

KEY POINTS

What is the issue?

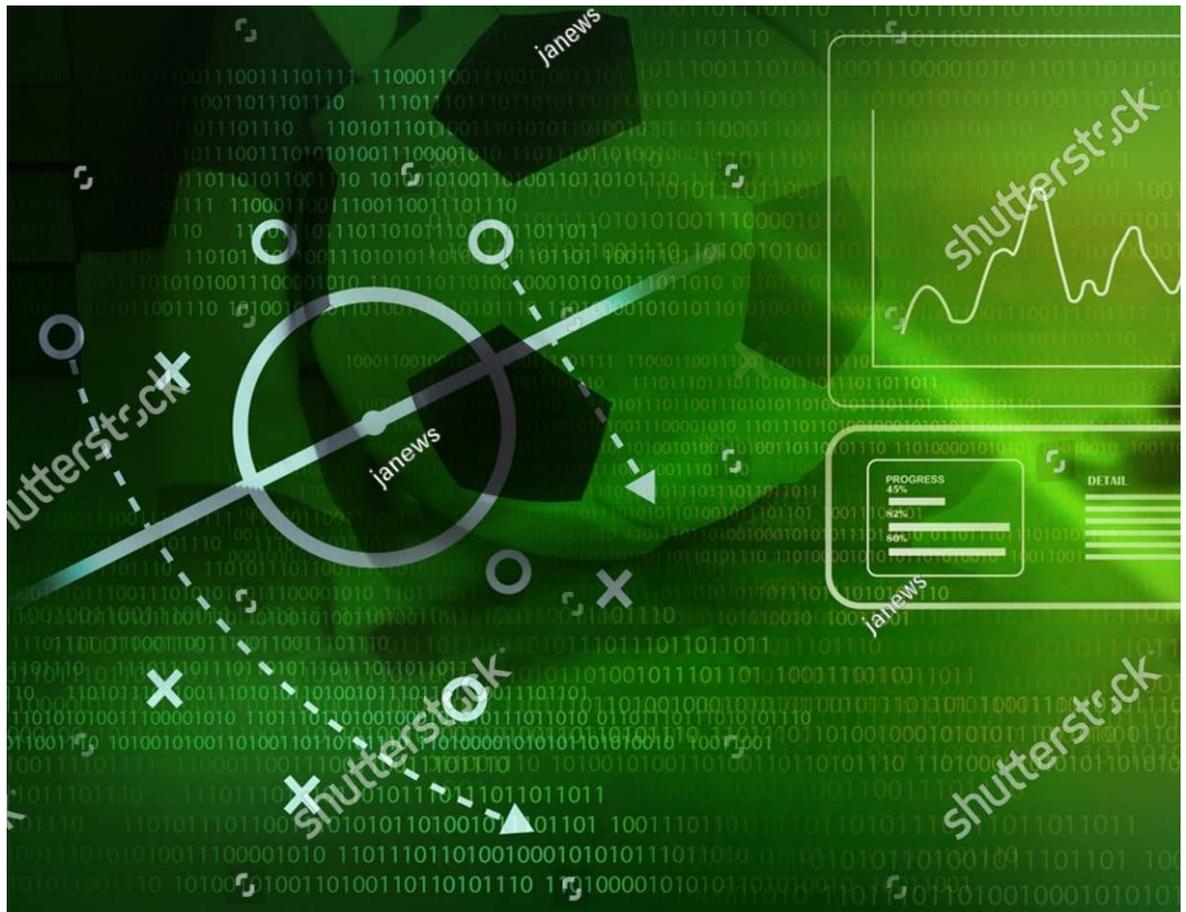
Amendments to Spain's so-called 'Beckham' tax regime has created more flexibility for clients relocating to Europe.

What does it mean for me?

Foreign high-net-worth individuals, executives and investors should consider the tax implications of relocating to Spain.

What can I take away?

Up-to-date knowledge on the status of these tax regimes is of importance for advisors.



Bend it like Beckham

CARLOS GABARRÓ DETAILS CHANGES TO SPAIN'S SO-CALLED 'BECKHAM' TAX REGIME

Spain is one of the highest-ranked countries in the world in terms of quality of life. However, high-net-worth individuals and expatriates should carefully consider the tax implications when relocating to Spain, including the advantages that may be provided by the so-called 'Beckham tax regime',¹ which has provided greater flexibility since January 2023.

ORDINARY TAX RESIDENT

An individual would be considered a tax resident if:

- they remain in Spanish territory for more than 183 days during a given calendar year ('sporadic' absences are disregarded unless they prove the individual is a tax resident of another country);² or
- their centre of economic interests,

whether directly or indirectly, is located in Spain.

Spain applies the principle of worldwide taxation and a resident taxpayer is subject to tax in Spain on their worldwide income. Total personal income tax liability is computed under the general rules, plus those applicable in the autonomous community of residence.^{3,4} Allowances and rebates also vary depending on the autonomous community of residence. So-called 'savings income' is taxed at lower rates ranging from 19 to 28 per cent for income exceeding EUR300,000. This income includes, in general terms, dividends, interest and capital gains derived from the transfer of assets.

At the time of leaving Spain, 'exit tax' applies in cases where the taxpayer owns certain shareholdings and has been a resident during ten of the previous 15 years.⁵ The latent capital gains would have to be included in the taxable base corresponding to the last year ➔



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of residence unless they were to relocate to another EU or European Economic Area Member State, in which case, Spain maintains its right to taxation if the relevant shareholding is effectively transferred within the following ten years. Further, taxation would apply, for example, if the tax rollover relief regime has been applied on corporate reorganisation transactions, such as on a merger or a share-for-share contribution (i.e., reorganisations resulting from the implementation into Spanish law of the EU Merger Directive),⁶ or in cases where an individual has opted for certain other tax deferral benefits.

