

# The “Beckham Law”, Spain’s special tax regime for inbound expatriates

# Legal framework

The special tax regime for workers relocated to Spanish territory is governed by Article 93 of Law 35/2006, of 28 November, on Personal Income Tax (LIRPF), and developed in Articles 113 to 120 of Royal Decree 439/2007, of 30 March (RIRPF). The election and notification procedure is governed by Ministerial Order HFP/1338/2023, of 13 December.

The most significant reform in recent years was introduced by Law 28/2022, of 21 December, on the promotion of the start-up ecosystem (the "Start-Up Law"), with effect for tax periods commencing on or after 1 January 2023, with the stated aim of facilitating access to the regime and attracting foreign talent. Its principal innovations were as follows:

- **Reduction of the prior non-residence period.** The number of tax periods preceding relocation during which the taxpayer must not have been tax resident in Spain was reduced from ten to five years, considerably widening the universe of potential beneficiaries.
- **Extension of scope to remote workers.** The regime was extended to employees who, whether or not directed by their employer, relocate to Spanish territory to work remotely using exclusively computer, telematic and telecommunication means and systems — the "digital nomad" scenario.
- **Access for company directors regardless of shareholding.** Directors of entities were granted access irrespective of their percentage shareholding, removing the former 25% threshold. The only remaining limitation applies where the entity qualifies as an asset-holding entity (art. 5.2 LIS): in that case, the director may not hold a shareholding that would result in their classification as a related party within the meaning of art. 18 LIS.
- **Extension to the taxpayer's family members.** For the first time, the option to be taxed under the IRNR (Non-Resident Income Tax) rules was made available to the taxpayer's children under twenty-five — or of any age in the case of disability — and to their spouse or, where there is no marriage, the parent of the children, provided certain conditions are met (detailed in section 5).

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## Subjective scope and access requirements

Individuals who acquire tax residence in Spain as a result of their relocation to Spanish territory may elect into this regime, provided the following requirements are met simultaneously:

### 1. No prior residence in Spain

The taxpayer must not have been tax resident in Spain during the five tax periods preceding the year of relocation (art. 93.1.a LIRPF). The count is made over complete prior tax periods, not calendar years. The DGT has clarified (ruling V1148-22) that merely holding a dwelling in Spain, without acquiring resident status, does not preclude access to the regime.

### 2. Qualifying circumstance for the relocation

The relocation must result from one of the circumstances exhaustively listed in Article 93.1.b LIRPF (as worded by Law 28/2022):

- **Employee:** commencement of an employment relationship, ordinary or special, with an employer established in Spain, or relocation ordered by the employer under an assignment letter. The DGT has accepted remote work from Spain for a foreign employer as a scenario falling within this category where the taxpayer holds the international telework visa provided for under Law 14/2013.
- **Company director:** appointment as director of an entity resident in Spanish territory. No shareholding limit applies, except where the entity qualifies as an asset-holding entity under art. 5.2 LIS, in which case the director may not hold a shareholding that would result in their classification as a related party within the meaning of art. 18 LIS.
- **International remote worker:** employees providing services remotely from Spain using exclusively computer, telematic and telecommunication means and systems, holding the international telework visa (Law 14/2013) or the corresponding residence authorisation.
- **Entrepreneurial activity:** carrying on in Spain an economic activity classified as entrepreneurial under Law 14/2013, duly evidenced by a favourable report issued by ENISA or the Directorate-General for Trade and Investment.
- **Highly qualified professional:** provision of highly qualified services to start-up companies (within the meaning of Law 28/2022) or performance of training, research, development and innovation activities, provided that the income derived from such activities represents at least 40% of the taxpayer's total business, professional and employment income in each tax period in which the regime applies.

### 3. No income obtained through a permanent establishment

The taxpayer must not obtain income that would be classified as obtained through a permanent establishment (PE) situated in Spanish territory (art. 93.1.c LIRPF). This requirement excludes from the regime taxpayers carrying on self-employed economic activities in Spain with a stable organisation of human and material resources.

#### ***Tax treatment: quantification and tax base***

##### Determination of the tax base

Taxpayers under the special regime are subject to Non-Resident Income Tax (IRNR) — with the special features set out in art. 93 LIRPF — exclusively on income obtained in Spanish territory, with the worldwide-income principle of the general PIT regime not applying.

