



Spain

Introduction

A person's liability for Spanish tax is determined by residence status for taxation purposes and the source of income derived by the individual. Income tax is levied at either progressive tax rates for residents (with flat rates for investment income and capital gains) or flat tax rates for nonresidents. In the case of residents, the individual's taxable income for the year is calculated by subtracting allowable deductions from the total assessable income. Nonresidents do not have any allowable deductions or credits, except for certain expenses for those individuals who are tax residents in another EU country.

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Income tax

Liability for income tax

A person's liability for Spanish tax is determined by residence status. A person can be a resident or nonresident for Spanish tax purposes.

A resident of Spain generally refers to an individual who remains in Spain for more than 183 days in any given calendar year or has the individual's business or economic interests located in Spain. Temporary absences from Spain are disregarded in order to calculate the number of days spent in Spanish territory, unless the individual can prove residency in another country.

In general, nonresident taxpayers are taxed at the rate of 24 percent on income obtained in Spanish territory or which arises from Spanish sources (19 percent for investment income and capital gains as of January 1, 2010).

Tax regime for inbound expatriates

According to a law enacted in early 2004, individuals who become Spanish tax residents as a consequence of their assignment to Spain may choose between being taxed as a Spanish tax resident (according to the personal income tax progressive rates scale with a general 45 percent top marginal rate, which could vary depending on the Autonomous Community where the individual is tax resident) or as a nonresident (according to the nonresident income tax rules, with flat rates for Spanish-sourced income, 24 percent for work income). This option is effective for the period in which the change of residence takes place and the five years following.

The main requirements that must be met to be able to apply for the regime are summarized below. These requirements must continue to be met throughout the period during which the regime is applicable.

- The expatriate has not been a Spanish resident during the 10 years prior to the assignment to Spain.
- The assignment to Spain is derived from a labor contract.
- The services are performed physically in Spain.
- The services are rendered for a Spanish resident company or a permanent establishment in Spain of a nonresident company.
- The work income received for the services is not exempt from taxation under the rules of nonresident income tax.
- As of January 1, 2010, the expected remuneration of the employee does not have to exceed the annual amount of 600,000 euros (EUR) in each of the tax years in which this regime will apply. This requirement applies to those employees that have been seconded to Spain later than December 31, 2009.

Tax trigger points

Technically, there is no threshold/minimum number of days that exempts the employee from the requirements to file and pay tax in Spain. To the extent that the individual qualifies for relief in terms of the dependent personal services article of the applicable double tax treaty, there will be no tax liability. The treaty exemption might not apply if the Spanish entity is the individual's economic employer.

Types of taxable income

For extended business travelers, the types of income that are generally taxed are employment income (both cash and in-kind remuneration are considered), Spanish-sourced income, and gains from the sale of taxable Spanish assets (such as real estate).

Tax rates

For residents, tax is assessed on taxable income using graduated tax rate tables (combining general tables and autonomous community tables) ranging from 24 percent to a general 45 percent (which could vary depending on the Autonomous Community where the individual is tax resident).

Nonresidents are taxed at a general flat rate of 24 percent on gross Spanish source income; no deductions or credits are allowed, except for certain expenses for those individuals who are tax residents in another EU country.

Investment income and capital gains for tax residents are taxed at a flat rate of 19 percent for annual amounts up to EUR 6,000 and 21 percent for income exceeding such amounts.

Investment income and capital gains for nonresidents are taxed at a flat rate of 19 percent.

Social security

Liability for social security

In principle, all employees working in Spain, regardless of their nationality, must be registered with the Spanish social security administration, and the employer must make the corresponding contribution for both employer and employee. The contributions depend on the category of each employee and cannot exceed certain limits.

The rate for employers (plus a professional contingency rate depending on the company activities) is 29.9 percent plus a percentage to cover labor accidents and illness; the percentage depends on the activities. The employee rate (indefinite contracts) is 6.35 percent.

The minimum and maximum social security bases vary depending on an employee's category of employment and educational background. Please note that expatriates, according to international social security agreements and EU applicable regulations, may continue with home-country social security contributions and regimes.

The current maximum monthly social security base is EUR3,230.10.

Compliance obligations

Employee compliance obligations

The due date for tax residents and individuals taxed under the special regime for individual assignees for filing the tax return and making payments is June 30 following the tax year-end, which is December 31. Specific deadlines for filing tax returns apply to nonresidents, and Spain does not allow time extensions to the deadlines; if the return is not filed on time, penalties will be imposed. These penalties will vary depending on whether the tax return is filed after the deadline on a voluntary basis or whether it is filed as a result of a tax audit.

Employer reporting and withholding requirements

For residents, withholdings are calculated according to a progressive scale based on the amount of taxable income that is expected to be paid during the tax year (both cash and in-kind remuneration are considered) and the family status of the employee. For nonresidents, a flat 24 percent withholding is applied. These withholdings are paid to the Spanish tax authorities on a monthly or quarterly basis and will be deducted from the final tax due on the Spanish tax return.

Other

Work permit/visa requirements

A citizen of any EU member country or a citizen of any of the members of the EEA or the Swiss Confederations may enter, leave, move, and/or remain freely in Spanish territory.

For any other citizens, a work visa must be applied for before the individual enters Spain. The type of visa required will depend on the purpose of the individual's entry into Spain.

Double taxation treaties

Spain has entered into double taxation treaties with more than 70 countries to prevent double taxation and allow cooperation between Spain and foreign tax authorities in enforcing their respective tax laws.

Permanent establishment implications

There is the potential that a permanent establishment could be created as a result of extended business travel, but this would be dependent on the type of services performed and the level of authority the employee has.

Indirect taxes

There are two main indirect taxes in Spain that could tax sales operations carried out within Spanish territory depending on the status of the individual/entity that performs said operations.

- Spanish value-added tax – Spain imposes a value-added tax (IVA) on taxable supplies of goods and services in mainland Spain. The rates are 4 percent or a “super-reduced rate” for basic necessities; 7 percent (8 percent as of July 1, 2010) or “reduced rate” for food, dwellings, transport, tourism, etc.; and 16 percent (18 percent as of July 1, 2010) or “standard rate” for everything else.
- Spanish Transfer Tax – Transfer tax (ITP-TOP) is levied at a general rate of 7 percent on the second and any subsequent transfers of immovable property and rights thereon, except guarantees. No transfer tax is levied where the transaction is subject to IVA.

Transfer pricing

Spain has a transfer pricing regime. A transfer pricing implication could arise to the extent that the employee is being paid by an entity in one jurisdiction but performing services for the benefit of the entity in another jurisdiction, in other words, a cross-border benefit is being provided. This would also be dependent on the nature and complexity of the services performed. Effective February 2009, Spanish companies have been required to have transfer pricing documents on file and available should the Spanish tax authorities request them. Failure to do so may result in penalties.

Local data privacy requirements

Spain has data privacy laws.

Exchange control

There are no limits on the amount that an individual can bring into or take out of Spain; however, there are certain reporting requirements.

Nondeductible costs for assignees

The deductibility of expenses might depend on whether the assignee is taxed as a resident or a nonresident. Nonresidents do not have any allowable deductible expenses, except for certain expenses for those individuals who are tax residents in another EU country. For tax residents, deductible expenses are rather limited, one of the main ones derived from employment income being compulsory social security contributions.

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