



Approval of the regulations developing the inbound expatriate regime and the new application and tax return forms

Tax Alert



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6 December 2023 saw the publication in the Official State Gazette of [Royal Decree 1008/2023 of 5 December 2023](#), which ushers in a number of changes to the PIT Regulations and certain aspects of the CIT Regulations. [Click here to access the spanish version.](#)

Specifically, this Royal Decree implements the amendments to the **special inbound expatriate regime** introduced by [Law 28/2022](#) of 1 December 2022, to Promote the Start-up Ecosystem (known as the “Start-ups Law”), which was passed almost a year ago.

For its part, [Order 1338/2023](#), approving the notification and tax return forms adapted to reflect the version of the regime in force since 1 January 2023, was published in the Official State Gazette on 15 December. Specifically:

- A new **form 149** for notification of the application or waiver of, or exclusion from, the regime, and notification of the end of the assignment to Spain.
- A new **form 151**, a specific personal income tax return for individuals taxable under the special regime applicable to workers, professionals, entrepreneurs and investors moving to Spain, to be used for the first time to file the return for the 2023 tax year, in 2024.

It is worth recalling that the inbound expatriate regime is regulated in article 93 of the Personal Income Tax Law (“PIT Law”) and articles 113 to 120 of the Personal Income Tax Regulations (“PIT Regulations”) and provides for scenarios in which individuals who relocate to Spain and meet certain requirements may opt to pay taxes according to non-resident income tax (“NRIT”) while formally being regarded as a tax resident taxpayer during the tax year in which they acquire their tax residence status and the five tax years immediately thereafter.

Amendments introduced to the inbound expatriate regime by the Start-ups Law

Law 28/2022 introduced a number of amendments to the inbound expatriate regime, effective as of 1 January 2023, with a view to encouraging workers and entrepreneurs from abroad to set up in Spain. For more details, see our [KS Input 994/2022](#) “Start-ups Law: Tax measures”.

The most relevant amendments include the following:

- The inbound expatriate regime may be applied where the person in question **has not been resident in Spain during the five tax years preceding the year in which they relocate** to Spain (formerly, this period was ten years).
- Subject to certain requirements, **the scope of application** of the special regime now covers **teleworking-related** scenarios, directors (irrespective of their stake in the entity’s share capital), **innovative entrepreneurs and highly qualified professionals** who are to render services to start-ups or engaging in certain **training, research, development and innovation activities (R+D+I)**.
- **It is also now available to certain close family members** accompanying the main taxpayer on their move to Spain under the regime¹.

As regards certain new features, the Law referred to implementing regulations, which are now embodied in RD 1008/2023 of 5 December 2023.

Meanwhile, the Ministerial Order approving **form 151** (the PIT return for taxpayers opting for this special regime) and **form 149** (for notification of exercise of the right to apply the regime) has now also been published.

Scope of the developing regulations

The developing regulations introduced by RD 1008/2023 cover a wide range of aspects. Among other things, they define the beneficiaries that may opt for this tax regime as of 1 January 2023 and certain aspects relating to application of the special regime to the relative of persons moving to Spain.

The main amendments introduced to the PIT Regulations by RD 1008/2023 and, more specifically, as regards application of the inbound expatriate regime, are listed below:

¹ The new regulations governing the special regime provide for two figures, namely: (i) a main taxpayer; and (ii) other taxpayers associated with that main taxpayer and belonging to their family unit (the taxpayer’s spouse and their children under the age of twenty-five,

age being irrelevant in the case of children with disabilities, or in the event of a non-marital relationship, the parent of such children), and who are related to the main taxpayer during the periods in which the regime applies.

I.- Clarification of the scope of application of the regime and inclusion of definitions

Article 113 of the PIT Regulations has been adapted to reflect the new scope of application - which is broadened to include new scenarios - and clarify the following concepts:

- **Entrepreneurial activity** is defined as an activity that is innovative and/or of particular economic interest to Spain, provided that:
 - (i) A **favourable report has been issued by Empresa Nacional de Innovación, S.A. (ENISA)** per the terms of article 70 of Law 14/2023 of 27 September 2013, on support for and the internationalisation of entrepreneurs, and
 - (ii) The **residency permit** for the pursuit of a business activity, provided for in article 69 of Law 14/2023, is obtained prior to the relocation to Spain.

European Union (EU) citizens and foreigners not requiring a residency permit are only required to obtain the favourable report issued by ENISA before moving to Spain. The above report is also required if, after having opted to apply for the special regime, the taxpayer wishes to commence an entrepreneurial economic activity other than that which led them to move to Spain.
- **Highly qualified professionals**, such as those with the qualifications referred to in article 71 of Law 14/2013. In particular, this circumstance will be deemed met where the residency permit referred to in the above article is obtained prior to moving to Spain.
- **Training or R&D&I activities** are those pursued by:
 - (i) The research personnel referred to in article 13 and additional provision one of Law 14/2011 of 1 June 2011, on Science, Technology and Innovation;
 - (ii) Scientific and technical personnel engaged in scientific research, development or technological innovation at business entities or R&D&I centres established in Spain;

- (iii) Researchers covered by an agreement entered into by public or private research bodies, on such terms as may be set forth in regulations;
- (iv) Teachers hired by universities, higher education and research bodies or centres or business schools established in Spain;

Specifically, this circumstance will be deemed met where the taxpayer has the relevant residency permit mentioned in article 72 of Law 14/2013 before moving to Spain.

II.- Development of aspects affecting application of the regime by relatives of the main taxpayer

As per the amendments introduced by the Start-ups Law, the main taxpayer/inbound expatriate's spouse or the other parent of their children (where they are unmarried) and their children are also eligible for this regime.

