

SPANISH TAX REGIME FOR INCOMING PROFESSIONALS

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Tags

Beckham Law

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Remittance Basis

Spain

Tax Residency

INTRODUCTION

In Spain there is an advantageous tax regime available for incoming professionals. While an individual who benefits from the regime will be deemed tax resident in Spain, the tax is limited in two ways: (i) the tax base consists only of Spanish source income and (ii) a special tax rate of 24% is applied to that income. Foreign-source income will not be subject to tax in Spain regardless, even if remitted to Spain.

BACKGROUND TO THE BENEFICIAL TAX REGIME

It was in the last days of 2003 when a new tax regime was created for qualifying immigrant professionals in Spain. This new regime was not subject to further development and was put aside until the year 2005, in which new implementation rulings were issued and the system became viable.

Technically, the beneficial tax regime was designed as a temporary measure for incoming professionals, such as football players – read “soccer” in U.S. It was used to attract well-known football celebrities to play for Spanish clubs, and as a result, the law was nicknamed “the Beckham Law.” European football clubs normally agree to bear the players’ personal tax burden. Hence, any system that reduces the tax on players constitutes significant aid to the clubs, not the players themselves, and allows the clubs to hire the best players under better salary conditions. Today, this nickname is so well known that it has even been referred to as the “Beckham Law” on Wikipedia.

The regime is automatically granted, provided that conditions are met and the election for coverage is properly filed. This special tax regime has been used by a significant number of foreign professionals and sportsmen coming to Spain on a temporary basis in recent years. Some small changes have been made to the regime since it was created, but the core remains unchanged.

REQUIREMENTS FOR COVERAGE

In order to be able to apply for this special tax regime, the following requirements must be met:

- The individual must not have been tax resident in Spain in the preceding ten years.
- The motivation for coming to Spain should be one of the following:

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- The individual has an employment contract in Spain, which can either be (i) a new contract from a Spanish company or a Spanish branch of a foreign entity, or (ii) a secondment to Spain from a foreign employer, but always within a labor relationship
- The individual has been appointed as administrator (director) of a company that is not considered for tax purposes to be a related party to the individual (the company would be a related party if the administrator held, directly or indirectly, more than 25% of the capital or voting rights of the company)
- The individual does not obtain income in Spain that would be considered as obtained through a permanent establishment in Spain.

The first requirement is factual. No comment is required. The third requirement applies only in exceptional cases in which the individual could be deemed a dependent agent of a foreign company following the definition of permanent establishment included under Article 5.5 of the O.E.C.D. Model Income Tax Treaty.

The second requirement deserves comment. The special regime is limited to professionals covered by a labor contract or performing administrative duties as directors of companies in which they do not maintain control. The typical case would be of a managing director in a big corporation who is not technically an employee but is treated as such for these purposes. This excludes entrepreneurs or company owners, unless they were hired by a different company, not related to the individual's company or business. In fact, under social security law, an individual who owns or controls a company, as measured by 25% ownership of capital or voting rights, cannot be considered to be an employee of the company. The existence of an employment contract between the company and the shareholder owning 25% or more will not change the result.

In the author's experience, this requirement is not easily met in many cases. For individuals caught up by the control exclusion, arrangements must be explored to address the problem, possibly by transfers of ownership or limitations on voting rights.

TAXATION UNDER THE SPECIAL REGIME

Application Process

The incoming professional who meets the above requirements may file an application with the Tax Office requesting his entitlement to the special regime. The initial period of coverage runs from the financial year in which the application is filed through the next five financial years. The application is submitted on Form 149. It should be accompanied by

- personal identification;
- the labor contract or a secondment letter, whichever is applicable;
- a social security registration certificate; and
- any other documents that prove the accomplishment of the legal requirements.



Once the application form is filed by the individual, the Tax Authority has ten business days to answer. As mentioned above, the Tax Authority has no discretion to withhold the benefits of this regime. Instead, it will issue a letter acknowledging the receipt of the application and the terms and conditions under which the regime will apply for the current year and the following five years.

The Tax Regime

The benefits of the regime are relatively straightforward.

