

**TAXATION OF URBAN PROPERTY  
OWNED BY INDIVIDUALS WHO ARE NOT  
RESIDENT IN SPAIN**

**PERSONAL INCOME TAX  
PROPERTY TAX  
REAL STATE TAX**

## **1. INTRODUCTION**

If you are not resident in Spain and own urban property in Spain, you are subject to Personal Income Tax, Property Tax and local Real State Tax.

### **1.1. REPRESENTATIVE**

You are not obliged to appoint a representative before the tax authorities. However, you may appoint one, if you wish, and notify the appointment to the Office or Branch of the Tax Agency corresponding to the place where the property is located.

### **1.2. TAX IDENTIFICATION NUMBER (N.I.F.)**

In Spain each person is assigned a tax identification number (N.I.F) which must be used on all tax returns and communications addressed to the tax authorities.

In general, the N.I.F. of a Spanish national is his/her National Identification Number (D.N.I.); in the case of foreign nationals, the N.I.F. is their Foreigner identification Number (N.I.E.). These identification numbers are issued by the Directorate General of the Police. Nevertheless, nationals of other European Union member states and of other states which are party to the Agreement on the European Economic Area who are not obliged to have a N.I.E. may apply to the Tax Administration for a tax identification number (N.I.F).

## **2. PERSONAL INCOME TAX**

Where a property is owned by a married couple or by various individuals, each one is treated as a separate taxpayer and must file returns separately.

Depending on what the property is used for, the income subject to taxation is as follows:

### **2.1. INCOME FROM URBAN PROPERTY FOR OWN USE**

The income to be declared is the amount resulting from applying to the cadastral value of the property, as shown on the Real State Tax (Impuesto de Bienes inmuebles: I.B.I.) receipt, the following percentages:

- 2 per cent, in general.
- 1,1 per cent in the case of property whose cadastral value was revised or modified after 1<sup>st</sup> January 1994.

This income is chargeable once per year, on 31<sup>st</sup> December, and has to be declared the following year.

If you have not owned the property for the entire year or if it was leased for part of the year, you must declare the corresponding proportion.

- Tax return form: Form 210, using general section 210-A and indicating income type 02.
- Filing period: 1 January to 30 June.
- Place of filing: the Branch of the State Tax Administration Agency corresponding to the place where the property is located.
- Tax rate: 25%.

## **2.2. LEASED URBAN PROPERTY**

The income to be declared in this case is the total amount collected from the tenant, without deducting any expenses.

This income is chargeable when it is claimable from the tenant or when it is collected (if earlier). Each rent due is taxed separately and, consequently, a return must be filed for each rent due.

Nevertheless, collective returns may be filed which may include various chargeable income of one or more taxpayers falling within a calendar quarter. If the collective return includes the income of several taxpayers, the person filing it must be a representative or one of the persons which the law regulating this tax defines as being jointly and severally liable (payer or administrator).

- Tax return form: in accordance with the foregoing, there are two possibilities:
  - Form 210. Ordinary return, using general section 210-A and indicating income type 01.
  - Form 215. Collective return. Also indicate income type 01
- Filing period: for ordinary returns (form 210), the deadline is one month after the date on which the rent is due. Collective returns (form 215) relating to a quarter must be filed within the first 20 calendar days of the month of April, July, October or January following the first, second, third or fourth calendar quarter, respectively.
- Place of filing: the Branch of the State Tax Administration Agency corresponding to the place where the property is located.

- Tax rate: 25%.

### 2.3 CAPITAL GAINS ON THE SALE OF PROPERTY

Capital gains on the sale of property are taxable income. This income is chargeable when the capital gain takes place.

The gain is generally the difference between the sale and acquisition values.

The acquisition value is the actual amount for which the property being transferred was acquired, plus the expenses and taxes inherent in the acquisition (excluding interest) paid by the person now transferring it. Depending on the year of acquisition, this value is updated by application of the update coefficients established each year in the State General Budget law. For assets transferred in 2006, the coefficients are as follows:

<b>Year of acquisition of the asset</b>	<b>Coefficient</b>
1994 <sup>(1)</sup> or earlier	1.1924
1995	1.2597
1996	1.2167
1997	1.1924
1998	1.1692
1999	1.1482
2000	1.1261
2001	1.1040
2002	1.0824
2003	1.0612
2004	1.0404
2005	1.0200
2006	1.0000

<sup>(1)</sup> If the asset was acquired on 31<sup>st</sup> December 1994, the 1.2350 coefficient will apply.

In order for these coefficients to apply, the asset being transferred must have been acquired at least one year before the transfer date.

If the property being transferred were leased, the value thus determined must be reduced by the amount of depreciation corresponding to the lease period. The depreciation is also updated on the basis of the year in question.

The transfer value is the actual amount for which the transfer was made, less the expenses and taxes inherent to the transfer which were borne by the seller.

The difference between the transfer value and acquisition value determined in this way is the gain which is subject to taxation.

Nevertheless, if the property being transferred was acquired before 31 December 1994, the gain calculated as above is reduced by 11,11 % per year for each year (above two) during which the asset was held. This holding period is calculated by taking the number of years between the date of acquisition and 31-12-96 and rounding up. The amount of the taxable gain may be determined by applying the corresponding percentage from the table below to the gain calculated above.

Years elapsed to 31-12-96	1	2	3	4	5	6	7	8	9	10	Over 10
Before the 31 <sup>st</sup> December	1996	1995	1994	1993	1992	1991	1990	1989	1988	1987	1986
Percentage (%)	100	100	88.89	77.78	66.67	55.56	44.45	33.34	22.23	11.12	0

If the acquirer bought the property on two different dates or has made improvements to it, it must make the calculations as if there were two gains with different holding periods for applying the reduction and update coefficients.

