

A R C O

ABOGADOS Y ASESORES TRIBUTARIOS

Foreign nationals moving to Spain

INTRODUCTION

01.

Introduction.

- » This presentation was prepared by ARCO Abogados y Asesores Tributarios, S.L.P., Spanish law firm being member of WTS Alliance, a global network of selected consulting firms represented in more than 100 countries worldwide.
- » This document is intended to provide foreign nationals coming to live in Spain with a general background of Spanish tax law and other relevant issues. It reflects tax law and practice as of January 2017.
- » This presentation is not intended to be a comprehensive and exhaustive study of Spanish tax law, so it should be used as a guide. We advise the reader against making decisions without seeking professional advice.
- » For further information, please contact the ARCO Abogados y Asesores Tributarios S.L.P. offices in Spain, which are listed at the end of this presentation.

Basic rules of the Spanish tax System.

02.

Foreign nationals coming to live in Spain will, in general, become liable to Spanish personal income tax (I.R.P.F., "*Impuesto sobre la Renta de las Personas Físicas*") or to Spanish Non-residents Tax (I.R.N.R., "*Impuesto sobre la Renta de No Residentes*"). Whether you are subject to one tax or the other will depend on your status as a tax resident or a non-tax resident of Spain. This will mainly depend on the length of your stay in Spain.

Spanish tax resident in Spain.

Individuals spending more than 183 days during a calendar year in Spain will be considered Spanish tax residents. These, are generally subject to Spanish income tax and wealth tax on worldwide income and assets, regardless of where it was generated.

For Spanish Tax Residents, all income, less statutory reductions, is aggregated and subject to income tax at progressive rates from 19 up to 45%. On the same vein, all assets, less statutory exclusions, are aggregated and subject to wealth tax at a progressive scale of charge that ranges from 0,2% to 2,5%.

Spanish Non-Tax Resident.

Non-residents are individuals not spending more than 183 days during a calendar year in Spain. As a result of being considered as a non-tax resident in Spain, taxpayers are subject to income tax on income from Spanish source only and to wealth tax on assets located on Spanish only.

Income tax is charged at a general flat rate of 24%. That rate does not apply to residents of other EU or EEA Member States with which there is an effective exchange of tax information, for those foreigners the tax rate shall be 19% .

Spanish non-tax residents are also liable to the Spanish wealth tax on their assets located in Spain at the same scale of charge that applies to tax residents.

Taxes assigned to the Autonomous communities and Municipalities

The Spanish Constitution establishes four levels of political organization within the kingdom of Spain: Municipalities, Provinces, Autonomous Communities and the State. The first group constitutes the subdivisions of the second, the second group constitutes the subdivisions of the third and the third group constitutes subdivisions of the last. Amongst those governmental organizations only the provinces do not have legislative capacity in tax matters.

Taxes assigned to the Municipalities.

Municipal taxes are governed by the Royal Legislative Decree 2/2004, of 5 March, (hereinafter RLD 2/2004) which approves the Consolidated Text of the Law regulating Local Tax Authorities, as well as, by the local tax regulations issued by each municipality regulating certain aspects of the municipal taxes. The main taxes levied by municipalities are:

- a) **Property Tax:** Tax charged on the ownership of any of the following rights in urban, rural or special real estates located within the territory of the municipality: (i) Administrative concessions over the real property or over the assignment of public services rendered on a public real property, (ii) Surface right on the land, (ii) usufruct entitlement over real states and (iv) property right on real estates.
- b) **Business tax:** This tax is levied for the sole fact of carrying out an economic activity within the municipal territory. The goal of this tax, additionally to collect taxes to fund the municipality, is to obtain a census of the businesses operating in Spain, as well as, to identify its owners. It does not apply to individual entrepreneurs.
- c) **Tax on motor vehicles:** This tax is levied on the ownership of roadworthy motor vehicles, regardless of its type and category.
- d) **Construction, installation and work tax:** This tax is levied on any construction, installation or work, carried out within the municipality's territory, for which a building or construction permit is required even if it has not been requested.
- e) **Tax on the increase in value of urban land:** Tax charged on the increase in the urban land value when they are transferred.

