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The benefits of purchasing real estate in Spain – The GOLDEN VISA –

The benefits

This type of visa allows investors to enter and stay in Spain for a period of 1 year, increasing the actual period of 90 days for non-residents. In addition, it allows the investor to travel freely, without visa restrictions in the 'Schengen area' that includes Spain, France, Germany, Austria, Belgium, Denmark, Estonia, Finland, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Czech Republic, Liechtenstein, Luxemburg, Malta, Netherlands, Norway, Poland, Portugal, Slovenia, Slovakia, Sweden and Switzerland.

This visa can be renewed, notwithstanding the lack of the minimum period of residence in Spain of 183 days per year. The resident permit obtained on renewal will be valid for a period of 2 years, renewable for a further period of 2 years.

General Requirements:

- Not having entered or stayed illegally in Spanish territory.
- Being of at least 18 years of age.
- Not having a criminal record in Spain or in the countries where the applicant lived during the last 5 years prior to the application.
- Not denied entry in any country, which has a valid agreement with Spain in this sense.
- Have a valid health insurance with an authorized entity to operate in Spain.

- Have sufficient economic resources (2130 euros monthly for himself/herself and 532 euros per family member).
- Be a holder of a valid investor's visa or being within the period of 90 calendar days prior to the application.
- Having visited Spain at least once during the process of the application for the visa.
- Pay the administrative fee for the visa.

Special Requirements:

1. Real Estate Investments

According to the Spanish law, non-EU citizens who buy properties in Spain of values superior to 500 000 euros are entitled to a residence permit in Spain for the minimum duration of one year, because they are considered investors with a special treatment.

In addition to the general requirements, the buyer must obtain a certificate that includes the continuous information of the possession and charges over the property. The Land Registry Office shall issue this certificate within 90 day prior to filing the application for the residence visa. The buyer must also prove to have made a real estate investment 500,000 € free of any liens or encumbrances. The part of the investment exceeding the required amount may be subject to mortgages or other charges.

2. Capital Investors

An initial investment, equal to or greater than 2 million euros in securities of Spanish public debt or by a value equal to or greater than 1 million euros in shares or shares of Spanish companies or deposits in Spanish banking financial institutions can be understood as significant capital investment, entitling the investor to a resident visa.

The minimum investment amount required should be made within a

period not exceeding 60 days preceding the filing of the visa application. The applicant shall maintain its investment for a period equivalent or superior to 5 years.

3. Entrepreneurs and Entrepreneurial Activity

This applies to both investors and entrepreneurs. Regarding investors, the law refers to those who submit a business project that will be developed in Spain and is regarded and accredited as of general interest.

As for Entrepreneurs, it is stated that an entrepreneurial activity is that which is of innovative and special interest to Spain and has been offered a favourable report from the Commercial Office where the investor submits the visa application.

CITIZENSHIP

There are a number of ways in which an individual can claim citizenship of Spain. For most, it will depend upon a minimum period spent legally living and working in the country or marriage to a Spanish citizen.

For most people a period of ten years of residency is required. Depending on the law of the country of origin, acquiring the Spanish nationality may mean giving up the former nationality of the applicant.

The administrative body in charge of citizenship applications is the "*Ministerio de Justicia*". When making the application for Spanish citizenship one will need to present a certain amount of documentation with the application. This includes:

- The birth certificate,
- A certificate from the consulate which gives details of the current

- nationality,
- Details of any criminal convictions and details of any military service carried out in the home country,
 - A certificate from the Spanish authorities which details any criminal activity involvement during the time in Spain,
 - A certificate from the police confirming the details of the residency in the country,
 - A copy of the applicant's registration at the local town hall.

Citizenship will give the holder a Spanish passport and they will also have the right to vote in Spanish elections. For those who are not already citizens of the EU, it will also give the right to live and work in other EU Member States.

Once citizenship has been approved the applicant will be expected to attend a ceremony where s/he will swear loyalty to the Spanish King and promise to uphold the constitution and the laws of the country.

Frequently Asked Questions:

What is a Golden Visa in Spain?

It is a new type of residence permit, established by the Law 14/2013, of the 27th of September, aimed at those non-resident foreigners who want to enter the Spanish territory in order to carry out a significant capital investment.

Does the golden visa authorize me to circulate freely within the Schengen area?

Yes. This type of visa authorizes investors meeting the requirements to circulate freely within Spain, France, Germany, Austria, Belgium,

Denmark, Estonia, Finland, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Czech Republic, Liechtenstein, Luxemburg, Malta, Netherlands, Norway, Poland, Portugal, Slovenia, Slovakia, Sweden and Switzerland.

Can I keep my tax residence outside Spain?