### **Withholding tax**

The person acquiring the property is liable to withhold 5% of the agreed consideration and pay it in to the Treasury, regardless of whether or not he/she is a resident. This withholding is a payment on account of the seller's tax on the gain obtained on the transfer. Accordingly, the buyer must provide the non-resident seller with a copy of the form 211 with which the withholding tax was paid in, so that the latter may deduct the withholding from the tax payable in the return declaring the capital gain. If the amount withheld exceeds the tax finally payable, the excess is refundable.

Nevertheless, if more than 10 years elapsed between the date of acquisition of the property or the date of the last improvement made to it and 31<sup>st</sup> December 1996, then there is no capital gain or obligation to file a return and, consequently, there is no obligation to withhold and pay the aforementioned 5%.

If the tax withheld is not paid in, the liability for the tax is attached to the property.

Form, period and place for filing the return:

- Form: 212.

When the property being transferred is owned jointly by a married couple in which both spouses are non residents, a single return may be filed.

- Filing period: three months from the end of the period in which the purchaser of the property must pay in the withholding tax (which is one month from the date of the sale).
- Place: the Branch or Office of the Tax Agency corresponding to the place where the property is located.
- Tax rate: 35%.
- Refund of excess withholdings.

In the case of capital gains where the amount withheld exceeds the actual tax payable, the taxpayer is entitled to a refund of the excess. The refund procedure is initiated by filing form 212 before the aforementioned Branch or Office. The refund is paid by bank transfer to the account indicated in the form. The account-holder must be the taxpayer himself or his representative; in the latter case, the document accrediting the appointment as representative must expressly authorise him to receive the refund. Where the taxpayer does not have an account open in Spain, a refund by cheque may be requested by writing to the Delegate of the Tax Office. The refund application (form 212) must always be accompanied by the copy "for the non-resident seller" of the form 211 used to pay in the withholding tax.

The Administration has six months from the refund filing deadline in which to issue a provisional settlement. If the refund application is filed late, the six month period runs from the filing date. If no administrative assessment is issued in that period, the Tax Administration must refund the excess over the amount of tax self-assessed by the taxpayer without the need for further action by the taxpayer, although the Administration may perform subsequent assessments if appropriate. If the aforementioned six months elapse and the refund order is not issued for reasons attributable to the Administration, interest will be paid on the outstanding refund amount (at a rate of 4% in 2005).

### **3. PROPERTY TAX.**

Non-residents must file a Property Tax return if they own property in Spain at 31<sup>st</sup> December of each year, regardless of the value of the property.

Urban property must be declared at the highest of the following three values:

- the cadastral value, as reflected in the Property Tax receipt for the year to which the return refers,
- the value assessed by the Administration for purposes of other taxes,

- the acquisition price, consideration or value.

The net wealth (which is the taxable amount) is determined by the difference between that value and the charges or liens on the property and the debt principal invested in the property.

There is no tax-free allowance and, consequently, the base of assessment coincides with the taxable amount.

The tax payable is calculated by applying the tax rate approved for the year in question to the aforementioned taxable amount

The tax rates for 2006 are as follows:

Taxable amount up to (€)	Gross tax amount	Rest of taxable amount up to (€)	Applicable rate
0	0	167,129.45	0.20%
167,129.45	334.26	167,123.43	0.30%
334,252.88	835.63	334,246.87	0.50%
668,499.75	2,506.86	668,499.76	0.90%
1,336,999.51	8,523.36	1,336,999.50	1.30%
2,673,999.01	25,904.35	2,673,999.02	1.70%
5,347,998.03	71,362.33	5,347,998.03	2.10%
10,695,996.06	183,670.29	thereafter	2.50%

Each individual must file a separate return. Accordingly, if a property is owned by a married couple or by various persons, each one of them must file a single return for the corresponding part.

Form, period and place for filing the return:

- Form:714, the same as for resident taxpayers.

- Filing period: 1<sup>st</sup> May to 30<sup>th</sup> June.

- Place: the Branch of the State Tax Administration Agency corresponding to the tax domicile of the representative or, where there is no representative, of the party which is jointly and severally liable or, where there is more than one such party, the Branch of the Tax Agency in whose territory the administration of the principal part of the assets or activities is located, deposited or exercised.

#### **4. PROPERTY TAX AND PERSONAL INCOME TAX (Simplified return).**

A non-resident whose only taxable property in Spain is a dwelling fundamentally for own use may elect to use a single form for declaring Property Tax on the dwelling owned in Spanish territory and Personal Income Tax on the estimated income from the use of that dwelling.

##### Form, period and place for filing the return:

- Form: 214. Simplified return for non-residents (dwelling for own use).
- Filing period: the entire calendar year immediately following the one to which the return refers.
- Place: the Branch or Office of the State Tax Administration Agency corresponding to the place where the property is located.

#### **5. REAL STATE TAX.**

This is a local tax, i.e. levied by Municipal Governments, which is payable by real state-owners.

All real state in each municipality is included in a census and has an assigned value (its cadastral value). The amount payable is calculated by applying the tax rate set by the Municipal Government to the cadastral value.

- Each year, a Real State Tax payment slip is issued for each property in the census. Municipal Governments normally allow the payment to be made by direct debit to a bank account, which makes it easy for the taxpayer to pay the tax before the deadline and thus avoid surcharges.
- The period for payment varies depending on the municipality, but it is normally around the months of September, October and November each year.