REFLECTIONS ON POSSIBLE RESTRICTIONS ON NON-RESIDENTS FOR THE PURCHASE OF A PROPERTY IN THE BALEARIC ISLANDS (Illeslex)



As a result of the recently approved parliamentary initiative, the debate on limiting properties in the Balearic Islands to non-residents is once again on the table. It is an undeniable reality that the Autonomous Community has experienced great demographic growth in recent decades, which has brought with it the problem of access to properties.

To alleviate the effect of overcrowding, the possibility of restricting the sale of properties to non-residents or those who have been living in the archipelago for less than five years has been raised.

Subjects covered by the measure

One of the most important points to be clarified with regard to the proposed measure is the specific definition of the concept of non-resident. If we were dealing with non-residents of the Balearic Islands, we would be faced with a measure that is unquestionably unconstitutional and, therefore, unworkable. It would violate the constitutional principles of equality, free choice of residence and the right to private property, found in Articles 14, 19 and 33, respectively, of the Spanish Constitution.

Under no circumstances could the premise contained in Article 53.1 EC be invoked with regard to the regulation of constitutional rights by law, as the

essential content of these rights is not being respected.

We understand that this is not the case, and that the parliamentary initiative refers to non-resident aliens, so perhaps a more appropriate terminology would be non-nationals.

With regard to foreigners, on the one hand, we find those who are not resident in Europe, who enjoy the freedom to choose their place of residence, subject only to the limitations arising from laws and treaties, as provided for in Article 5 of Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration. However, we will focus on nationals of a Member State of the European Union, who enjoy the status of *European citizens* and all the rights deriving therefrom.

The freedom of movement, residence and establishment of European citizens is one of the basic pillars of the Community regulation set out in the Treaty on the Functioning of the European Union, as well as in international treaties such as the Maastricht Treaty of 1992 and the Lisbon Treaty of 2009.

While it is true that there are exceptions to these principles in countries such as Finland (in the territory of the Aland Islands), Malta and Denmark, these were included in a transitional period prior to definitive accession to the Union by means of derogations to the Treaties they were intended to ratify. It is also important to stress that the only country that effectively limits the ability to purchase a first home is Denmark by derogating from Protocol 22 of the Schengen Treaty; the restriction imposed by the other countries only applies to the purchase of a second home.

However, when Spain joined the EU in 1986, it did not establish any type of differentiated treatment with respect to the limitation of properties for non-residents, ratifying all the European Treaties and regulations without any exemption.

As stipulated in Article 96 of the Constitution, all international treaties signed by Spain become part of its legal system and cannot be modified except in the manner provided for in the treaties themselves. It would therefore not be possible for a territory to unilaterally modify a norm that involves so many international actors.

Processing channel

While this is not the first time that such a measure has been proposed at the European level, it has never been successful. Restrictions on non-residents purchasing a property were proposed in both French and Italian regions, but failed because they were contrary to national and European regulations.

Another interesting case was that of certain municipalities in Flanders, which established restrictions on the purchase of real estate on the grounds that they did not have sufficient links with the territory in which they intended to settle. The issue was challenged, reaching the European Court of Justice, which ruled that the rule was contrary to EU principles, but established the future viability of the restriction if it was justified on grounds of general interest.

This resolution left the door open to future restrictive measures provided that a general interest that could go beyond the European right of freedom of movement and residence was duly and strictly justified.

In the event that the Balearic Islands did indeed want to go ahead with the proposal, it would have to do so by creating an autonomous law invoking its competences in spatial planning and housing granted by Article 148.1.3 of the EC. The first obstacle that the regional legislature would face would be to duly justify the necessity of the measure in the general interest.

If this is achieved, the regulation would have to be submitted to the national body for review. As established in Article 149.1.2 and 3 of the Constitution, the State has exclusive competence in matters of foreigners and international relations, so it would be the State that would determine whether the regulation is in accordance with European law. Likewise, in the event that it is considered to be in accordance with international law, the state would be the most responsible in the event of an appeal for non-compliance brought by Europe.

In this situation, the Court of Justice of the EU would judge the case by issuing a binding decision, motivated by the balancing of the general interest and the rights deriving from European rules.

The economic factor

Another decisive point to be assessed is the economic – and social – impact that

and application of the measure would have on the islands. Currently, more than 25% of the GDP of the Autonomous Community is related to the real estate sector, with the purchase of property by foreigners accounting for almost 40% of the total. Similarly, the largest tax revenue in the archipelago is based on the transfer tax.