Yes, as long as the applicant stays in Spain for a period of less than 183 days per year.

How long can I stay in Spain with the Golden Visa?

The visa entitles the right holders to stay in Spain during one year. Once this period is expired, this permit can be renewed for a period of two years, renewable for two more years if it can be proved that the investment has been sustained throughout this period.

Does the golden visa authorize me to work?

Yes. The visa entitles the right holder to live and work in Spain.

The 500.000 Euros are per applicant or per application?

This sum is per applicant, but relatives can join (spouse and child of less than 18 years of age).

Can I buy more than one property?

Yes. The investment does not have to be made regarding one single property.

Should the investment be carried out free of charges and encumbrances?

Yes. The applicant should prove his capacity of carrying out an investment of 500.000 euros free of any charges and encumbrances. Nevertheless, the amount that exceeds for the required figure can be subject to charges or encumbrances.

At the termination of the maximum period of five years, can I request the long-term residence?

It can be requested, but will not be granted automatically at the termination of the investors permit. In this case, the continuity of the residence in Spain should be proven for the acquisition of the long-term residence.

What requirements do I have to comply to access the long-term residency?

In order to access the long-term residency, it is required to prove that the applicant has lived legally in Spain for a minimum period of five years. That the residency is effective means that the periods lived out of Spanish Territory must be less than six consecutive months and not exceed a total of ten months during the said five years.

Does the Law 14/2004; of the 27th September have retroactive character?

No. The Law is only applicable to the investments carried out from the 29th September 2013 onwards.

Legal Advice regarding the Purchase of Real Estate in Spain

Before you complete on your property purchase you should make sure that you have seen the Land Registry extract (nota simple) and checked the following details:

- The details registered regarding the property and the seller match the reality,
- That there are no debts or charges, such as a mortgage, on the property,
- That there are no legal proceedings initiated against the property for contravention of land planning law.

You should also check the planning permission and building restrictions for the property, particularly when you buy off-plan or directly from the developer. Information regarding the planning permission can be obtained from the town hall.

If you buy an off-plan property, you should check the details of the developer's insurance against structural defects and the certification of the new built.

Additionally, you should check the following documents:

- A receipt of the previous owner's paid annual property tax (IBI) and a certificate from the town hall proving that the payments are up to date.
- A cadastral certificate stating the boundaries and square metres of your land.
- The licence of first occupancy or habitation certificate issued by the town hall.
- Receipt to prove that the previous owner has paid all utility bills.
- A certificate signed by the President of the Community of Property Owners stating that there are no outstanding debts.
- An energy efficiency certificate.

On completion, it is advisable that you register the property in your name with the Land Registry to ensure full protection of your ownership rights. It is strongly recommended you employ a legal conveyancer, as the conveyancing system in Spain may be different to that in your country.

How to establish a S.A. or S.L.

Setting up a Limited Responsibility Company in Spain

Benefits

Responsibility: this is limited to the capital invested by the shareholder(s). Additionally, this type of company protects the shareholders from personal liability in the event of bankruptcy.

Number of shareholders: there is a minimum of one individual in which case it will be defined as *Sociedad Limitada Unipersonal*. There is no limitation as to the maximum number of shareholders.

Investment: The Company can be established with cash and/or assets.

Legal personality: the company must be constituted before a public notary and registered in *Registro Mercantil*.

Dividend payments: before dividends can be paid, 10% of earnings must be retained until total retained earnings are equal or above 20% of the paid up capital of the company. Dividends can be distributed on the condition that, post distribution, the book value of the company is not less than the paid up capital total.

Taxes: for companies incorporated after 2013, the tax payable shall be 15%.

Steps

1. Obtaining a Foreigner's tax identification number - NIE

Prior to commencing the process of setting up a company in Spain, non-resident and resident foreigners must obtain a foreigner's tax identification number (NIE). The application shall be made at a police station with a department for foreigners.

Documents required:

- a) An application form, (form EX-15)
- b) Receipt for payment of the administrative fee, stamped by the bank.
- c) Identity card or passport and a photocopy.
- d) Two passport photographs.
- e) Communication of the financial, professional and social reasons for the application.

2. Registro Mercantil

Verify that a different company has not already taken the name of the company you wish to use. Obtaining a certificate from the Registro Mercantil of the place you wish to incorporate your company does this.

3. Agencia Estatal de la Administracion Tributaria

You shall apply for a tax identification code or *C.I.F.* This is done by filling in the 036-tax form and submitting it to the *Hacienda*.

Documents required:

The NIE and a photocopy of it.

4. The Bank

A deposit of 3000Euros is required. This is the minimum authorised share capital payable into a Spanish bank account. A bank certificate proving that this payment was made is required for the act of incorporating the company.

