



# Thinking beyond borders: Management of extended business travelers - Spain



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**01**

**Key message**

# 1 Key message

A person's liability for Spanish tax is determined by residence status for taxation purposes and the source of income derived by the individual. Income tax is levied at either progressive tax rates for residents (with flat rates for investment income and capital gains) or flat tax rates for nonresidents. In the case of residents, the individual's taxable income for the year is calculated by subtracting allowable deductions from the total assessable income. Nonresidents do not have any allowable deductions or credits, except for certain expenses for those individuals who are tax residents in another EU country/jurisdiction. A special tax regime for inbound assignees might be available for those individuals who become Spanish tax residents as a consequence of their assignment to Spain or of acquiring a board of director position in an entity, provided certain requirements are met. As of 1 January 2023, the regime was also extended to workers moving to Spain to work remotely using solely IT and telecommunication s, and to individuals moving to Spain to engage in an economic activity classed as entrepreneurial and to those displaced to Spain who are highly-qualified professionals that render services to start -ups or engage in training, research, development or innovation activities , and to some family members of the main taxpayer qualifying for the special regime, provided certain requirements are met.

**02**

# **Income tax**

# 2 Income Tax

## 2.1 Liability for income tax

A person's liability for Spanish tax is determined by their residence status. A person can be a resident or nonresident for Spanish tax purposes. Resident/Non-resident status is held for the whole of the tax year.

A resident of Spain generally refers to an individual who remains in Spain for more than 183 days in any given calendar year or has the individual's business or economic interests located in Spain. Temporary absences from Spain are disregarded in order to calculate the number of days spent in Spanish territory, unless the individual can prove tax residency in another country/jurisdiction. Tax residents are taxed according to a progressive scale of rates.

In general, nonresident taxpayers are taxed at the rate of 24 percent on income obtained in Spanish territory or which arises from Spanish sources (19 percent for investment income and capital gains).

General rate of 19 percent applies to non-resident individuals who are tax resident in a country/jurisdiction of the European Union (EU) or of the European Economic Area (EEA) with which an effective exchange of tax information exists.

Specific Personal Income Tax regulations and scales of rates apply in the three Historic Territories of the Basque Country (Vizcaya, Guipuzcoa and Alava) and also in Navarra.

## 2.2 Tax regime for inbound expatriates

Individuals who become Spanish tax residents as a consequence of their assignment to Spain may choose between being taxed as a Spanish tax resident (according to the personal income tax progressive rates scale with a general 47 percent top marginal rate) which could vary depending on the Autonomous Community where the individual is tax resident) or as a nonresident (according to the nonresident income tax rules, with flat rates for Spanish-sourced income, 24 percent for work income). This option is effective for the period in which the change of residence takes place and the following 5 years.

Some changes to this regime entered into force as of 1 January 2023.

The main requirements that must be met to be able to apply for the regime and the applicable rules are summarized below. These requirements must be met throughout the period during which the regime is applicable.

- The individual has not been a Spanish resident during the 5 tax years preceding the year in which he or she was posted to Spain (under the former regulation this period was ten years).
- The assignment to Spain is derived from a labor contract or from an international assignment ordered by the employer (excluding professional sports-persons).
- The regime has been extended to workers posted to Spain to work remotely using solely IT and telecommunications resources and systems, regardless of whether the posting is ordered by the employer. This condition is deemed met if the worker holds an international telework visa.
- The regime may also be applied to individuals acquiring director status at a Spanish company. The main development here is that the requirement whereby the director must not hold a stake affording related-party status (generally speaking, this means a stake equal to or exceeding 25 percent) will only apply where the entity in question is an asset-holding company.

