

Can I claim the Municipal Tax if the property is sold for less than the purchase price?

When a property in Spain is transmitted, the seller must pay two taxes as a general rule: the **Capital Gains Tax** and the **Plusvalia Municipal Tax**.

The first tax payable by the seller, the Capital Gains Tax, is the difference between the sale price and the acquisition. This tax is payable by both residents and non-residents. However, if there has been no gain upon the sale, there would be no need to pay this tax. That is to say, when you sell the property for less than the amount for which it was acquired, it is considered capital loss and therefore there is no obligation to pay any amount.

For example, if I buy a property in **Marbella** in 2009 by € 1 million and sell it in 2015 for € 1.2 million I will have obtained a capital gain of € 200,000 and I will be obliged to declare and pay the tax.

However, if the same property is bought in Marbella in 2009 by € 1 million and sold in 2015 for € 750,000, I will have had a capital loss. In this case, I will declare the sale as a loss and there is no obligation to pay any amount.

Municipal Tax

The second tax to be paid by the seller is the Plusvalia Municipal Tax. This tax is collected by the municipalities for urban properties transmissions (such as houses and plots) by any title (such as purchase, inheritance and donation). Legally, this tax is payable by the seller, but it can be agreed that the buyer pays this tax.

With regards to the calculation of the Plusvalia Municipal Tax, it must be noted that each municipality can set its coefficients, reductions, tax rates and bonuses, within the limits as established in the Local Tax Law (*Ley reguladora de las Haciendas Locales*). The payable tax is mainly obtained with the *catastral* value of the land and the number of years they have owned the transferor. Thus, the greater is the *catastral* value and the number of years since the last transmission, the higher will be the Plusvalia Municipal Tax. This tax is paid when the property value has increased and also decreased.

However, it has now raised a "*cuestión de inconstitucionalidad*" before the Constitutional Court on the demand for payment of the Plusvalia Municipal Tax when a property is sold for a considerably lower amount to that at which it was purchased, that is, when there is a capital loss. Therefore, for the moment the Constitutional Court has in its hands the decision to not apply the tax in cases where there is a capital loss.

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Lawyers from Lexland are waiting for Constitutional Court's decision on this matter, as it may open the gates to apply for a refund of Plusvalia Municipal Tax paid in cases of capital loss. Please contact us if you have sold your property for less than the purchase price, as there may be a possibility of requesting the return of the "unfairly" paid Plusvalia Municipal Tax.