

#### TRANSFER TAX OF PUBLIC AUCTION PURCHASES

It used to be the case that where property was purchased as a result of a public auction, whether judicial, notarial or administrative, the base for calculating the Transfer Tax levied on the transaction was not the sell off price but the official value given by the Tax Authority. This meant that a property auctioned off for 100,000 Euros with an official value of 200,000 Euros would initially pay tax for the 100,000 Euros and subsequently the Tax Authority would raise a supplementary demand for tax for the excess of 100,000 Euros.

Fortunately, the transaction would never attract the penalties envisaged for those transactions where the declared price/sell off price fell short of 20% and 200,000 Euros of the official declared value.

However, the Spanish Supreme Court, following the opinions of previous court rulings (TS 1-12-93 TS 5-10-95 TEAC 7-3-96) declared a partial annulment of article 39 of the RITP (Transfer Tax regulation), and identifies the sell off price with the base for calculating the transfer tax, without conditions. This means that the Tax Authority is not entitled to raise a supplementary demand for tax if they consider the sell off price is lower than the official value given by the Tax Authority to the auctioned property.