The future commission – still to be formed – in charge of analysing the measure will have to take into account the magnitude of the restriction, as well as the repercussions it would have on the economy of Balearic residents.

In view of the above, it can be concluded that achieving the enforcement of a rule restricting access to the purchase of property by foreign non-residents will be an arduous task at both the national and international level. It is clear that there is a need to promote measures aimed at facilitating access to housing for islanders, although this must always be done in accordance with the law and constitutionality.

Javier Blas & Clara Lladó, from ILLESLEX



26/01/2021, Over the last few days, numerous articles and front pages have alarmed British citizens who were thinking of buying a property on the islands. The exit of the United Kingdom from the European Union on 1 January has meant that its citizens have become non-EU foreigners, which has direct effects on British property investments in Mallorca and the rest of the Balearic Islands.

One of the consequences of Brexit is the need to obtain a permit from the Ministry of Defence, according to a law of 1975 on areas and installations of interest for National Defence. However, this military permit will not be necessary if a British or any non-EU foreigner (with the exception of Swedes and Norwegians) wishes to acquire a property on urban land, be it an apartment, a villa or a

plot of land.

This authorisation will only be necessary if they wish to acquire a property on rural land. The great repercussion and alarm caused by this new requirement, which is now also necessary for British citizens, is due to the delay that it is said to cause in carrying out the real estate transaction.

Well, let's analyse this supposed delay. Although it is true that there can be simple and quick purchase and sale transactions, this is not usually the case when it comes to the purchase of a rural property in Mallorca. It is very important to carry out a process of examination of the documentation, the physical reality of the property and its legal situation. It is very rare to find a rural property that is 100% legal and with all the documentation up to date. Therefore, the most advisable thing to do in these cases is always to sign a first deposit contract, whereby the buyer hands over part of the price and a period of time is established, which usually ranges from 1 to 3 months, to carry out a due diligence process, so that the seller can obtain essential documentation before the sale, so that the urban situation can be regularised or even, and very often, so that the buyer can be granted the bank financing needed to carry out the investment.

Well, taking into account that it takes an average of 3 months from the date of application to obtain the military permit, we are not talking in these cases about such a considerable time delay. The importance of good planning is clear here, as well as the importance of submitting the application with enough time in advance and the necessary and correct documentation to avoid further delays or surprises. If this authorisation is not available at the time of signing the public deed of sale, the buyer cannot be registered as the new owner in the Land Registry. Again, this is not necessary if the property being purchased is located on urban land.

And, returning to the money deposit contract (also a purchase option contract), it will be essential to establish in the contract a reasonable period of time to obtain permission before signing the public deed of sale. We see, therefore, the need to have the help of a lawyer specialised in the matter, since, if the process of buying a rural property already involved an exhaustive examination process, now there is an additional requirement for the British. And so that it remains just another requirement and does not become a problem, at ILLESLEX ABOGADOS we offer you our services as specialists in real estate and urban planning law, with more than 20 years of experience in the sector.

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Sorry, this entry is only available in European Spanish.



31.7.2018 When you visit **Majorca** on holiday or even if you live here, you know for certain that you will find the best beaches that the Mediterranean can offer, along with great people and amazing landscapes. However, just imagine if to this list you can add discovering a local gastronomy which offers a great variety of dishes in an unexpected local restaurant. Well that's what I am talking about! In the charming village of Llubí, located to the north of the central plain of the island, you can find this **gastronomic delight**. '**Brut**' whose owners are Brazilian and Argentinian, opened a year ago in **Llubí**, offering a nightly menu full of unexpected tastes and textures, washed down with a selection of homemade beers or carefully selected wines. I won´t tell you any more so that you can discover the rest for yourselves, but I must warn you that you need to call to make a reservation:+34 971 188 231.



27.04.2016. If you intend to **buy a Mallorca property this year**, you may already know that a high and mighty exchange rate can really help you cut your costs. After all, if the pound is on the up versus the euro, this means you get a hatful of euros extra, when you transfer money from the UK to Spain. With this in mind, is sterling destined to rise against the common currency in 2016? Well, let's take a peek.

1.Sterling could hop, skip and jump versus the euro, if the UK votes to stay in the European Union in the upcoming referendum, due on June 23rd.

This would give the pound a nitro boost, as the UK would remain part of the world's largest trading bloc, clearing a storm cloud of uncertainty from Britain's economic outlook. In turn, as the pound rises, it'd become better value to buy Mallorca property!