- The special tax regime may also be applied where the individual is posted to Spain to engage in an economic activity classed as entrepreneurial. To this end, entrepreneurial activity is taken to mean an activity that is innovative and/or of particular economic interest to Spain, and in respect of which a favourable report has been issued by the *Empresa Nacional de Innovación* (ENISA, the National Innovation Entity).
- The taxpayer does not obtain income that would qualify as being obtained through a permanent establishment situated in Spain.
- The whole of the employment income/business activities income obtained by the taxpayer during the period of applicability of the regime will be deemed to correspond to work/activities performed in Spain and, therefore, will be fully taxable in Spain. However, income related to an activity performed prior to the assignment to Spain by the taxpayer who has been granted the special tax regime, will not be deemed as obtained in Spain. Moreover, with regard to income obtained once the assignment in Spain is over, provided that the taxpayer maintains Spanish tax resident status for said year, and the relevant notification is filed within a month with the tax authorities, that income will not be either deemed as obtained in Spain.
- A tax relief to avoid double taxation is available under the special tax regime for foreign taxes paid. It is limited to 30 percent of the tax payable on the total employment income received in the fiscal year.
- The 24% non-resident rate will only be applicable to taxable employment income up to 600,000 euros (EUR) while any employment income exceeding that amount will be taxable at the marginal rate applicable to tax residents (47%).
- The opportunity to opt for this special regime has also been extended with effect 1 January 2023 to the worker's spouse or the other parent of their children (if unmarried), children under the age of 25, and disabled children, irrespective of their age, where:
  - a. they relocate to Spain together with the main inbound expatriate or before or on a subsequent date, provided that if they arrive before, they do not acquire their residence in a tax year prior to the first tax period in which the special regime is applicable to the main taxpayer, and if they relocate after, they do it before the end of such first tax period in which the special regime is applicable to the main taxpayer ;
  - b. they acquire tax residence in Spain.
  - c. they were not considered resident in Spain during the five tax periods prior to their displacement to Spain.
  - d. they do not obtain income that could be classified as having been obtained through a permanent establishment located in Spain.
  - e. the sum of the net taxable income in each of the tax periods in which they are subject to this special regime is lower than the net taxable income of the main inbound expatriate.

The special regime will apply in any successive tax periods in which (where such conditions are met), it also applies to the main inbound expatriate.

A transitional regime has been put in place in the Personal Income Tax Regulations in order to apply for the special tax regime, whereby:

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

The wording of this transitional provision appears 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 option would apply (in general six months as of the date of start of the activity in Spain indicated in the Social Security documentation for the main taxpayer; or six months as of the date of entrance in Spain for the relatives or the deadline applicable for the main taxpayer if that was longer).

Specific regulations and relevant differences apply in the three Historic Territories of the Basque Country (Vizcaya, Guipuzcoa and Alava) and in Navarra with regard to the content and practicalities of the special tax regime for inbound assignees.

## 2.3 Tax trigger points for employment income

Technically, there is no threshold/minimum number of days that exempts the employee from the requirements to file and pay tax in Spain. To the extent that the individual qualifies for relief in terms of the dependent personal services article of the applicable double tax treaty, there will be no tax liability. The treaty exemption might not apply if the Spanish entity is the individual's economic employer.

## 2.4 Types of taxable income

For extended business travelers, the types of income that are generally taxed are employment income (both cash and in-kind remuneration are considered), Spanish-sourced income, and gains from the sale of taxable Spanish assets (such as real estate).

## 2.5 Tax rates

For residents, tax is assessed on taxable income using graduated tax rate tables (combining general tables and autonomous community tables) ranging from 19 percent to a general 47 percent, which could vary depending on the Autonomous Community where the individual is tax resident.

Non-residents are taxed at a general flat rate of 24 percent (19 percent for individuals who are tax resident in a country/jurisdiction of the EU or of the EEA with an effective exchange of tax information) on gross Spanish source income; no deductions or credits are allowed, except for certain expenses for those individuals who are tax residents in another EU country/jurisdiction.

Investment income and capital gains for tax residents are taxed at a flat rate of 19 percent for annual amounts up to EUR6,000, 21 percent for income in an amount between EUR6,000 and EUR50,000, 23 percent for income in an amount between EUR50,000 and EUR200,000 and 27 percent for amounts between EUR200,000 and EUR300,000 and 28% for amounts exceeding EUR 300,000.

Investment income and capital gains for nonresidents are taxed at a flat rate of 19 percent.



**03**

# **Social Security**

# 3 Social Security

## 3.1 Liability for social security

In principle, all employees working in Spain, regardless of their nationality, must be registered with the Spanish social security administration, and the employer must make the corresponding contribution for both employer and employee. The contributions depend on the category of each employee and cannot exceed certain limits.

The rate for employers (plus a professional contingency rate depending on the company activities) is 30.48 percent plus a percentage to cover labor accidents and illness; the percentage depends on the activities. The employee rate (indefinite contracts) is 6.47 percent.

The minimum and maximum social security bases vary depending on an employee's category of employment and educational background. Please note that expatriates, according to international social security agreements and EU applicable regulations, may continue with home-country/jurisdiction social security contributions and regimes. The current maximum monthly social security base is EUR4,720.50.