5. Memorandum of Articles

This document, establishing the initial agreement of the shareholders and the norms by which the company will run shall be drafted. It is recommended you are assisted by a lawyer in drafting this agreement given its complexity and effects it may have regarding the way the company is ran.

Generally, it must include the name of the company, the address, the object of the company, and designation of the governing body.

6. The Notary

The appointed director or the *administrator* of the company to be established shall present the abovementioned documents to the notary. The notary will draft the deed of incorporation and the director shall sign this.

7. Agencia Tributaria

The Agencia Trbutaria shall register the deed of incorporation. A stamp will be providing certifying the registration.

8. Registro Mercantil

The deed shall be registered in the Registro Mercantil. The original documents shall be returned once the registration is completed. The deed shall be stamped, proving that the company has been registered.

9. Agencia Tributaria

The Agencia Tributaria shall on this occasion provide you with a Permanent Corporate Tax Identification Number (CIF). For these purposes, you will be required to fill in the 036 Form.

10. Tesoreria General de la Seguridad Social

You will have to register the director for social security and occupational accident insurance purposes. Procedural formalities regarding Employment and Social Security matters shall be complied with.

Purchasing Shares in Spanish Company

Benefits

In general, buying shares in a company does not lead to tax obligations in Spain, i.e., VAT, transfer tax and stamp duty.

Steps

1. Obtaining a Foreigner's tax identification number - NIE

Prior to purchasing shares in Spanish Company, a foreign citizen who is not a legal resident in Spain shall obtain a NIE, following the steps mentioned above.

2. Agencia Estatal de la Administración Tributaria

The form 030 shall be filled in and submitted to the *Agencia Tributaria*.

3. Public Notary

The acquisition shall be made before a public notary and by way of a public deed of sale. The purchaser or the person with power of attorney must appear before the public notary.

Documents required:

- a) Power of attorney, if applicable.
- b) National identity document or passport, and NIE or residence card of the foreign citizen or his or her representative (if applicable).

Buying shares through a company

Steps

1. Obtaining a NIF

A foreign company wishing to purchase shares in a Spanish company must obtain a NIF.

A legal representative of the company must sign the NIF application; if the legal representative is not a legal resident in Spain he or she must first obtain a NIE.

Foreign companies may wish to provide a power of attorney to a trusted professional such as a lawyer to complete this procedure.

2. Agencia Estatal de la Administración Tributaria

The foreign company's legal representative shall fill in and sign the Form 036, which must be submitted to the tax authorities.

Documents required:

- a) Representative's national identity document or residence card for foreigners.
- b) Document certifying the existence of the foreign entity: the company's deed of incorporation in the applicant's country and the company by-laws filed with an official registry in the applicant's country, or a certificate issued by a notary public or the tax authorities certifying the company's existence.

The tax authorities shall issue an identification number.

3. Public Notary

Once been registered with the tax authorities, the foreign company may purchase shares of the Spanish company through a public deed of incorporation.

Documents requested:

- a) The company's by-laws, with the minimum content required under Spanish law.
- b) A certificate of availability of the company name for registration issued by the Central Commercial Registry.
- c) In the case of cash contributions, a deposit receipt issued by the bank certifying the payment of the initial contributions (or, where applicable, the corresponding amount in cash).
- d) If the foreign citizen incorporating the company does not appear before the notary public in person, the original power of attorney he or she granted to his or her representative must be provided, together with the corresponding apostille and an official translation.
- e) Original identity documents (national identity document or passport, and NIE or residence card for foreigners) of the individuals incorporating the new company.
- f) Completed declaration of foreign investment.

4. Agencia Estatal de la Administración Tributaria

The company shall apply for the NIF.

5. Registro Mercantil

The company must file the deed of incorporation with the *Registro Mercantil* and, once it has been filed, the company must apply for the final tax identification number card indicating the company's name without the wording "under incorporation" appearing after the name. Companies can request the final tax identification number from the tax authorities by submitting Form 036.

Foreign Company buying Spanish Company

Steps

The steps to be followed are the same as the ones mentioned in the case above. Notwithstanding, the following observations are made:

Notary

To execute the deed of sale, the buyer must provide the following documents:

- a) Original powers of attorney (if applicable).
- b) Certificate of the company's existence certifying the authority of the legal representative.
- c) Original identity documents (national identity documents or passport, and foreigner identification number or residence card for foreigners) of the representative.
- d) Completed declaration of foreign investment.

• Payment

The buyer or its representative must pay the purchase price of the company by cheque at the moment of signing the deed, unless the payment has been made by bank transfer before the public deed is executed.

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