Taxes assigned to the Autonomous communities and Municipalities

Taxes transferred to Autonomous Communities.

Since January 1, 1997, powers over the following taxes have transferred to the autonomous communities:

- a) Wealth tax.
- b) Inheritance and gift tax.
- c) Capital and property transfer tax.

As a result of this transfer, the autonomous communities may set, under certain limits, their own (i) tax rates, (ii) exempt minimum figures and (iii) tax credits. The amounts shown in this document are the general ones to be applied, in the event that the autonomous communities do not set their own rates and figures. Notwithstanding, we would like to draw your attention to the fact that there could be great differences in the taxation from one Autonomous community to another.

Control over personal income tax has also been partially transferred to the tax department of the Autonomous Communities, so they may set a different scale of charge for the taxpayers living within its territory, as well as, set additional tax reliefs.

Income tax for non-tax resident individuals

03.

Non tax residents are subject to tax on Spanish source income only (subject to treaty exclusions) . Are deemed income earned within the Spanish territory:

- a) Income from self-employment/freelance work.
- b) Income from dependent employment (e.g. wages, salary, bonus payments, incentives, allowances...)
- c) Pensions and other similar benefits.
- d) Fees paid to directors and supplementary allowances.
- e) Income from capital investments.
- f) Income from rentals and royalties.
- g) Attributed income from urban buildings.
- h) Capital gains arising from transfers of assets located in Spain.

In general terms, no deductions on gross income are allowed to non Spanish tax residents, apart from donations to charity institutions. Nevertheless, EU or EEA are allowed to deduct expenses on gross income as Spanish residents do.

Income earned by residents in a EU country is charged at a flat tax rate of 19%, whereas third countries residents' income earned in Spain is charged at a flat rate of 24%.

Income earned in Spain by non resident is normally subject to withholding at the moment consideration is paid. The withholding tax is considered a final tax in almost all cases. Non-residents taxpayers who have been withheld in excess by their payer are entitled to claim for a refund on January of the following year.

Income tax for tax resident individuals

04.

Tax period.

The Spanish tax period matches with the calendar year: From 1 January to 31 December.

Residency.

Foreign national will be considered Spanish resident for tax purposes if any of the following requirements are fulfilled:

- a) You spend more than 183 days within a calendar year; or,
- b) The place of your business, professional or economic interests is located in Spain.
- c) Your family permanently resides in Spain (except in cases of legal separation or circumstances where you can prove tax residency in another country).

Temporary absences from Spain are counted as days in Spain when determining the 183 days test, unless you were able to prove tax residence in another country (that prove consists on a Certificate of residence issued by the tax authorities of other country).

Under the Spanish legislation, there is no status as part-year resident, so an individual is considered as either Spanish tax resident or non tax resident, and is taxed as such for the entire taxable period that matches with the calendar year.

Family Unit – joint filing.

Spanish income tax (IRPF) allows both, single and joint filing. The choice between single and joint filing shall be communicated on the yearly return, and option chosen can be changed from one year to another. Generally, it is more advantageous to file separately when both spouses are employed or self-employed.

Family unit refers to couples legally married with no children, with under-age (25 years old) children or disabled children who are of legal age and who are judicially subject to extended or restored care and control. In the event of legal separation or where there is no legal marriage, the unit formed by the father or mother and all the children who live with either one of them meet the requirements for filing jointly.

The laws under which a couple were married (community of property or separation of assets) would be considered in determining ownership, so income earned by a couple married in community of property shall be split in two for income tax purposes, except personal service income (e.g. employment income) that may not be split, but is taxed to the person performing the services.

A reduction to the tax base called “Personal minimum” is granted to each individual when filing separately or to the family unit when filing jointly. The personal minimum for 2017 is €5,550 for single filings, and €8,950 for jointly filings.

Tax base.