- **Tax Rate:** The incoming professional will be tax resident in Spain but will be taxed as a nonresident. As discussed below in greater detail, the tax base is limited to Spanish-source income. For the first €600,000 of Spanish-source income, the special tax rate for nonresidents is applicable. It is a flat 24%. The tax on amounts in excess of €600,000 is imposed at standard tax rates. This is in itself a substantial advantage, since the marginal individual tax rate in Spain is 46% for 2015 and the rate for 2016 is scheduled to be 45%.

For savings income, including interests, dividends, and capital gains obtained in Spain, the tax rate is 20% for the first €6,000, 22% from €6,000 to €50,000, and 24% for amounts in excess of €50,000. Each of these rates will be reduced by one percentage point in 2016.

- **Residence Certificate:** Because the beneficiaries of this regime are resident in Spain for income tax purposes, they benefit from E.U. taxation principles. In principle, tax treaties signed by Spain should be applicable to beneficiaries of this regime. However, there may be other views; each treaty is unique and should be reviewed carefully. In addition, it may be more difficult for an individual benefitting from this regime to obtain a tax residence certificate from the Tax Authority. A limited review of the situation may be required before a certificate is issued.
- **Tax Base:** Only Spanish-source income is subject to taxation. This will include salary income or directors' fees, and any other income from Spanish sources. All employment income or directors' fees will be deemed to be obtained from sources in Spain no matter where they were obtained from or paid from prior to arrival. Other income or gains obtained outside of Spain would not be subject to Spanish taxation.
- **Other Taxes:** Beneficiaries of this special regime will be subject to Spanish wealth tax only on wealth located in Spain. Incoming professionals will not have special inheritance tax protection while they are resident in Spain. In this regard, pre-immigration planning for temporary residence in Spain is highly recommended.

COMPARISON WITH OTHER SIMILAR REGIMES

This beneficial tax regime for professionals has similarities to special tax systems of countries that impose tax on a territorial basis rather than on a worldwide income basis. Examples include the remittance basis taxation regime in the U.K. and the nonregular resident regime in Portugal.

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- *U.K. Remittance Basis Regime*: This is a regime that is enjoyed by persons who are not domiciled in the U.K. but are tax residents, nonetheless. The remittance basis regime is currently in effect, but it is scheduled to be terminated in 2017 for those who will have been resident for 15 years. Several important differences exist between the U.K. regime and its counterpart in Spain.
 - Remittances to Spain from abroad are totally irrelevant for Spanish tax purposes. Whether the remittance comes from income, gain, capital, or loans, the remittance is not taxed so long as it is deemed to arise from sources outside of Spain.
 - Spain will deem all salary income or directors' fees as Spanish-source income regardless of the location where services were performed or the location of the payroll used to compensate the individual. As a result, all such compensation is taxable in Spain.
 - The period of time under which benefits are allowed under the Spanish regime is five years plus the year of arrival.
 - The U.K. remittance basis regime does not create a special tax rate for U.K.-source income; all income that is taxed is exposed to ordinary graduated rates of tax, rather than a 24% tax rate.
- *Portuguese Nonregular Resident Regime*: The tax exemption on foreign-source income is conditioned upon the fact that such income has been or can be subject to taxation abroad. Portuguese-source income is taxed at the rate of 20%, and the regime can be obtained for up to ten years.

IMMIGRATION ISSUES

In order to qualify for the special regime, the individual must be tax resident in Spain. Although the principles of tax residence do not match those of the immigration law, an individual wishing to benefit from this special tax regime must comply with Spanish and European immigration rules. If not an E.U. citizen,¹ an applicant must obtain a residence visa and a work permit. Work permits are not difficult to obtain for top management positions and for employees sent on a secondment position within a multinational group. A work permit for a standard position may be difficult to obtain, and the applicant may have to prove that his or her professional skills are not available from other candidates within Europe.

CONCLUSION

The Spanish special tax regime for incoming individuals can be an interesting alternative for professionals willing to come to Spain within the framework of a labor relationship or director's mandate. The individual will be considered tax resident in Spain, but only Spanish-source income would be subject to tax at the flat rate of 24% for up to €600,000 of income. Foreign-source income and gain would not be taxable in Spain. These benefits are enjoyed for the year of arrival and the following five years.

¹ Citizens of Switzerland are included.