid to the corresponding Town Hall every year, in one payment to be made between September 15 and November 15 (this is the usual period, however it might change in accordance with each Town Hall).

We can ensure this payment is made by direct debit from your Spanish bank account.

3.3. PROPERTY INCOME TAX

Anyone who owns properties in Spain must file a tax return with the Spanish tax authorities. The Tax Office calculates an annual Imputed Income as a percentage (1.1% to 2% depending on the Town Hall) of the Cadastral Value of the real estates. Note that the Cadastral Value is normally significantly lower than the market value. On the Imputed Income, Income Tax is **24%** for non EU citizens, and **19%** for tax residents in the ECC (Economic European Community).

If you decide to rent out your property, the above Income Tax would not apply for the periods in which the property is occupied, and a separate tax declaration must be filed accordingly. In that case you pay Tax on Rental Income.

As a general guideline, the percentage of tax you pay on profit is **24%** for non EU citizens, and **19%** for tax residents in the ECC (Economic European Community).

We advise that any person who owns a property in Spain, but is not resident there the entire year, should designate a 'fiscal representative' who will carry out all the procedures necessary before the tax authorities. As we also offer this service, please check with our non-resident tax department in this regard.

3.4. CAPITAL GAINS TAX

Capital gains tax is payable based upon the increase between the original purchase price of a property and the selling price. This tax applies to the seller, and is levied at **19%** in the case of non-residents.

Anyone purchasing a property from a non-resident must withhold 3% of the purchase price, which is then paid to the tax authorities on account of any liability by the vendors. The vendor then has a 3-month period to pay the rest of this tax to the tax authorities. There are situations in which the tax due would be less than the 3% withheld, in which case it needs to be claimed back from the tax office. We will be pleased to assist you in that matter.

3.5. WEALTH TAX

If you are resident in Spain, you must pay Wealth Tax (Impuesto sobre el Patrimonio), which is applicable to all the assets you have in Spain. Among these assets are real estate, bank accounts and other assets.

The net wealth (assets minus obligations) will have to be more than 700,000 Euros per individual to have the obligation to declare it, or alternatively, a gross wealth of more than 2 million Euros. Rates are from 0.20% to 2.5%. There is a deduction for the main residential home of 300,000 Euros which is exempt from this tax.

4. MORTGAGES

In Spain, foreigners and non-residents can apply for a mortgage with Spanish banks. Our staff can assist you in finding the mortgage option most suited to your needs.

4.1. REQUIREMENTS

In order to obtain a mortgage in Spain, you must meet a series of requirements related to your ability to meet payments and also the value of the property being purchased.

The mortgage repayment will never exceed 30% or 35% of the net monthly income of the applicant and the maximum re-payment period is 30 years. In Spain, mortgages are normally granted until the age of 70-75.

4.2. AMOUNT REQUESTED

As part of your mortgage application process, the bank will commission an official, certified and independent valuation company, to carry out a valuation of the property. This company will provide an official report on the value of the property, which becomes the main direct guarantee for the recovery of the loan in case of non-payment.

With regard to the mortgage amount, the official loans offered by banks are, as a general rule, up to 60%-65% of the valuation value of the property for non-resident clients, and up to 80% for residents.

As with any mortgage, the property acts as the main guarantee; if the client cannot meet payments, the mortgage lender can execute the property, and eventually, repossess it and sell it to recover its loan.

4.3. TYPES OF MORTGAGES

The most common type of mortgage in Spain is the capital and interest or repayment mortgage.

In capital and interest mortgages, the loan is returned by paying part of the capital monthly, together with the interests generated. This way, the loan is returned completely once the repayment period has ended.

4.4. NECESSARY DOCUMENTS

You will need certain documents in order to apply for a loan, which vary depending on whether the applicant is employed, self-employed or retired:

Employed:

- Last three pay slips.
- Tax return from last two tax years.
- Company certificate confirming salary and length of time at company.
- Bank statements for last three months.
- Reference letter from bank.

Self-employed:

- Tax returns for last two tax years.
- Report by accountant.
- Bank statements for last three months.
- Reference letter from bank.

Retired:

- Last three pension slips.
- Tax return from last two tax years.
- Bank statements for the last three months.
- Reference letter from bank.

4.5. MORTGAGE COSTS

Apart from the monthly interests and repayments, there may be costs related to setting up a mortgage in Spain, like the opening commission, insurance, legal fees, etc.

If you are interested in obtaining a mortgage, we can draft a detailed list of all associated costs related to setting up the mortgage, once we know the amount you are allowed to borrow.

Another legal requirement in setting up a mortgage is purchasing an insurance policy on the property and its contents. Eventually, the bank could also demand to contract a life insurance policy. Our firm can assist you in this as well.