The special tax base comprises all employment income paid by employers or entities resident in Spain, as well as movable capital income of Spanish source. Foreign-source income is neither included in the tax base nor subject to taxation in Spain during the period of application of the regime.

Type of income	Rate (Beckham Law)	Rate (general regime)
Employment income (base up to €600,000)	24% (flat rate)	General scale: up to 47%* (state + regional)
Employment income (base over €600,000)	47%	47% (top marginal rate)
Dividends, interest, capital gains of Spanish source	19% / 21% / 23% / 27% / 28% / 30% by bracket	Same savings-income scale
Foreign-source income	Not subject	Included in tax base (worldwide income)

\* May be higher depending on the Autonomous Community.

#### Interaction with double taxation treaties (DTTs)

A point of particular practical relevance, frequently under-analysed, is the interaction of the special regime with the double taxation treaties signed by Spain.

A certificate of residence in Spain may be obtained, but not for the purposes of the double taxation treaty. The rationale is that, where the Beckham Law applies, no double taxation should arise, since the taxpayer is taxed in Spain solely on Spanish-source income.

#### Wealth Tax and the Solidarity Tax on Large Fortunes (ISGF)

During the period of application of the special regime, taxpayers are subject to Wealth Tax solely on a limited ("real obligation") basis — that is, on the assets and rights they hold that are situated, exercisable or to be performed in Spanish territory (art. 5.One.b of the Wealth Tax Act). Assets situated abroad are therefore excluded from the reporting obligation.

The same territorial limitation applies to the Solidarity Tax on Large Fortunes (Law 38/2022), which reproduces the same limited-basis taxation criterion for non-residents.

Likewise, the obligation to file the Informative Return on Assets and Rights Located Abroad (Form 720) and the Informative Return on Virtual Currencies Located Abroad (Form 721) is suspended during the tax periods in which the special regime applies.

## Election procedure: deadline, form and documentation

### Strict, non-extendable deadline:

The election into the special regime must be exercised by filing Form 149 with the Spanish Tax Agency within six months of the start date of the activity in Spain, which is generally taken to be the date of registration with the Spanish Social Security system or in the documentation allowing, where applicable, the retention of the home-country Social Security legislation. Once this period has elapsed without the election being made, the taxpayer definitively loses the right to access the regime for that period of residence, with no possibility of extension or late remedy (art. 116 RIRPF).

## The required documentation varies according to the qualifying



### Employee

Employment contract or assignment letter. Where the relationship is with a foreign employer: evidence that the relocation takes place within the framework of that employment relationship.



### International remote worker

International telework visa (Law 14/2013) or equivalent residence authorisation. Contract with a foreign employer specifying the provision of the service from Spain by telematic means.



### Director

Deed of appointment or certification by the competent body. For asset-holding entities: evidence that the shareholding does not result in classification as a related party (art. 18 LIS)



### Entrepreneur

Favourable report from ENISA or the Directorate-General for Trade and Investment evidencing the entrepreneurial activity.



### Highly qualified professional

Evidence of the highly qualified nature of the services and, where applicable, that at least 40% of income derives from the activities provided for by law.



### Family members (art. 93.2 LIRPF)

Evidence of the family relationship and of joint relocation or relocation within the first tax period of application of the regime.

## Extension of the regime to family members (art. 93.2 LIRPF)

Law 28/2022 introduced a new paragraph 2 into Article 93 LIRPF allowing the extension of the special regime to the taxpayer's spouse — or, in the absence of marriage, the parent of their children — and to children under 25, or of any age where they have a recognised disability.

The requirements that must be met cumulatively by the family members are as follows:

1. **Relocation to Spain together** with the primary taxpayer, or subsequently provided it occurs within the first tax period of application of the regime.
2. **Acquisition of tax residence** in Spain as a result of the relocation.
3. **Not having been tax resident** in Spain during the five tax periods preceding the relocation.
4. **Not obtaining income** that would be classified as obtained through a permanent establishment situated in Spanish territory.
5. **The sum of the family members' taxable bases** in each tax period must be lower than the taxable base of the primary taxpayer in that same period.

