

Spanish tax office will not accept equity release to mitigate taxes

A Marbella law firm has denounced around ten banks for fraud

:: SUR IN ENGLISH

MARBELLA. Spanish "Hacienda" has recently confirmed that the so-called Equity release on Spanish property is not valid for tax mitigation purposes. According to an official answer to an enquiry submitted by Lawbird Legal Services representing 100 of approximately 1,000 victims, mostly British, attempting to mitigate wealth and inheritance taxes registering a charge against the property is tax fraud.

This matter was denounced a year ago at the Audiencia Nacional as fraud, fraudulent publicity and tax evasion but the Magistrate Fernando Andreu dismissed the case on grounds that he deemed the allegations to not be of a serious nature and the facts were not proven conclusively. Civil proceedings have been filed and rulings are soon expected.

According to Antonio Flores of Lawbird, "the Tax Office's response represents a boost to the aspirations of the victims in relation to demonstrating that, indeed, they were victims of a scam and not accomplices to an alleged fraud, as has been insinuated".

Following the dismissal of the case by the National Audience back in April 2012 and further to a "denuncia" filed at the Malaga offices of the Spanish Tax Office, Lawbird indicated that it was this body who should investigate if such a "tax amnesty", now deemed fraud, did actually exist.

Tax fraud

Hacienda has now come back stating that the approximately 600 mortgage loans sold to foreign pensioners with a Spanish property, under the pretext that they would allow them to - legally- mitigate wealth tax during the life of the subscriber, and inheritance taxes following their demise, cannot benefit from any reduction in such taxes. In fact, the Tax Office states that attempting to reduce the value of the home would constitute tax fraud and a criminal offence where the defrauded sum exceeds €120,000 per tax year.

Lawbird deems that "the borrowers are victims because top banks confirmed the legality of the product, assisted by top-notch Madrid lawyers who now, following the repercussions of the case, are distancing themselves from their former clients."

Banks

The banks allegedly involved are Nordea Bank Luxemburg, Danske Bank Luxemburg, Landsbanki, Jyske Bank, Rothschild, Sydbank and Nykredit who sold either directly, or



It is alleged that people were frightened by high tax threats. :: SUR

Property owners were offered mortgage loans to reduce the value of their properties

through unregulated Costa financial offices, the financial packages. Most of the pseudo-IFAs have now disappeared.

According to the victims, the strategy was to scare them with unbearable tax consequences should they not do anything with their unencumbered properties. Several banks, most of them from Scandinavian countries with private banking offices in Luxembourg, made their clients believe that in Spain, if someone is to die without having a mortgage on their properties, the Tax Office would tax the inheritors so heavily that they would not be able to ever pay those taxes.

They offered mortgage loans to reduce the value of their properties and advised that the loan capital should be sent to opaque tax havens, in some cases, with a view to have it invested on behalf of the pensioner. However, as a result of poor

Victims say the strategy was to scare them with unbearable tax consequences

investment decisions by these banks the invested capital lost substantially and now, the victims are fighting to save their homes.

This alleged financial plot started in 2004 and finished in 2008. Flores calculated that in Spain, over 500 couples could be affected, most of them pensioners. The total sum of funds taken out to Luxembourg could reach 250 million euros, according to the lawyer. The banks told their clients that this sum would be "tax free" if it was inherited in a tax haven, or without the Spanish Hacienda's knowledge. The alleged fraud to the Tax Office could reach, on average, 20 per cent of the total sums, approximately 50 million euros in total.

Lawbird is particularly worried that pensioners with very limited income, some of whom were over 85 years of age, decided to rush into speculative investments with their properties.

Promoter sentenced for selling property with an irregular licence in Marbella

The case dates back to 2007 when an Irish buyer refused to go ahead with the purchase

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The Spanish Supreme Court has declared that a contract signed by an Irish purchaser with the developer Marbella Vista Golf S.L., for a unit in Santa Maria Green Hills, was validly terminated by the purchaser.

The Supreme Court has argued that for a property developer to comply with the contract not only is the unit to be completed, but it needs to have the mandatory licence of occupancy.

The Court of First Instance in Marbella deemed that the developer could not be held responsible for not having the licence, as it was up to the Town Hall to grant it and so, it was out of the control of the developer. The Appeal Court reversed this decision on grounds that granting licences of occupancy by administrative silence was not valid, if these violated planning laws and regulations. On appeal, the Supreme Court ratified this conclusion.

The Court also deemed that for-



Legalised in 2010. :: J.L.

eigners deserved extra protection given that, whilst their understanding of the laws was lower, they trusted the reliability of the Spanish system of protection of property rights.

The building licence came under scrutiny from Marbella Town Hall as the residential complex had been built on land zoned for one family Andalusian style homes and had been challenged by the Junta de Andalucía.

What Marbella Vista Golf SL had built was eleven blocks with 42 separate entrances, with carparks and communal zones, making up the residential complex of Santa Maria Green Hills.

British holidaymakers warned to watch out for thieves and pickpockets

The British Embassy has told Easter holidaymakers in Spain to be on their guard following the reported increase in theft and pickpocketing

:: SUR IN ENGLISH

British Consulates around the country have detected the rising trend due to an increase in applications for emergency travel documents. The majority of these applications are because holidaymakers have had their passports stolen.

The Barcelona Consulate issued 1,320 emergency travel documents in 2012. Of these 75 per cent were the result of stolen passports, an in-

crease of 19 per cent from 1,072 the previous year. During the first two months of this year the number of emergency documents issued was up to 120, 20 per cent up on the same period last year.

As well as the stress of reporting a crime and the loss of holiday time, offices, visitors face the cost of 115 euros for an emergency passport.

Visitors have been warned to be especially vigilant on public transport and in busy areas as well as to watch out for distraction techniques: when thieves might ask for directions or offer their help. Tourists and residents are reminded to keep an eye on their bags and belongings in restaurants, hotels and stations.

Dave Thomas, Consular Director for Southern Europe, said: "Unfortunately we have seen increases in pickpocketing and distraction thefts. We urge holidaymakers to keep an eye on their belongings at all times. We want to reduce the numbers of British visitors who come to us for help over stolen passports and belongings, so they can get on with enjoying their Easter breaks instead of spending their precious holiday time in our consular offices."

The number of British tourists applying for emergency travel documents has risen