

SPECIAL FISCAL REGIME APPLICABLE TO EXPATRIATES EMPLOYED IN SPAIN “THE BECKHAM LAW”

Under the terms of Royal Decree 687/2005, (10th June), enacted to amend the Income Tax Regulations under Royal Decree 1775/2004, (30th July), which govern the special fiscal regime applicable to Non-Resident Income Tax, any foreign nationals coming to work in Spain may apply to be taxed as non-residents. At the time of enactment the tax rate was set at around 24%, instead of the average income tax rate which was around 43%.

The notion behind this measure or exemption was to induce talent to come to Spain. The tax scheme was aimed at high net worth individuals such as researchers, scientists and executives, thereby opening the way for Spanish companies to hire qualified personnel from other countries.

When the measure first came into effect, the media dubbed this non-domiciliary resident tax regime “*The Beckham Law*”, given that the famous footballer was one of the first to take advantage of this legislation.

Regulations under this decree were amended in 2010, and new requirements were introduced, in particular a requirement that income arising in Spain could not exceed 600.000 Euro. The amendment was not retroactive, meaning that those foreign workers who had signed an employment contract prior to 1st January 2010 in keeping with the terms of the royal decree at that time would not relinquish their tax advantage.

Once the amendments to the regulations were implemented the compliance requirements were as follows:

- 1.- The worker from abroad must not have been resident in Spain during the ten years prior to his/her new arrival in Spain;
- 2.- The move to Spain must be on grounds of an employment contract;
- 3.- The worker must actually engage in the employment activity in Spain, even if part of the work is carried on abroad, always provided that remuneration or payment for the latter (work carried out abroad) does not exceed 15% of the total income, or 30% where the employment activity or duties are undertaken in another firm within the group;
- 4.- The work is carried out for a firm or company resident in Spain, or for a non-resident company's permanent establishment located in Spain;
- 5.- The employment activity is not exempt from liability to Non-Resident Income Tax;
- 6.- Income arising under the employment contract must not exceed 600.00 Euro per annum;
- 7.- This fiscal regime shall be applicable during the tax period in which the change of residence takes place, and for the following five tax periods;

For these purposes, the tax period shall be taken to mean that in which residence was acquired, the first calendar year in which, once the relocation takes place, the worker remains in Spain for more than 183 days.

The tax rate under this scheme currently stands at 24,75%, even though, in principle, the rate will be reduced to 24% as of 1st January 2015.

Furthermore, it must be taken into account that those persons availing of this tax scheme shall be nonetheless liable for Wealth Tax; solely on property or rights located or exercisable in Spain.

This special fiscal regime shall apply solely to income arising in Spain.

Workers wishing to opt for this special expat tax scheme are required to write to the Spanish Tax Authority no later than six months after commencing the employment activity, based on the date stated when they registered with the Spanish Social Security Agency, or the date stated in the papers which allow the worker, as the case may be, to remain in the social security system in his/her country of origin.

The so-called “*Beckham Law*” has currently come to the forefront again because of a report drawn up by the Expert Committee for Tax Reform, which proposes reactivating the fiscal regime in place prior to the 2010 amendments. The Expert Committee proposes that the tax regime should extend to a much wider range of taxpayers, without differentiating between the types of income, like the Portuguese and British models. The proposals encompass the following points:

- 1.- Extend the scope of the regulations under the regime so that the foreign national who relocates on foot of an employment contract or with the intention of engaging in business activities without a permanent establishment may avail of the scheme. Likewise, extend the scheme to encompass company directors or significant shareholders; and pensioners or those in receipt of income from movable property (tangible assets) or immovable property;
- 2.- Eliminate the requirement that remuneration (income) cannot exceed 600.000 Euro;
- 3.- Eliminate the requirement that the percentage of income arising outside Spain must be less than 15% of employment income, or at least situate this percentage requirement at 50% of the income from employment;
- 4.- Curb the requirement that the taxpayer must not have resided in Spain five years prior to his/her latest relocation to Spain;
- 5.- Extend the application of this regime to 10 years;
- 6.- Abolish the imputation of property income when determining the taxable income of the taxpayers who have availed of this fiscal regime;
- 7.- The levy on pensions and allowances availing of this fiscal regime would be equal to the minimum tax rate. This measure would prove a clear incentive in attracting pensioners from other European countries;
- 8.- Apply the reduction instituted for the transfer of the main residence (the dwelling in which the person habitually lives) in *mortis causa* (decease), in those cases where the taxpayer is not habitually resident in Spain;
- 9.- Simplify disclosure requirements or exempt information from disclosure in those cases where such information is not deemed relevant to anti-fraud, anti-money laundering or anti-terrorism campaigns;

The proposed tax reforms are aimed at bringing Spanish fiscal policy into line with that of those other countries competing directly with Spain in attracting investors, while also inducing high net worth qualified professionals to relocate to Spain, thereby deterring potential foreign investors, directors, executives and pensioners from relocating to other countries offering a more attractive tax regime within a context of strong tax competitiveness.

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