**04**

# **Compliance obligations**

# 4 Compliance obligations

## 4.1 Employees` compliance obligations

The due date for tax residents and individuals taxed under the special regime for individual assignees for filing the tax return and making payments is 30 June following the tax year-end, which is 31 December. Specific deadlines for filing tax returns apply to nonresidents, and Spain does not allow time extensions to the deadlines; if the return is not filed on time, penalties will be imposed. These penalties will vary depending on whether the tax return is filed after the deadline on a voluntary basis or whether it is filed as a result of a tax audit.

## 4.2 Employer reporting and withholding requirements

For residents, withholdings are calculated according to a progressive scale based on the amount of taxable income that is expected to be paid during the tax year (both cash and in-kind remuneration are considered) and the family status of the employee.

For nonresidents, a general flat 24 percent withholding is applied on employment income (19 percent for non-resident individuals who are tax resident in a country/jurisdiction of the EU or of the EEA with which and effective exchange of tax information exists).

These withholdings are paid to the Spanish tax authorities on a monthly or quarterly basis and will be deducted from the final tax due on the Spanish tax return.

**05**

# **Immigration**

# 5 Immigration

## 5.1 Work permit/visa requirements

**EU citizens** have the right of freedom of movement, which means they have unrestricted access to Spain's labor market. A work and residence permit or visa won't be required to either enter or work in Spain. The same rules apply to citizens of Iceland, Liechtenstein, Norway and Switzerland.

A citizen of any EU member country/jurisdiction or a citizen of any of the members of the EEA or the Swiss Confederations may enter, leave, move, and/or remain freely in Spanish territory but all those EU citizens, EEA nationals and Swiss nationals who are going to reside in Spain for more than 3 months must obtain the "Central Registry for Foreigners Certificate" at the corresponding Police Station within the first 3 months after their entry in Spain. This process of EU Registration or Certificate of European Union Citizenship is compulsory for all European citizens, including their family members, who are going to live or work in Spain for a period of more than 3 months, and should be completed within the first 3 months after having arrived in Spain. The document obtained will be a green id-card shaped document, without a photo, which will contain their NIE (Foreign Identity Number).

The rest of the foreign nationals (**third-country/jurisdiction nationals**) who intend to engage in active, productive employment in Spain will need a Residence and Work Permit. Depending on the purpose of travel to Spain and the nationality of the traveler, there are different types of visas that will apply to each case, and processes and processing times could vary. For all work authorization types, foreign nationals must coordinate with their employer to collect and legalize corporate and personal documentation. This will include the new Teleworking visa approved December 2022.

Relevant communications within the scope of the EU's Posting of Workers Directive should also have to be carried out.

**06**

**Other issues**

# 6 Other issues

## 6.1 Double taxation treaties

Spain has entered into double taxation treaties with almost 90 countries/jurisdictions to prevent double taxation and allow cooperation between Spain and foreign tax authorities in enforcing their respective tax laws.

## 6.2 Permanent establishment implications

There is the potential that a permanent establishment could be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has.

## 6.3 Indirect taxes

There are two main indirect taxes in Spain that could tax sales operations carried out within Spanish territory depending on the status of the individual/entity that performs said operations.

- Spanish value-added tax – Spain imposes a value-added tax (IVA) on taxable supplies of goods and services in mainland Spain and the Balearic Islands. In general, the rates are 4 percent or a "super-reduced rate" for basic necessities; 10 percent or "reduced rate" for food, dwellings, transport, tourism, etc.; and 21 percent or "standard rate" for everything else.
- Spanish Transfer Tax – Transfer tax (ITP-TOP) is levied at a general rate which usually ranges from 6 to 11 percent (as established by the applicable Autonomous Community) on the second and any subsequent transfers of immovable property and rights thereon. No transfer tax is levied where the transaction is subject to IVA. This tax is also levied on the transfer of goods or rights carried out by private individuals.

## 6.4 Transfer pricing

Spain has a transfer pricing regime. A transfer pricing implication could arise to the extent that the employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction, in other words, a cross-border benefit is being provided. This would also be dependent on the nature and complexity of the services performed. Spanish companies are required to have transfer pricing documents on file and available should the Spanish tax authorities request them. Failure to do so may result in penalties.

## 6.5 Local data privacy requirements

Spain has data privacy laws.

## 6.6 Exchange control

There are no limits on the amount that an individual can bring into or take out of Spain; however, there are certain reporting requirements.



## 6.7 Non-deductible costs for assignees

The deductibility of expenses might depend on whether the assignee is taxed as a resident or a nonresident.

Nonresidents do not have any allowable deductible expenses, except for certain expenses for those individuals who are tax residents in another EU country/jurisdiction. For tax residents, deductible expenses are rather limited, one of the main ones derived from employment income being compulsory social security contributions.

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