

Exploring opportunities: the Spanish Special Tax Regime for Impatriates as an alternative to the legislative changes in Portugal and the UK.

The measures approved by the Portuguese and British governments represent a significant change in taxation for expatriates and international professionals. Can the Spanish tax regime be an alternative?

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The end of the Portuguese Special Regime for Non-Habitual Residents in 2023, to be replaced by a new more restrictive regime, and the forthcoming repeal, scheduled for April 2025, of the UK's special regime for impatriates (the so-called "Non Dom"), represent a significant alteration in the field of taxation for expatriates and international professionals. Against this background, the Spanish tax regime for impatriates, popularly known as the "Beckham Law", appears as an interesting alternative to consider, even more after the improvements introduced in 2023.

The Spanish tax regime allows, through compliance with certain requirements, individuals who acquire their tax residence in Spain as a result of moving to Spanish territory to opt to be taxed under the Non-Resident Income Tax.

This means that taxpayers who opt for the regime will not be taxed in Spain on their worldwide income, but only on income obtained from Spanish sources (except for employment income, which will be fully taxed in Spain regardless of where it was generated) at a fixed tax rate of 24% up to 600,000 euros, which means taxation at a rate lower than the progressive rate of Personal Income Tax (IRPF, according to its Spanish acronym). Above this amount, the income obtained is taxed at a rate of 47%.

As mentioned above, since 2023 this regime has been modified by the introduction of numerous improvements. The main innovations are the following:

- a) The number of tax periods prior to the move to Spanish territory during which the taxpayer may not have been a tax resident in Spain is reduced from ten to **five years, thus** making access to the regime easier.
- b) The subjective scope of application of the special regime is extended, increasing the number of cases in which it can be applied.
- c) The regime now establishes the possibility of applying the special regime to the children of the taxpayer under the age of 25 (or whatever their age in the case of disability) and to their spouse or, if there is no marriage, the parent of the children, provided that they meet certain conditions.

What are the requirements for access to the special regime?

The requirements for individuals moving to Spanish territory to be able to apply the special regime are as follows:

1. They must not have been resident in Spain during the five tax periods prior to the one in which they move to Spanish territory (previously there were ten periods).
2. That the trip to Spanish territory takes place due to one of the following circumstances.

1º Employed workers

- Who move as a consequence of an employment contract, with the exception of professional sports men and women. This requirement is understood to be fulfilled when an employment or statutory relationship is initiated with an employer in Spain or when the posting is ordered by the foreign employer and there is a letter of posting from the latter.
- "Digital nomads". As a result of the latest amendments introduced in the regime, it is now also extended to those cases in which, without being ordered by the employer, the work is carried out remotely, through the exclusive use of computer, telematic and telecommunication means and systems. In particular, this circumstance will be understood to be fulfilled in the case of employees who have the visa for teleworking of an international nature provided for in the Law on support for entrepreneurs and their internationalisation.

2º Directors

They may be shareholders, except in the case of an asset-holding entity, in which case the shareholding may not be 25% or more.

3º Individuals carrying out economic activities in Spain

- Persons carrying out an activity in Spain that qualifies as entrepreneurial, i.e. an activity that is innovative and/or of special economic interest for Spain, are eligible, for which the taxpayer must have a favourable report issued by ENISA, the public company in charge of this recognition.
- Highly qualified workers who carry out in Spain an economic activity consisting in the provision of services to start-up companies or in the performance of training or R&D&I activities, receiving remuneration that represents in total more than 40% of the total income, may also be eligible.

3. That no income is obtained from carrying out professional or business activities in Spain, except in the cases specifically provided for in the regulation, which are those indicated in point 2. 3º.

4. Relatives of the taxpayer

In this case, it is required (i) that they move to Spanish territory with the taxpayer at the time the latter moves or during the first period of application of the regime if the move is subsequent, (ii) that they acquire their tax residence in Spain, (iii) that they had not been resident during the five tax periods prior to the move, (iv) they do not obtain income from professional or economic activities in Spain (except those already indicated) and (v) the sum of their taxable income (net income) in each of the tax periods of application of the special regime is less than the taxable income of the taxpayer giving rise to the application of the referred regime.

What is the deadline for communicating the option for the special regime?

The option for the regime must be notified within a maximum period of six months from the date of commencement of the activity as stated in the registration with the Social Security in Spain or in the documentation that allows, where applicable, the maintenance of the Social Security legislation of origin, without the application submitted after this period being effective.

In the case of family members, the deadline is also generally six months from their entry into Spain.

The waiver of the regime must also be communicated during the months of November and December prior to the beginning of the calendar year in which the renunciation is to take effect.

For how long can this special regime be applied?

It is applicable during the tax period in which the taxpayer acquires tax residence in Spain and the following five tax periods (except in the event of waiver or exclusion). In other words, depending on the dates, it may apply for up to six years.

For family members it will apply as long as they continue to meet the requirements set out above and the main taxpayer with whom they are moving maintains the special regime.

Final considerations

In conclusion, the option for this special regime can be very attractive, even more so since the approval of the new features described above, for people moving to Spain, especially in the case of individuals with a high level of income. However, given the complexity that may be involved in analysing compliance with the requirements for its application, as well as, if necessary, its defence in the event of a possible challenge by the Spanish tax authorities, our recommendation is to seek expert advice before opting for this regime.