

Spain: still an attractive destination

Xavier Xivillé
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Many people from northern EU countries associate Spain with retirement, good weather where you can go on holidays and, if you are wealthy, maybe stay longer, but under no circumstances more than 183 days to avoid being considered as tax resident.

Although this may be true to some extent, it is definitely a cliché. Currently, Spain offers many opportunities beyond the real estate sector, which, historically, has received a huge amount of foreign investment. Depending on your wealth and income composition, Spain can also be a friendly tax jurisdiction for wealthy people taking Spanish tax residency.

In addition to new investors and the wealthy moving their headquarters to Spain, the country is also attracting industries such as IT and fashion, where Barcelona is consolidated hub.

This trend is encouraged by several factors, including (i) reasonable corporate income tax and the participation exemption regime applicable to Spanish holding companies; (ii) the impatriates regime that establishes a low tax burden for employees assigned to Spain; and (iii) moderate taxation of individual shareholders.

Reduction of the corporate income tax burden

Corporate income tax has undergone a progressive reduction in the last few years; the current tax rate is a flat 25%.

The Spanish patent box grants a 60% tax reduction on payments received as a consideration for the use of, among others, patents and secret procedures. This reduction aims to encourage companies' investing, developing and licensing.

In addition, on January 1, 2015, the Spanish participation exemption removed certain requirements, and those remaining are not difficult to meet because they are mainly based on a minimum stake threshold and the existence of a double tax treaty with an exchange of information clause, provided the company distributing the dividends is eligible. This simplified regime must be analyzed together with the Spanish controlled foreign corporation (CFC) rules.

The Spanish holding regime (*Entidad de Tenencia de Valores Extranjeros—ETVE*), which is especially advantageous for non-resident shareholders and at least as attractive as most European holding regimes, has also been improved.

Net wealth tax

Residents are taxed on their worldwide assets when their taxable base exceeds €700,000 or if their assets are valued at more than €2,000,000 (it may differ depending on the autonomous region). However, non-resident individuals are taxed only on assets located or deemed to be located in Spain, with the same minimum thresholds.

When assets are valued at more than €10,695,996.06, progressive tax rates apply, with a top margin of 2.5%. Several allowances and a tax limit are applicable, depending on the wealth composition and type of income earned, respectively. Therefore, tax liability could be reduced from merely applying the tax rate to applying the top tax rate on the taxpayer's net wealth. For instance, shares in family entities defined as follows are exempt from wealth tax.

An entity is considered a family entity if: (i) its main activity is not wealth management, i.e., it is not a passive holding entity; (ii) the taxpayer owns at least 5% of the company or 20% jointly with his or her spouse and close relatives; and (iii) the taxpayer performs management activities in the entity, earning for these services more than 50% of his or her business, professional and employment income.

Despite the top margin established, the tax burden is usually reasonable, depending on the composition of assets and the autonomous region.

Non-resident taxpayers who are residents in a EU Member State or the EEA are entitled to apply the regulations approved by the autonomous region.

Inheritance and gift tax

Spanish tax residents receiving property and rights (i.e., heirs and donees) must pay inheritance and gift tax on their worldwide assets.

On the other hand, non-tax residents receiving property and rights are only taxed on assets located or rights that can be exercised in Spain. Consequently, even if the deceased were a resident in Spain, non-tax resident heirs are not taxed in Spain on assets located or rights exercised abroad.

The taxable base is the net value of the property and rights received, minus deductible debts and expenses. This tax is calculated at progressive rates, with the top marginal rate of 34% applying to €797,555.08 and higher. Tax liability depends on: (i) the individual's net wealth before receiving the inheritance or gift, and (ii) the relationship with the deceased or donor.

However, in recent years, certain autonomous regions have introduced provisions lowering the tax base, including a 99% tax rebate if certain conditions are met.

Other exemptions and allowances include a 95% allowance to close family members inhering a family company.

Non-residents qualifying as tax residents in an EU member state can apply the autonomous region legislation, which is usually more favorable, as from September 3, 2014, when the EU court issued decision C-127/12.

Personal income tax

Spanish tax residents must pay personal income tax on their worldwide income and capital gains.

Taxpayer income is broken down, where applicable, into two tax bases: (i) the general taxable base, which includes employment income, business income, capital gains not included in the savings base and imputed income; and (ii) the savings taxable base, which includes investment income (e.g., dividends and interest) and capital gains from the transfer of assets. The general base is taxed progressively, with a top marginal rate of 43.5%. The savings base is taxed at a

progressive rate ranging from 19% to 23%. Please note that each autonomous region may modify certain aspects of the PIT, including tax rates.

Impatriates tax regime

The regime for individuals moving to Spain to work (impatriates) has remained stable since its introduction, but certain modifications were introduced last year to income taxation and requirements. This is still an optional regime under which individuals, in the tax year when they move to Spain and the following five tax years, are taxed under the non-resident income tax rules (it also affects to Net Wealth tax). Under these rules, only Spanish-source income is taxed (except for employment income, taxable in Spain regardless of its source). Investment income and capital gains are taxed at 19% to 23%, and the remaining income at 24%, up to €600,000; the rest is taxed at 45%.

Consequently, tax planning is crucial to optimize the tax burden on personal income tax, net wealth tax and inheritance and gift tax, but the Spanish tax system makes setting up headquarters and tax residency in Spain attractive.