



## LEASING PROPERTY IN SPAIN – FAQs

### *1.- Which issues should I be aware of when leasing property in Spain?*

There are two main issues to consider:

- a) Legal aspects which will be drafted in a lease agreement;
- b) Taxes: which taxes apply, how much are they and who pays them.

### *2.- What should my lease agreement cover?*

Typically, the lease agreement should include at least the following:

- a) Description of property;
- b) Purpose: commercial or residential lease;
- c) Duration of lease;
- d) Renewal;
- e) Securities;
- f) Rent: amount, payment and update;
- g) Responsibility over repair and maintenance;
- h) Termination

### *3.- Which documents will the tenant request from me?*

It is common to provide the tenant with a copy of the property certificate from the Land Registry, while an energy performance certificate is mandatory.

### *4.- What is the minimum duration of a lease?*

The parties can freely stipulate the duration for commercial or residential leases; however, if the duration of a residential lease is less than three years long, it will be automatically renewed until it reaches the three-year mark (although the tenant can serve a 30-day notice prior to termination). Should nothing be stipulated the minimum duration for a residential lease is one year.

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### *5.- What kind of security is usually given?*

For residential leases, one-month deposit; for commercial leases two months. Nevertheless, the parties can agree on additional security.

### *6.- Who is responsible for repair and maintenance?*

In residential and commercial leases it is the landlord's duty to undertake any repair and maintenance work, unless the tenant is responsible for the damages. If the landlord wishes to execute improvements while the tenant is in the property, the latter is entitled to a reduction in the rent in the proportion of the property he cannot dispose of.

### *7.- When can a tenant terminate the agreement?*

The tenant can serve a 30-day notice after six months of execution. The parties can agree on a compensation paid by the tenant equivalent to one-

month rent per each remaining year.

### *8.- Which taxes are applicable?*

- a)** Transfer tax ("ITP/AJD");
- b)** VAT ("IVA");
- c)** Personal income tax ("IRPF") or;
- d)** Corporate income tax ("Impuesto de Sociedades").

Transfer tax is always due by the tenant and levied by the regions ("comunidades autónomas") so rates and possible deductions will change depending on the property's location. By way of example, we will compare rates in Madrid and Catalonia:

Monthly rent: € 1,000

Duration of lease: 3 years

Transfer tax in both cases is levied on the total rent paid during the lease, ie € 36,000. Catalonia applies a flat rate of 0.3% in 2014 and 0.5% in 2015. This would give us € 108 in 2014 and € 180 in 2015.



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Madrid applies a sliding scale:

| TOTAL RENT (€)   | TAX (€) |
|--|---------|
| Up to 30.05  | 0.09    |
| From 30.06 till 60.10  | 0.18    |
| From 60.11 till 120.20   | 0.39    |
| From 120.21 till 240.40  | 0.78    |
| From 240.41 till 480.81  | 1.68    |
| From 480.82 till 961.62  | 3.37    |
| From 961.63 till 1,923.24                                      | 7.21    |
| From 1,923.25 till 3,846.48                                    | 14.42   |
| From 3,846.49 till 7,692.95                                    | 30.77   |
| From 7,692.96: 0.024040 euros for each 6.01 euros or fraction. |         |



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Tax is calculated as follows:

$$€ 36,000 / € 6.01 = € 5,990.02$$

$$€ 5,990.02 * € 0.24040 = € 144$$

VAT is only levied on commercial leases at a rate of 21%.

If the landlord is an individual, any lease income will be subject to IRPF according to a sliding scale<sup>1</sup> (rates will vary depending on the region where you become a tax resident). IRPF in Madrid starts at 23.95% and goes up to 51.50%. There is also withholding tax charged at 21% which serves as payment on account.

Corporate landlords will be taxed at a current rate of 30% (25% for taxable income up to € 300,000 in the case of qualifying smes). As with individual

landlords, there is also withholding tax charged at 21% which serves as payment on account.

Companies whose main activity is property rental can qualify for a special tax regime provided that they meet two main requirements:

- a)** The number of leased properties must be a minimum of 8;
- b)** The duration of each lease must be a minimum of 3 years.

Thanks to this regime, the effective Corporate Income Tax rate is 4.5% on income derived from the lease.

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*The following presentation is for information purposes only and does not constitute legal advice. Please contact one of our offices should you wish to discuss any issue.*



<sup>1</sup> The sliding scale is composed of a state tax rate and a regional tax rate.