



# DAVIES ABOGADOS

solicitors/estate agents

## LEGAL CORNER:

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***Before selling: have the expenses explained correctly . Make sure you do not pay more tax than you have to .***

**Q.** I understand that if I sell my property I need to think about the following expenses: solicitors fee, capital gains tax and plusvalía tax. What is plusvalía tax , and how is it calculated?

**A.** Up to recently this was a small tax , but now it can be a high amount and needs to be considered before the transaction.

It is charged on the sale of a property, if the property is the subject of an inheritance, if it is transferred in some other way, or if it is given away. This tax is a local tax charged by each municipality on the increase in value of Urban land in its own district land and is distinct from Capital Gains Tax.

It is important to realize that the tax is charged on land alone, not on the buildings that may stand on the land.

The rates of tax are set by each municipality and can vary widely between neighboring municipalities . The tax is based on the increase in the official, that is to say the “Catastral”, value of the land which a property occupies. This is the same value that is used to set your local property tax or “IBI” and can be found on the bill for your “IBI” issued by your local ayuntamiento each year and is shown as the “valor del suelo”.



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The actual price at which a property changes hands, or the value attributed to it if it is the subject of a gift or inheritance is irrelevant.

You will be thinking the above sounds strange. How can a tax be levied on a theoretical increase in value instead of on a real increase ? I agree , and sometimes the strange system can cause unfair results.

Calculation:

The Plusvalia is calculated as a function of the catastral value of the land and the number of years of ownership (up to a maximum of 20 years). The higher the catastral value and the number of years of ownership, the higher the tax.

Plusvalia tax = Catastral value of the land x Yearly percentage of value's increase x Number of years of ownership x Tax rate

The yearly percentage of value's increase and the tax rate are fixed by the Town Halls. They are established locally : Your solicitor will inform you of the percentage of value increase per year and the tax rate applied in your municipality.

If you provide your solicitor with your last rates bill and you original purchase deed he will be able to tell you what the plusvalia tax will be if you sell.

Up to now, when a Town Hall had updated the catastral values, usually with really high increases of the values compared to the existing ones, article 107.3 of the Law had established that on the following five years after the revision of the values, the Town Halls had to apply a deduction of 40 to 60 % to the catastral value. If a Town Hall made not contemplation of this rule the law established an automatic deduction of 60%. However new Law passed in 2012 has changed that situation allowing the Town Halls to eliminate those deductions, which is why a lot of people are suddenly paying much higher rates and find themselves with an unfairly high plusvalía tax when they sell.

On a sale of a property it is the responsibility of the seller to pay the tax, but if the seller fails to pay this responsibility may be passed to the buyer, who would then have to recuperate the money form this seller.

If the property is being inherited or is the subject of some other type of gift it is the beneficiary or recipient of the property who is liable to pay the tax.



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Certain transactions are exempt from the Plusvalia Tax, the main ones which are likely to affect the general public are the transfer of property between spouses who are divorcing, or to children to comply with Court judgments, and “aportaciones” or transfers to companies in which spouses are the only shareholders which may be used for tax planning.

The amount of the tax that will be charged on a transaction will depend firstly on the Catastral value of the land which the property occupies, and secondly on the length of time since it last changed hands. If you are selling an individual house which stands on a large plot which you have owned for a considerable length of time the amount of the Plusvalia Tax could be many thousands of Euros. On the other hand, as the tax is charged on the value of land alone, the amount of Plusvalia Tax charged on a flat in a block which you have not owned for very long the tax may be quite modest.

For those of you who are considering rearranging your financial affairs to take advantage of tax planning schemes, the amount of Plusvalia tax that may be due is one of a number of elements, which include the Notary and other fees that may be payable, which you need to consider when balancing the costs and benefits of these schemes. Depending on the amount of Plusvalia, it may be cheaper to make a gift of the property rather than enter into more complex arrangements with higher Notary and other fees.

The time for paying the Plusvalia Tax is within 30 days of a sale or gift between living people, or 6 months of the date of death on an inheritance.

Your town hall can advise you of the amount of Plusvalia that may be payable on a transaction involving your property, but as I always write in concluding these articles, if in doubt take advice from a solicitor as they are the best qualified to help you with these matters.

Michael Davies.

Abogado.

***Not  
everyone  
advertising  
legal advice in  
Spain is  
qualified.***



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Michael Davies is a Spanish Abogado and has been practicing law in Andalucia since 1993. He is member of the Law societies of Almería and Madrid . For a short period of time leading up to 2007 he was also Honorary British Consul .