The PIT Regulations have now been amended to regulate certain aspects affecting those relatives moving to Spain, such as the deadline by which they must opt to apply for the special regime, its duration and the grounds for waiver of, or exclusion from, the regime.

- **Deadline for moving to Spain and acquisition of tax residence by relatives of the main taxpayer**

The Regulations clarify the deadline by which relatives of the main taxpayer must move to Spain in order to qualify for this special regime.

More specifically, such relatives are now permitted to move to Spain even before the main inbound expatriate does so, provided that:

- Where they do so before, they do not acquire tax residence in Spain prior to the first tax year in which the special regime is applicable to the main taxpayer; or
- Where they do so afterwards, the first tax year in which the special regime is applicable to the main taxpayer has not ended.

- **Duration of the regime for relatives of the main taxpayer**

Article 115 of the PIT Regulations has been amended to clarify that where the spouse of the main taxpayer (or the other parent of their

children, where they are unmarried) and/or their children opt to apply for the special inbound expatriate regime, such regime will apply throughout the tax year in which they acquire tax residence in Spain and until the last tax year in which the main taxpayer is eligible for the special regime.

- **Deadline for exercising the right to opt for the regime**

For the spouse (or the other parent, where they are unmarried) and children of the main taxpayer, the time limit is set at six months from arrival in Spain or from the date on which the relevant period starts running for the taxpayer (whichever is the longer). In such cases, relationship to the main taxpayer, age and disability will be determined at the date on which the right to opt for the regime is exercised.

As regards exercise by the main taxpayer of the right to opt for the regime, the deadline continues to be six months from the date of commencement of the activity stated (i) upon registration with the Spanish social security or (ii) in the documentation allowing the maintenance of the social security in the home country, as the case may be.

It has now been clarified that where registration with social security is not mandatory, the start date stated in the document evidencing the date of commencement of the activity must be taken into account for the purpose of calculating the six-month deadline period.

Lastly, the right to opt for the inbound expatriate regime must be exercised by filing the relevant notification form. In this regard, it is clarified that a **separate notification** must be filed for each taxpayer (i.e. one notification for the main taxpayer, one for the spouse or other parent, where they are unmarried, and one for each of the children eligible for the regime).

Furthermore, the newly approved order specifies that taxpayers with family ties (referred to as “related taxpayers”) must identify the notification filed previously by the main taxpayer in their own notification of exercise of the right to opt for the regime. This means that the main taxpayer must submit their notification to apply for the regime before the related taxpayers do so.

III.- Transitional regime

A transitional regime has been put in place for the new scenarios introduced by the Start-ups Law, whereby:

- Taxpayers acquiring their tax residence in Spain in the 2023 tax year as a result of moving to Spain in 2022 or 2023 prior to the entry into force of the ministerial order approving the new tax form for notification of application of the above regime, may exercise this right within a maximum period of six months of entry into force of the order (i.e. six months as of 16 December 2023).

The wording of this transitional provision would appear to suggest that it does not apply to persons moving to Spain in the second half of 2023, when tax residence is not acquired until the 2024 tax year, in which case the general rule on the time limit for exercising the right provided for in article 116 of the PIT Regulations would apply. Taxpayers would be well advised to pay attention to any eventual rulings issued by the authorities in this connection.

IV.- Waiver of, and exclusion from, the special regime

The Royal Decree regulates the waiver of, and exclusion from, the special regime by the spouse (or other parent) and children of the main taxpayer/inbound expatriate (relatives of the main taxpayer). Specifically:

- **Waiver by the main taxpayer's relatives** is subject to the deadlines and terms applicable to waiver by the main taxpayer.

The main taxpayer will still be able to **waive** the application of this special regime in the November and December preceding commencement of the calendar year in which the waiver is to take effect.

- **Exclusion of relatives of the main taxpayer from the special regime** will be governed by the following special rules:
 - ✓ Relatives of the **main inbound expatriate** will be **collectively** excluded from the special regime where: (i) the sum of the net taxable income of the main inbound expatriate's relatives exceeds the net taxable income of the main taxpayer in any year in which the special regime applies; and/or (ii) the main taxpayer waives or is

excluded from the special regime. In this latter case, if the main inbound expatriate has notified the tax authorities of their own waiver or exclusion, their relatives will not be required to provide notification of their exclusion.

- ✓ Relatives of the **main inbound expatriate** will be **individually** excluded from the special regime, which will nonetheless continue to apply to the others, where: (i) they fail to meet any of the eligibility requirements for the special regime; or (ii) they fail to meet the eligibility requirements in respect of relationship, age or disability. Termination of the marital relationship due to divorce or annulment of the marriage does not constitute non-fulfilment of the relevant requirements.

Persons who are individually excluded must notify the tax authorities accordingly.

Note, in this regard, that no amendments have been introduced in respect of potential non-fulfilment of the requirements by the main taxpayer.

V.- Special provisions for inbound expatriates earning income from economic activities

The Start-ups Law permits application of the inbound expatriate regime, inter alia, where a worker moves to Spain to pursue an economic activity classed as entrepreneurial.

With this in mind, the PIT Regulations have been amended to permit the international double taxation credit provided for in article 80 of the PIT Law to be taken in respect of income from economic activities classed as entrepreneurial.

Meanwhile, with regard to the withholdings and payments on account system, withholdings on account may only be made on income from economic activities under the inbound expatriate regime where such income arises from professional activities (thus excluding that arising from business activities). Consequently, the invoices issued must include details of the applicable withholding tax rate and compliance with the formal obligations to keep records of income and expenses and store invoices, as provided for in the legislation applicable to non-residents.

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