2.*The pound may make like a sparrow and fly against the common currency, if the European Central Bank again cuts interest rates.*

This would lift the GBP/EUR exchange rate, because it'd be a sure sign that the ECB is desperate, both to prevent the Eurozone's economy sinking into the mud, and to stop deflation. And this thereby would make buying a Mallorca property more affordable for you!

3.*Sterling could soar like Superman versus the euro, if the Eurozone's migrant crisis gets out of hand.*

After all, hundreds of thousands of people have travelled to Europe this year, to escape war in Syria. Yet Europe doesn't have anything that resembles a coordinated policy to help and house these refugees. If this gets out of hand, the euro could sink, making Mallorca property better value!

Of course, it's also worth mentioning that the pound to euro exchange rate could stumble, if the UK leaves the EU in June. To protect yourself against this eventuality, set up what's called a forward contract. This lets you lock in the exchange rate where it's at today, so that if it falls tomorrow, you still get the rate you've locked in. This way, you're protected when you buy Mallorca property!

Given all this, you're in an excellent position to make the most of the exchange rate when you buy Mallorca property.

By Peter Lavelle at foreign exchange broker Pure FX http://www.purefx.co.uk



5th March 2016: the typical fabrics from Mallorca are called “llengües” and they are made by artisans as in the past in small majorquian workshops. They have very characteristic prints in bright colors that evoke the sea and an exotic flair. In Mallorca Realtors we like visiting the store Textile Bujosa in Santa Maria del Cami and enjoy the pure craftsmanship.



13th December 2015: After several years, Sir Richard Branson buys back the Property Son Bunyola, a majestic majorquian Posesion. The fantastic estate is located near the town of **Bunyola** and will be reconverted into a **luxury hotel.**



23th April 2014: Tax increases are impacting most of us in Europe, but the extent to which they affect you often depends on how much attention you pay to tax planning. It still surprises me sometimes how some people worry about every little fall in their investment returns but fail to consider what detrimental impact tax is having on their capital and income.

Whether your investment objective is to preserve your wealth, or to provide an income, or to provide capital growth, for the most effective results you need to protect your capital and income from being eroded by taxation. Paying more tax than you need to could undo some of what your investment strategy has achieved.

You only need to pay unto Caesar that which is due to Caesar, and yet many investors pay more than strictly necessary because they have not structured their investable assets, including their pensions, in the most tax efficient way. The way you hold your capital can make a significant difference to how much tax you pay.

While tax should not necessarily wag the investment dog, you should always talk to a wealth manager to establish what your options are so you can make the most informed decision. It doesn't make sense to buy investments one way and pay a high tax on them when you can hold them in a different way which provides relatively similar results but with a lower tax liability.

There are various benefits to strategic tax planning. It can reduce income and capital gains tax on your savings, investments and pensions. Many people pay more tax than necessary, such as income tax on bank interest they are not even withdrawing and capital gains tax when switching between investments. You may be able to avoid this.

The less tax you pay, the more you have to spend or save for your future or leave to your heirs.

If you are an expatriate living here in Spain your tax planning needs to be designed around the local tax rules, but you should also consider what your future circumstances may be. For example, if you are a British expatriate, do you think there's any chance you'll return to the UK in future? If so there are steps you can take now to make your investments tax efficient when you return to the UK, that you would not be available after you return.

In summary, you need to protect your wealth in real terms. Professional advice from a firm like Blevins Franks which combines effective tax planning strategies with investment advice would maximise your wealth preservation opportunities.

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27th September 2013: The Spanish television and film producers Vicente and Carlos Ortí have made a promotional video of the island of Majorca for the Russian television market. Drawing on the long career which the Ortí brothers have had in the audiovisual sector and the experience of **Mallorca Realtors** in the luxury property market**;** this pilot programme travels around the island, looking at the culture, the gastronomy, the landscape and the **luxury property market in Majorca**. Importantly, the island has attracted European citizens for many years and more recently those from Russia.



May 17th 2013: As a property owner, I wish to inform you that as of the 1st June 2013 it is obligatory to have a **certificate of energy efficiency**. This certificate classifies the property on a scale from A to G according to its energy efficiency and gives advice on how to make improvements, as is necesary. This regulation is already implemented throughout Europe and in Spain it will be obligatory both for the sale and the rental of a property.

We recommend that you designate a registered inspector to carry out the survey and thus obtain the certificate for your property as soon as possible. At your request, we can offer you a list of recommended agents who will help you to obtain this certificate.

If you already have the aforementioned certificate for your property, could you please send us a copy, as we have the obligation to include this information in the sales prospectus for your property.