The Spanish Income Tax for individuals divides incomes in two categories of income which are taxed differently because they are included in different tax bases:

A. The General Tax Base which is integrated by the following incomes:

- 1) Income from dependent employment.
- 2) Income from self-employment – freelance work.
- 3) Income from real estate property.
- 4) Capital gains not included on the Saving Base.

B. And the Saving Base integrated by the following Incomes:

- 1) Income from capital investments.
- 2) Income from loans.
- 3) Capital gains/losses from the transfer of assets.

Tax base.

The following elements (among others) are specifically exempt of taxation (usually subject to certain limits on the amount involved) so they will not be integrated on the tax base:

- Certain literary, artistic and scientific awards.
- Indemnities received for dismissal from employment.
- Indemnities received as a consequence of civil liability for physical or psychological damages
- Indemnities received for employment-related accidents or illness and,
- Child support received from a parent following a court decision.

The following expenses can be deducted from the gross employment income when calculating the tax base:

- Mandatory social security contributions.
- Dues to unions or compulsory contributions to professional association bars.
- Expenses incurred in litigation with the employer.
- An annual lump-sum reduction of €2,000 in respect of other expenses.

Alimony paid to an ex-spouse in satisfaction of a judicial decision is deductible from the payer's taxable income. On the contrary, child support is not deductible from the tax base.

Tax rates.

The individual income tax management is carried out by the state government, although a portion of the tax collected has been assigned to the Autonomous Communities. Therefore, Autonomous Communities are entitled to set its part of the scale of charge, as well as, certain tax reliefs.

The scales of charge that applies to the general tax base are:

A. State's scale of charge (for 2016 and 2017).

<u>Taxable base</u>	<u>Tax due</u>	<u>Remaining taxable base</u>	<u>Tax rate</u>
0,00	0,00	12.450,00	9,50%
12.450,00	1.182,75	7.750,00	12,00%
20.200,00	2.112,75	15.000,00	15,00%
60.000,00	8.950,75	Onwards	22,50%

B. Autonomous Community scale of charge: Madrid (for 2016 and 2017).

<u>Taxable base</u>	<u>Tax due</u>	<u>Remaining taxable base</u>	<u>Tax rate</u>
0,00	0,00	12.450,00	9,50%
12.450,00	1.182,75	5.257,20	11,20%
17.707,20	1.771,56	15.300,00	13,30%
33.007,20	3.806,46	20.400,00	17,90%
53.407,20	7.458,06	Onwards	21,00%

Tax rates.

The scale of charge applying to the saving base is unique within the whole territory of Spain (for 2016 and 2017).

Taxable base		Tax rate
From	To	
0,00	6.000,00	19,00%
6.000,00	44.000,00	21,00%
50.000,00	onwards	23,00%

The general tax base is levied by both, the state and the autonomous community scale of charge, and the saving base is levied by its scale of charge only. The addition of the amounts resulting from the previous calculations results in the gross tax due before tax credits.

Tax Credits.

The main tax credits granted by the Spanish income tax law for tax-residents (IRPF) are:

- Deduction for investment in habitual dwellings purchased before January 1, 2013.
- Deduction for renting the habitual dwelling.
- Deduction for donations to charity institutions.
- Annual deduction for maternity.
- Annual deduction for large families.
- Tax credit for avoidance of international double taxation.

Special tax regime for inbound expatriates

04.

Requirements.

Individuals who come to work to Spain may be taxed as non-resident, for the year they acquire the Spanish tax residency and the following 5 years, when the following circumstances are met:

- Have not been considered Spanish tax-resident for the previous 10 years to the arrival to Spain.
- The assignment to Spain must be due to any of the following circumstances:
 - a) A local employment contract with an Spanish entity (company or PE).
 - b) Being posted to Spain by his foreign employer for carrying out his duties in Spain (Iether in a Subsidiary, in a PE or in none of the previous entities).
 - c) Being appointed member of the board of directors of a Spanish company to which the individual is not related to (< 25% shareholding in the equity).
 - d) Individual does not earn Spanish source income qualifying for Permanent Establishment (PE) in Spain.

