PRACTICAL GUIDELINES
REGARDING THE PURCHASE OF REAL ESTATE IN SPAIN

I.- General Guidelines

In Spain, ownership is evidenced by a title deed (Property deed) signed before a Spanish Notary Public and registered with the corresponding Land Register to the location of the Property. Registration itself is the essential feature to prove ownership.

When planning a real estate transaction, it is of essence that the Purchaser carries out a due diligence revision on the following elements:

- Land Register to ensure that the seller is the registered owner and that the property and land for sale match the details recorded at the Registry, and that there are no debts, charges or other encumbrances, such as mortgages, on the property.
- Town Plan records to ensure that there are no legal proceedings initiated against the property for contravention of land planning laws.
- Latest Town Plan to see whether or not the property has any building restrictions, is in a green zone or includes a public pathway, easements or similar obligations.
- Also, if the property bounders the coast, it will be subject to the Coast Law and so applicable restrictions need to be checked.

Whilst this is not obligatory, it is wise to get a chartered surveyor, to check the building structures and do a topographic survey of the land.

On the other hand, as far as administrative documentation is concerned, the seller needs to deliver to the purchaser the following documents:

- A paid receipt for the previous annual property tax (IBI). Additionally it is useful to obtain a certificate from the town hall proving that there are no unpaid taxes from previous years.
- The Cadastral certificate giving the exact boundaries and square meters of the property.
- The license of first occupancy or habitation certificate issued by the town hall. This document is required to connect to supplies (electricity and water companies).
- Receipt to prove all supplies bills have been paid by the seller.
- As from 1st June 2013, all homes for sale in Spain are required by law to have an Energy Efficiency Certificate. The seller is obliged to show you this certificate.
- Where and if appropriate, if there is occupation of any public property shoreline bound slipway, the Coast Grant should be checked. Also, the presentation of a Coast
Invasion Certificate to determine that the Real Estate does not invade the public maritime land domain is required when executing the sale and purchase deed.

II. - Process and formalities

Regarding the process acquisition, it is usual in Spain (although not compulsory) for the buyer and seller to execute a private contract first to reserve the property in exclusivity, paying a non-returnable deposit (usually around 10% over price), the so called "Arras". This deposit is paid on account of the purchase price and, in the event the purchaser does not execute the purchase, it will remain with the seller. On the contrary, if the seller does not execute the transfer he will have to pay twice the amount to the purchaser as a penalty. Other type of agreements may be signed, like i.e. private sell and purchase agreements, put and call option rights, etc., although, in all cases, the relevant and final agreement needs to be granted in a public deed before a Public Notary. The sale and purchase deed to be signed before a Spanish public notary must cover all agreements reached by the parties with regards to the transfer conditions and payment of the purchase price. The transfer deed is the title to the property ("Escrutura de compraventa"), and have to be recorded at the Land Registry.

III. Tax Regime

In Spain, all taxpayers letter resident or non-resident are assigned with a Tax Identification Number (NIF), which must appear on all official or public documents (such as the transfer deed), tax returns, and in all communications with the Agencia Tributaria (Spain’s Tax Agency).

1.- Transfer tax ("Impuesto sobre Transmisiones Patrimoniales"). - The transfer tax levies the acquisition of real estate by the Purchaser. Each autonomous community sets its own tax rate annually (p.e., in Catalonia this tax is levied nowadays at a 10% on the purchase price and has to be paid within 30 days from execution of the sale and purchase deed).

Furthermore, if the seller is non-resident in Spain the purchaser is obliged to withhold on behalf of the seller, and deposit with the Tax Department a 3% of the purchase price. This withholding tax has for the seller the nature of payment on account of the corresponding Income tax for the profit deriving from this transfer in his country of residence.
2.- **Personal Income tax for non-residents ("Impuesto sobre la renta de no residentes"),** -

a) **Real estate owned by non-resident individuals for private use (not for economic activities),** shall be liable to pay Income Tax for non-residents based on a presumed income derived from the holding of the property.

b) **Real Estate owned by non-resident companies for private use.** No Income Tax for Non-residents will apply if the owner is a non-resident company in Spain. However, if the company is resident in a territory considered as a tax haven an annual tax of 3% on the cadastral value of the property at December 31 each year will be applicable.

c) **Income from leased property through a permanent establishment ("Impuesto sobre la Renta No Residentes").** Applicable to non-residents (individuals or companies) who own Real Estate in Spain for rental purposes. The income to be declared will be the lessee rental, without deducting any expenses.

3.- **Corporate Tax.** -

If a Spanish based company owns a property in Spain, it will have to comply with Corporate income tax obligations ("Impuesto sobre Sociedades")

Where taxable income is the company’s gross income for the tax year, less certain deductions. It is determined from the annual financial statements prepared under Spanish generally accepted accounting principles as adjusted for certain statutory tax provisions.

4.- **Wealth tax ("Impuesto sobre el Patrimonio").** - Non-residents are subject to wealth tax on the assets located or the rights exercisable in Spain. The taxable base is reduced by €700,000, the excess being taxed at a rate that varies between 0.21% and 2.75%, depending on the value of the assets.

5.- **Local Taxes.** -

a) **Local property tax (Impuesto Sobre Bienes Inmuebles (IBI))**
IBI is local property tax affecting owners of properties in Spain payable yearly to the Town Hall.

All the above taxes have specific regulations and particularities which need to be analyzed on a case to case basis.

In addition to taxes, there are a range of other costs when purchasing a property in Spain including notary fees and land register fees.