

Buying and Selling Spanish Property Using an Offshore Company Structure

During the property boom of the 1980s it was common practice on the Costa del Sol to buy property using an off shore company structure located in "tax haven" where little or no taxes were charged and the names of the owners remained confidential. According to "You and the law in Spain", David Searls excellent publication, 12,000 companies exist in Gibraltar for the purpose of owning property in Spain.

The real benefit of this is the company can change hands and with it the Spanish property, bypassing Spanish transfer taxes which can amount to around 10% of the purchase price. The property would still be owned by the company, but the company would be bought and sold and the tax office in Spain would remain unaware of the transfer. This system has also been used to avoid Spanish inheritance tax.

Nowadays buying a property using off-shore company structure is not a valid proposal unless you are looking at either inserting a Spanish limited company between the property and the off-shore company, in which case your annual running costs could well run into a few thousand Euros. One of the few remaining reasons for opting for such system is to conceal your identity for anonymity reasons.

With the introduction of new taxation laws in Spain, a property owned directly by an offshore company now attracts an extra annual taxation cost of 3% of the ratable of the property (Valor Catastral), a hefty levy if this value is high. If we consider the Valor Catastral to be 150,000€ your liability would be of 4,500€ per annum, in addition to the 1,500€ charged by the offshore entity if it is based in Gibraltar. Spain's Hacienda (tax authority) has a list of jurisdictions regarded as "tax havens" and for companies listed in these area round the world there are no exemptions from this tax. The only exception is when the company and its real owners are fiscal residents of a country which is signed up to the double taxation treaty with

Spain. The company can claim exemption by revealing the names of its owners and presenting certification that it has paid its taxes in its country of registration

The most sensible options nowadays are to either purchase directly (in your physical name) or via Spanish limited company. There is nothing preventing an individual from buying a property from an offshore company as opposed to buying the company itself, other than the interests of the vendor.

For new properties, this option should be totally discarded. But for older properties, purchasing the company, thus avoiding Spanish transfer taxes, might be a viable option in situation where the Valor Catastral is much lower than the real value. In these circumstances the net result of the 3% corporate could be much lower than the normal tax liability incurred. On the Costa del Sol, for example, some older properties which have not had their Valor Catastral updated have been sold for very high values but very low annual costs due to the out of date valuation. However, this is a short term option as the Hacienda is now revaluing the Catastral Values of properties throughout Spain, and it will only be a matter of time before this valuation is increased.

For those people stuck with a Gibraltar holding company owning their property there are two options available to divest themselves of the structure.

1. Sell the property to themselves as the new owner attracting the usual 10% purchase costs
2. Contact a specialist lawyer to wind up the Gibraltar company and distribute the assets to the owners of the company for smaller administration fee (usually around 3%).