Under this special tax regime, individuals are Spanish tax-residents but they are levied following the rules of the Spanish income tax for non residents (IRNR), what means that they are only taxed on their Spanish source income, with some special features:

- Individuals are tax on a world wide basis only for their work income during the regime application period. But for any other income different than work income (e.g. dividends, capital gains, interests, etc....) they are only tax on their Spanish source income.
- Regarding their Spanish source income, no compensation between gains and losses are allowed.
- Their tax base is also divided in two, general base and saving base, as applied to tax-residents.

Special regime for inbound expatriates

General Tax base:

Under the special regime for inbound expatriates the general tax base is integrated by all Spanish source income different than dividends, interests and capital gains, and the world wide work income.

Scale of charge levied on the general tax base:

Tax-Base		Tax-rate
From	to	
0	600.000,00 €	24%
600.000,00 €	onwards	45%

Saving tax base:

The saving tax base under the special tax regime for inbound expatriates is integrated by Spanish source dividends, interests and capital gains.

Scale of charge on the saving tax-base:

Tax-Base		Tax-rate
From	to	
0	6.000,00 €	19%
6.000,00 €	50.000,00 €	21%
50.000,00 €	onwards	23%

Special regime for inbound expatriates

Application for the regime:

This regime is optional, so taxpayer shall exercise the option by reporting his decision to the tax office nearest his domicile within the six following months to his arrival to Spain. Tax authorities will considered as arrival date the one on the registration document with the Spanish social security or the date on the certificate of coverage issued by his home country social security authority.

Application Form:

On the application form taxpayer shall communicate his personal data, employer data, arrival date and the date on document proving his registration with the social security system, whether the Spanish or the foreign one. Additionally the following documents proving his status of employee in Spain shall accompany the application form:

- Local employment contract, assignment contract, or certification issued by the representative body of the Spanish company proving his nomination as member of its board of directors depending on what is the reason of being posted to Spain.
- Certificate issued by the Spanish Social Security proving his registration with, or certificate of coverage issued by the social security authority of his former country.
- Certificate issued by the employer certifying the work relationship located in Spain.

Within the ten working days following the filing of the application form, the tax authorities will issue whether a Certificate proving that taxpayer is subject to this special regime or a resolution denying the application of it, in the event, individual fails to comply with this regime requirements.

Special regime for inbound expatriates

Waiver of the regime:

This regime can be waived within November and December of the previous year to which the waiver takes effect. Individual waiving this regime cannot reapply at a later date.

Exclusion from the regime:

Taxpayers that would have applied for this regime and who, later on, do not comply with the requirements for its application will be excluded from this regime. The exclusion will have effects in the tax year in which the requirements are no longer satisfied. From that moment onwards excluded individuals will be taxed on their world wide income as a regular resident.

Taxpayer excluded from this regime shall communicate that circumstance to the tax office within a one month period from the moment the requirements are no longer fulfilled.

Termination of the assignment period:

Taxpayers under this regime, who leave the country in a tax year whereby they are considered Spanish tax residents, shall report this circumstance to the Spanish tax authorities to avoid being taxed on their work income for the period of time they have not been working in Spain within that tax year.

Special regime for inbound expatriates

Relevant details:

- **Tax residency.**

One of the benefits of this regime is that having the status of Spanish tax resident, individuals are only taxed on their Spanish source income, except for the work income for which they are levied world wide. Due to their condition of Spanish tax residents, they are entitled to be granted with a tax residence certificate issued by the Spanish tax authorities. Nevertheless, the abovementioned certificate may be issued in two different ways depending on the definition how "tax residency" is defined on the tax treaty between Spain and the country for which the certificate shall be issued:

- > When "tax residency" definition on the tax treaty does not include individuals who are only taxed on their Spanish source income, then the tax residence certificate that the Spanish tax authority will issue is the one provided on Annex I.
- > When "tax residency" definition on the tax treaty include all individuals who under the laws of Spain are tax residents, then the tax residence certificate that the Spanish tax authorities will issue is the one provided on Annex II.

