

GMS Flash Alert

2023-008 | January 17, 2023



Spain - Improvements in Special Tax Regime for Inbound Expatriates

After months of parliamentary negotiation, on 22 December 2022 the *Boletín Oficial del Estado* (Spain's official gazette) published the final version of the Law 28/2022 to Promote the Start-up Ecosystem (the "Start-ups Law").¹

The Start-ups Law provides tax incentives aimed at attracting talent and investment to start-up companies. It also contains other relevant tax measures intended to both incentivise the establishment in Spain of nonresident workers and entrepreneurs and to attract investment by venture capital companies.

WHY THIS MATTERS

The new rules mean that Spain is opening its doors to qualified, eligible individuals who wish to work remotely in the country and to those who are undertaking entrepreneurial activities or activities for start-ups as defined.

They will now be entitled to avail themselves of the special tax regime, which affords preferential tax treatment under certain conditions. In addition, by shortening the Spanish non-residence period requirement (from ten years to 5 years), this opportunity is expected to be open to and appeal to a larger number of individuals.

Highlights of Key Measures

Among other measures, the Start-ups Law introduces certain relevant amendments to the inbound expatriates regime provided for in the Spanish Personal Income Tax (PIT) Law, with a view to attracting foreign talent to Spain.

The list of taxpayers eligible for the special regime is now extended. Formerly, only those starting an employment relationship with a Spanish employer, those joining an international assignment ordered by their employer, or those

appointed as directors at a Spanish company, who met certain requirements, could qualify for the special tax regime.

As of 1 January 2023, the regime is also extended to workers moving to Spain to work remotely using solely IT and telecommunications, 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.

Furthermore, the opportunity to opt for this special regime is now extended to the worker's spouse or (if unmarried) the other parent of their children and to the children themselves.

Finally, the period of non-residence in Spain required to qualify for the regime is shortened from the prior ten to just the five tax years preceding the year in which the taxpayer is posted to Spain.

Amendments to the Special Tax Regime Introduced by the Start-ups Law

Individuals acquiring tax residence in Spain as a result of being posted to this country may opt to be taxed according to the Non Resident Income Tax (NRIT) rules during the year in which they acquire their Spanish tax residence status and the five following tax years. When this regime is applied, taxpayers are only taxed in Spain on income obtained in Spanish territory, subject – with certain specific exceptions – to the NRIT rules for the taxation of income obtained in Spain without a permanent establishment. This implies being taxed at flat rates for Spanish-sourced income, at a rate of 24 percent for employment income up to EUR 600,000 (47 percent on income exceeding such threshold).

Below are the most relevant amendments to this regime under the new Start-ups Law, effective 1 January 2023:

- This regime may be applied if the posted individual has not been resident in Spain during the five tax years preceding the year in which he or she was posted to Spain (under the former regulation this period was ten years).
- The taxpayer may have been posted to Spain in the first year in which the regime is to be applied or in the preceding year.
- The list of taxpayers eligible for the regime is extended:
 - o In addition to the taxpayers already eligible – those with employment contracts commencing an employment relationship, or those under an international assignment ordered by their employer – the regime is 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.
 - o 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.
 - o The NRIT 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).

Likewise, the regime is applicable when the individual posted to Spain is a highly-qualified professional who is to render services to start-ups or engage in training, research, development or innovation

activities, for which he or she will receive remuneration accounting for over 40 percent of his or her employment income and income from economic activities. The term “highly-qualified professional” and the requirements for activities to be classed as training, research, development and innovation will be defined in the future implementing regulations.

- The opportunity to opt for this special regime is extended 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 travel to Spain with the main inbound expatriate or on a subsequent date, provided that the first tax period in which the special regime is applicable to the main inbound expatriate has not ended;
 - 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.

KPMG INSIGHTS

Through the Start-ups Law measures, Spain is taking steps to attract talent and innovation to the country and to offer a competitive tax regime for remote working situations from Spain.

No transitory regime has been foreseen for those individuals who were already benefitting from the special tax regime under the previous rules. Furthermore, the amended form to apply for the special tax regime under the new scenarios is yet to be approved by the authorities.

With the new version of the special tax regime, outbound assignees from Spain who repatriate after having been on international assignments, will now only need to have been nonresidents in Spain for the five tax years preceding the one in which they repatriate (formerly ten years), so there may be more frequent situations of outbound assignees returning to Spain who might qualify for the regime and for favourable tax treatment upon their repatriation. It will be therefore important to monitor these cases.

FOOTNOTE:

1 *Ley 28/2022, de 21 de diciembre, de fomento del ecosistema de las empresas emergentes*. See, in Spanish, at: https://www.boe.es/diario_boe/txt.php?id=BOE-A-2022-21739 .

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RELATED RESOURCE:

This report is excerpted, with permission, from "Tax developments for inbound expatriates, investors, workers and venture capital fund managers" in *KPMG Alert* (December 2022), a publication of the KPMG International member firm in Spain.

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