The requirement in point 5 — a taxable base lower than that of the primary taxpayer — is verified **period by period**. If in any year a family member's taxable base exceeds that of the primary taxpayer, that family member loses the right to apply the regime for that year, without this affecting the other family members or the primary taxpayer. The DGT has not expressly ruled on whether the loss in one year entails definitive exclusion or only a temporary exclusion for that period.

## Duration of the regime, waiver and exclusion

### 1. Period of application

The special regime applies during the tax period in which the change of residence takes place and during the following five tax periods, for a maximum application period of six years (art. 93.1 LIRPF, in fine). The count begins in the tax period in which Spanish tax residence is acquired, regardless of whether registration with Social Security took place in the previous year.

### 2. Voluntary waiver

The taxpayer may waive application of the special regime during the months of November and December preceding the start of the tax period in which the waiver is to take effect (art. 119 RIRPF). The waiver is irrevocable for the tax period in which it takes effect and subsequent periods, which makes an annual review of the appropriateness of maintaining the regime advisable.

### 3. Exclusion and its consequences

Subsequent failure to meet any of the access requirements results in exclusion from the regime as of the tax period in which the non-compliance occurs. The taxpayer must notify the exclusion by filing Form 149 within one month of the cause of exclusion arising (art. 120 RIRPF).

A change in the employment relationship — change of employer, leave of absence, collective redundancy — does not automatically result in exclusion from the regime, provided the taxpayer maintains or recovers a situation that meets the legal requirements within a period the DGT has considered reasonable. However, the definitive termination of the employment relationship without commencing a new qualifying activity may indeed result in exclusion, and each case must be analysed in accordance with the applicable administrative criteria.

## Suitability analysis: determining factors

The decision whether or not to elect into the special regime cannot be made on salary criteria alone. The factors determining suitability are as follows:

#### ✓ Remuneration level

The suitability threshold generally lies around €60,000 gross per year. Below this level, the advantage of the 24% rate may not offset the loss of deductions and reductions under the general regime (personal and family allowance, employment-income reduction, etc.).

#### ✓ Latent foreign capital gains

Taxation exclusively on Spanish source allows capital gains generated abroad to be crystallised without being subject to Spanish PIT during the period of application of the regime.

#### ✓ Foreign-source income

The exclusion of worldwide income from the tax base is one of the regime's most significant benefits. Taxpayers with substantial foreign-source dividends, interest or capital gains obtain a first-order differential advantage.

#### ✓ Autonomous Community of destination

Regional PIT rates vary significantly (from 9% in Madrid to 13.5% in other Autonomous Communities for the first bracket). Under the special regime the regional bracket does not apply, generating additional advantages in Autonomous Communities with higher rates.

#### ✓ Foreign assets

Limited-basis taxation under Wealth Tax and the ISGF can represent very significant tax savings for taxpayers with assets located outside Spain. The possible application of exit-tax rules in the country of origin should, however, be analysed.

#### ✓ Non-applicable rights and reductions

Under the special regime, the employment-income reduction (art. 20 LIRPF), the personal and family allowance and regional deductions do not apply. For taxpayers with significant family burdens, the loss of these benefits may reduce the net advantage of the regime.

## ***Technical questions frequently arising in practice***

### **Can an individual of Spanish nationality access the regime?**

Yes. The legislation draws no distinction on grounds of nationality. The only subjective requirement is non-residence in Spain during the five preceding tax years, regardless of the taxpayer's citizenship.

### **Does the regime apply to stock options exercised during its term?**

Income in kind arising from the exercise of share options is taxed as employment income in the period of exercise. If this occurs during the term of the special regime, the income is subject to the 24% rate on the portion corresponding to services rendered in Spain. Allocation to Spain requires analysing the service period associated with the options (vesting period) and the portion rendered in Spanish territory.

### **Can the employer apply reduced withholding from the outset?**

Yes. Once the election has been made via Form 149 and notified to the employer, the latter will apply withholding at 24% on employment income paid up to €600,000 and at 47% on the excess. The withholding rate cannot be applied retroactively to periods prior to obtaining the certificate confirming the election has been made.

### **How does the regime affect the PIT filing obligation?**

Taxpayers under the special regime file their PIT return using Form 151, specific to this regime, rather than Form 100 of the general regime.



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