- **Wealth tax**

Taxpayers under this regime are subject to the Spanish wealth tax on their net assets and rights located in Spain during this regime lifetime period.

- **Gift and inheritance tax.**

Individuals under this regime will be treated as regular tax residents for gift and inheritance tax purposes.

- **Information return disclosing assets abroad (Form 720).**

Taxpayers under this regime do not have to disclose their assets abroad to the tax authorities through form 720 during the special regime lifetime period.

- **Exit tax.**

Spanish exit tax system does not apply to Spanish tax residents under this regime during its lifetime period.

- **Family members.**

The application of this regime by one of the family members moving to Spain, does not mean that it will be automatically applied to rest of relatives moving to Spain with him/her. The regime is applied on an individually basis, so each family member, fulfilling the requirements for its application, shall apply for it. Otherwise, they will be taxed following standard income tax rules for tax residents.

What to do before you arrive in Spain.

a) What to do before the arrival to Spain.

Immigration.

Non EU-countries nationals must obtain a residence or work permit prior to their arrival to Spain accordingly to the Spanish Immigration Law. On the contrary, EU-countries nationals do not need to apply for a residence or work permit prior to their arrival, but they must apply for a European Residence Card.

It may take around six months for the paperwork to be processed and the residence/work permit to be issued. Generally, residence/work permits are issued for one year and must be applied for renewal at least one month prior to expiration.

Social Security.

Foreign nationals coming to Spain for working reasons, who would like to keep their home country Social Security system must apply for a Certificate of Coverage (A1 form for EU-nationals, Coverage Certificate pursuant Social Security treaties third countries residents) prior to start working in Spain. Otherwise, they will be liable to the Spanish social security contributions.

The Spanish Investment Visa Program (Golden Visa).

05.

The Spanish Golden Visa Regime

In September 2013 the Spanish Parliament approved the Act for the Promotion of Entrepreneurs (Ley 14/2013 dated 27th September), which contained a very interesting regime for foreign investors.

The Act contains special disposition for those non-EU citizens who make a significant investment in Spain, as they may apply for a visa or residence authorization for investors.

Features

- The Investors Residency Permit (or Golden Visa) allows the applicant for a two-year residence authorization. Once this time period has expired, the authorization may be renewed for successive five-year periods, provided the conditions that generated the right are maintained.
- The Golden Visa does not mean that the investor becomes fiscal resident in Spain. This aspect depends on the Spanish legislation in connection with the applicable Double Taxation Treaty.
- The Golden Visa provides a single authorization for living and working valid anywhere in Spain including the relatives that they meet the requirements (spouse and children economically dependent). It also provides free movement within the Schengen Member States.
- Obtaining the Golden Visa does not require actual residence in Spain; the only requirement is to visit Spain once during the period of residence. The application for a residence permit will extend the validity of the residence or stay of the permit holder in Spain until the end of the procedure.

Investment requirements

Initial investment of at least:

- €2 million in Spanish public debt.
- €1 million in shares or equities of companies with a real business activity.
- €1 million in investment funds.
- €1 million in bank deposits.
- Acquisition of real estate assets of at least €500,000 net of charges and taxes.
- Business projects in Spain considered being of general interest by fulfilling at least the creation of jobs, having an economic impact in the region where the project is located, or a significant contribution to scientific/technological innovation.

A representative appointed by the investor to manage a business project of general interest may obtain the investor visa or residence authorization.

Other requirements

- Applicant must be of full age.
- Family members (spouse, children of under age or of full age who are dependant the applicant and have not constituted their own family unit).
- Provide sufficient proof of income.
- Provide negative criminal records both in Spain and their home country and not be subject to an alert issued for the purposes of refusing entry in the territorial space of countries with which Spain has signed an agreement in this regard.
- Have a private medical insurance with a Company authorized to operate in Spain.

Depending on whether the investor is abroad or legally staying in Spain at the time of the investment, the process may involve the Spanish Consulate in their country of residency or can be handled directly in Spain.

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