

GARRIGUES



GOLDEN VISA

A quick residency guide for investors in real estate in Spain

SPANISH GOLDEN VISAS

This memo outlines the most relevant legal aspects of the regime applicable to foreigners applying for a Spanish Residence Visa/Authorization for investors on the basis of their investment in real estate in Spain, in accordance with Law 14/2013, amended by Law 25/2015. We also include general information of the taxes applicable to investment in real estate in Spain.

A. LEGAL

I. RESIDENCE VISA FOR INVESTORS

Key issues:

Granted right	Temporary 1-Year Residence Permit (Residence and working Permit).
Who may apply	All non-resident foreigners (non-European Union citizens or foreigners to whom European law does not apply) that wish to enter Spain to make a “significant financial investment”.
Main requirements	<p>Investment in real estate of at least €500,000 per applicant. The acquisition must be made by public deed and registered at the Property Registry</p> <p>The evidence of the investment required is: (i) an updated certificate from the relevant Property Registry indicating ownership and encumbrances relating to the investment and registration of the acquisition, as well as the amount of the investment, or (ii) if the acquisition has not yet been registered, a certificate from the relevant Property Registry evidencing the filing of the public deed of purchase with the Registry office, together with the documents certifying payment of the relevant taxes.</p> <p>Other remarks:</p> <p>The applicant may seek bank financing and the property may be encumbered, but only to the extent that the amount exceeds €500,000;</p> <p>The applicant must make an investment in real estate in Spain before applying for a permit. Consequently, prior to the investment, the applicant must ensure compliance with all other requirements.</p> <p>The applicant can also apply for a 6-month permit if he/ she has a preliminary contract executed as a public deed in real estate guaranteed by “arras” (deposit). The applicant must include a certificate evidencing a deposit in a bank in Spain for the amount of the acquisition, charges and taxes. If the applicant finally proves the investment, he/she can apply for a 1-Year Residence Visa or a Residence Authorization for Investors.</p> <p>The investment can be made directly or through a vehicle domiciled in territory that is not considered a tax haven under Spanish law, provided the foreigner directly or indirectly holds the majority of the voting rights and has the authority to appoint the majority of the members of its governing body.</p>

Negatively-framed requirements	<p>The applicant must not:</p> <ul style="list-style-type: none"> • Be in Spain unlawfully • Be subject to a ban on entering Spain or countries with which Spain has signed a convention accordingly • Be subject to Schengen Information System alerts • Be subject to Spanish Immigration and Border Service alerts • Have a criminal record in Spain or in any of the countries in which the applicant has resided in the last five years
Other requirements/ Documents needed	<ul style="list-style-type: none"> • Valid passport • Proof of sufficient financial means of support (both for the applicant and the applicant's family members) • Proof of health insurance • Criminal background clearance certificate from the Spanish authorities • Criminal background clearance certificate from the relevant authority of the applicant's home country or from any other country in which he/she has resided for the last five years • Certificate evidencing the investment in Spain
Prior residence permit	Not required
Where to apply	Spanish diplomatic missions and consular offices
Duration	1 year.
How long does it take?	10 working days on average, after all the documentation has been submitted

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2. RESIDENCE AUTHORIZATION FOR INVESTORS

Granted right	Temporary 2-year Residence Authorization
Who may apply	Non-resident foreigners legally in Spain, with or without a Residence Visa.
Main requirements	<p>If the applicant does not hold a Residence Visa, he/she must provide proof of compliance with all requirements to obtain the permit.</p> <p>If the applicant holds a Residence Visa, when applying for the Authorization, the legal requirements for obtaining the visa will still apply and should be certified. In addition, the investor must prove that he/ she:</p> <ul style="list-style-type: none">• Holds a valid Residence Visa for investors (or one that expired less than 90 days ago)• Owns real estate valued at the minimum amount required• Has fulfilled his/her tax and social security obligations
Where to apply	The application for a Residence Authorization must be filed with the “ <i>Unidad de Grandes Empresas y Colectivos Estratégicos</i> ” (Large Enterprises and Strategic Groups Unit)
Duration	<p>2 years, renewable</p> <p>Renewal: for periods of 5 years</p> <p>Renewal requirements: the legal requirements for obtaining the authorization will apply</p>
How long does it take?	Residence Authorization should be granted within 20 working days after receipt of the application with all the documents and, if no decision is made on the application within such period, it will be deemed as granted by virtue of administrative silence.
Family reunification	<p>The definition of a “family” includes: the applicant’s spouse or common law partner, children under 18 as well as children of legal age who are economically dependent on the investor and have not formed their own family unit or ascendants that are not financially independent. All the applicant’s family members may apply for a permit jointly and simultaneously or subsequently.</p> <p>If the investment is carried out by a couple under the community property or an analogous system and the amount is not equal to or above twice the amount of the threshold, it will be considered that the investment has been made by one of the spouses. The other spouse can apply for a permit under the general regime for family members.</p>