Other anti-tax deferral measures would potentially apply to resident taxpayers, such as the Spanish controlled foreign company (CFC) rules in cases of controlling a 'low-taxed' foreign entity or the obligation to report bank accounts and other specific assets located outside the country (under Form 720), noting the application of onerous penalties if they fail to do so.

THE EXTENDED BECKHAM TAX REGIME

With the aim of attracting foreign technology and IT talent, entrepreneurs and investors, the Beckham tax regime has become more flexible, per the amendments introduced by *Law 28/2022*, which have been in force since January 2023 and aim to encourage the start-up ecosystem.

Under the Beckham regime, if an individual relocates to Spain and becomes tax resident in Spain as a consequence of their work, they would generally suffer a much lower tax burden than an ordinary Spanish tax resident. In a nutshell, non-Spanish-sourced income (except for salary and self-employment remuneration derived from an innovative activity or an activity of special economic interest for the country) and non-Spanish-*situs* wealth would not be subject to taxation while the Beckham regime remains applicable.

To opt for this regime, the period during which the individual has not previously been a Spanish tax resident is now reduced from ten to five years. With the new rules, nothing has changed with respect to the term of application of this regime; it remains applicable during a maximum period of six years (i.e., the year one becomes a tax resident and the following five years), provided the relevant requirements are met during all those years.

The potential application of the Beckham regime is conditional on relocation to Spain during the first year in which the election is made or, with the new rules, even if the relocation took place during the previous year.

'In a nutshell, non-Spanish-sourced income ... and non-Spanish-situs wealth would not be subject to taxation while the Beckham regime remains applicable'

Such relocation shall take place as a consequence of any of the following circumstances:

- An employment contract with a Spanish employer or a foreign employer seconding the individual to work in Spain.⁷ With the new measures, the regime can also apply even if the move to Spain has not been ordered by the foreign employer, as long as the labour activity is performed remotely by the exclusive use of computer, telematic or telecommunication means. This would be deemed to be the case for employees availed of a 'digital nomad visa', as defined under *Law 14/2013 of 27 September*.
- Becoming a director in a company. However, in cases where the company is a passive asset-owning company, the director cannot hold an interest of 25 per cent or more in its share capital.
- Being a self-employed entrepreneur in Spain carrying out an innovative activity or activity of special economic interest for the country, subject to receiving a favourable report by the Spanish government agency ENISA.
- Being a highly skilled professional providing services to a 'start-up' company⁸ or in cases where more than 40 per cent of the total remuneration comes from work as a lecturer or a research and development or innovation specialist.

Worldwide salary (including certain in-kind benefits) or the remuneration for an innovative entrepreneurial activity or activity of special economic interest for the country (as indicated above) would be taxed at 24 per cent (and at 47 per cent for any amount exceeding EUR600,000). Spanish-sourced dividends, interest and capital gains derived from the transfer of assets would be taxed at rates varying from 19 to 28 per cent (the top marginal rate for income exceeding EUR300,000).

Conversely, other foreign-sourced income (including, but not limited to, dividends, interest and capital gains) would be out of the scope of Spanish taxation.

During the years of application of this regime, CFC rules would not apply and Form 720 should not be filed. The period to compute tax residence for the exit tax on certain shareholdings starts to apply only as of the first year in which this special regime is no longer applicable.

As another novelty, a spouse and children under 25 (or disabled children, no matter their age) may benefit from this special regime under certain requirements and if their taxable income, as per the Beckham regime, is lower than the one perceived by the main taxpayer for which the regime is applicable. Wealth tax and the new temporary solidarity tax would apply on Spanish-*situs* assets only.

Finally, careful consideration should be given to inheritance and gift taxation since the Beckham regime does not provide any specific benefit in this respect.

DIRECTOR OF A SPANISH COMPANY

As mentioned above, an individual relocating to Spain to carry on an active business through a Spanish company, where they hold the post of director, can now opt for the Beckham tax regime for up to six years.

Therefore, those moving to Spain for legitimate business and working reasons, and so acquiring tax residence in the country as a consequence of being appointed as director of their active companies, may now opt for this regime. This may include an individual starting a new active business as director in their own Spanish company or, also subject to detailed review, those being appointed as directors of a Spanish company holding domestic or cross-border active subsidiaries.

Foreign-sourced income including dividends or capital gains would be out of the scope of Spanish taxation. Likewise, foreign investments or assets would not be subject to the wealth/solidarity tax.

#RESIDENCY OR DOMICILE #SPAIN #TAXATION

¹ Named after the first famous individual making use of this special tax regime, footballer David Beckham, when he played for Real Madrid. ² The tax year in Spain coincides with the calendar year. ³ Spain consists of 17 autonomous communities and two autonomous cities. ⁴ Currently 54 per cent for the top marginal tax rate in the Valencia region. ⁵ In general terms, shareholdings in entities whose fair market value exceeds EUR4 million (or exceeding EUR1 million if holding more than 25 per cent of the share capital). ⁶ *EU Council Directive 2009/133/EC* ⁷ With the exception of professional sportspersons. ⁸ To qualify as a 'start-up', specific requirements must be met, to be certified by ENISA.