B. TAX

On very general terms, investments in real estate in Spain are subject to the following taxes:

- Direct taxation

Depending on whether the direct investor in the real estate is a legal entity or an individual and whether or not he has tax-resident status in Spain, the following direct taxes may be charged on the income from the investment in real estate or from the mere ownership of such real estate:

- Personal income tax

Individuals with tax-resident status in Spain are liable for this tax. The personal income tax rate is scaled, and may reach a maximum of 48% in certain Autonomous Communities.

- Corporate income tax

In general, entities established in Spain are liable for this tax. The standard rate applicable to net income obtained from the exploitation and/or the capital gain obtained in the transfer of real estate is 28%- 25% in 2016. There are reduced rates applicable in certain circumstances and special rules for calculating the tax base.

- Nonresident income tax

Individuals or entities not resident in Spain may be liable for this tax, although a differentiation must be made between nonresidents established in Spain (in which case their tax treatment would be very similar to that indicated above under corporate income tax) and nonresidents which are not.

In the latter case (nonresidents not established in Spain), Spanish-source income obtained on the exploitation of real estate will be taxed at 24% (general tax rate) or 19%¹ (if the nonresident is resident in another Member of the EU). The tax base would be the gross income (or the net income if the non-resident is established in the EU).

Capital gains, dividends or interest obtained by non-established nonresidents will be taxed at a rate of 19%². In either case, the applicable tax treatment will be determined having regard to any applicable tax treaties or EU Directives (which could reduce or avoid the taxation in Spain of the aforesaid income). For instance, tax treaty between China and Spain reduces the withholding on interest and dividends to 10%.

¹ During 2015, the tax rate would be 19.5% - if the income is obtained after July 7th - or 20% if the income is obtained before.

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For such purposes, as indicated, it will be essential to determine whether the taxpayer has tax-resident status in Spain or abroad. In general, an individual has tax-resident status in Spain where he stays in Spain for more than 183 days within a single year (and has in Spain his center of vital and economic interests). Legal entities are treated as residents of Spain where (i) they were incorporated pursuant to Spanish law, (ii) they have their registered office in Spain or (iii) they have their place of effective management in Spain. All of the foregoing is notwithstanding any rules stipulated in the related tax treaties.

- Indirect taxation

Acquisitions of real estate in Spain are subject to one, but not both, of the following two taxes:

- Value added tax

In general terms, this tax will be charged where the transferor of the real estate is a trader or professional (i.e., not a private individual) and the real estate being transferred consists of buildable land, land being developed or a new building. The transfer of rural land or used (not new) buildings will be, in principle, exempt from VAT, notwithstanding the possibility of waiving this exemption in certain cases, i.e., where the land or buildings are to be used for a non-exempt economic activity by the purchaser and comply with certain conditions (this waiver is not usually possible in the case of dwellings). The VAT rate is 21%, in general, and 10%, in the case of dwellings.

Acquisitions of real estate subject to VAT are usually also subject to stamp tax at a rate of between 0.5% and 2%, depending on the Autonomous Community in which the real estate is located. However, certain reduced tax rates may apply in certain cases.

- Transfer tax

This tax, incompatible with VAT and with stamp tax, will be charged where the transfer of real estate is not subject to VAT, i.e., where the transferor is not liable for VAT or where, due to the nature and use of the real estate, the transaction is exempt from VAT and the exemption cannot be waived (for example, acquisitions of used dwellings).

The general transfer tax rate is between 6% and 11%, depending on the Autonomous Community in which the real estate is located. However, certain reduced tax rates may apply in certain cases.

- Other taxes

In addition to the taxes indicated above, the ownership and subsequent divestment/transfer of real estate may also be subject to various local and autonomous community taxes. As an example and in summary, please note the following:

- Real estate tax: charged annually on the mere ownership of real estate located in Spain.
- Tax on economic activities: charged annually on the pursuit of an economic activity in Spain (lease, development, construction, etc.)

- Tax on erection and installation projects and construction work: charged on the execution of construction and refurbishment works on real estate.
- Tax on increase in urban land value: charged on the transfer of urban real estate.
- Inheritance and gift tax: charged on the non-profit transfer or *mortis causa* transmission of real estate located in Spain (or shares in Spanish entities).