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Tax implications of talent mobility — cross-border movement of employees: Spain

1. Overview of the tax system

The Spanish tax system makes a sharp binary distinction between residents and non-residents, supplemented by a statutory hybrid regime for qualifying inbound taxpayers (the so-called 'Beckham regime'). Each regime is governed by a different statute, applies different tax rates and is based on a different taxable perimeter.

1.1 Taxation regimes

Spanish tax residents — personal income tax (*Impuesto sobre la Renta de las Personas Físicas* or IRPF). Individuals who fulfil the residence tests set out in Article 9 of Law 35/2006 on Personal Income Tax (*Ley 35/2006, de 28 de Noviembre, del Impuesto sobre la Renta de las Personas Físicas y de modificación parcial de las leyes de los Impuestos sobre Sociedades, sobre la Renta de no Residentes y sobre el Patrimonio* or LIRPF) are subject to the IRPF, which is regulated by the LIRPF and its implementing regulation, Royal Decree 439/2007 (*Real Decreto 439/2007*). Residents are taxed on their worldwide income according to progressive scales, with a taxable base that combines a state component and a regional component, set by each of the 17 autonomous communities. The IRPF is, accordingly, a progressive, personal and partially decentralised tax: the same level of gross remuneration can attract a materially different tax burden in Madrid, Barcelona, Valencia or Seville.

Non-residents — non-residents' income tax (*Impuesto sobre la Renta de No Residentes* or IRNR). Individuals who do not fulfil the residence tests are subject to the IRNR, which is governed by Royal Decree 5/2004 (*Real Decreto Legislativo 5/2004*). The IRNR only applies to Spanish-source income and operates either through withholding at source (for most items) or through Form 210 self-assessments. IRNR taxpayers are not entitled to the personal and family allowances provided by the IRPF and, with limited exceptions, they are not able to offset losses or deductions.

Inbound special regime under Article 93 of the LIRPF — the 'Beckham regime'. A hybrid statutory regime is available to qualifying inbound individuals: the taxpayer is, formally, an IRPF taxpayer (ie, a Spanish tax resident), but computes tax as per the IRNR rules for six tax periods.

Employment income is taxed at a flat rate of 24 per cent up to €600,000 and 47 per cent on the excess; Spanish-source savings items follow the general IRPF savings scale; and foreign-source income other than employment income falls outside the Spanish taxable perimeter.

For inbound talent, this regime is often the single most important planning choice available and, for that reason, it is signposted here and discussed in depth in Section 2.5 below.

The two statutes, the IRPF and IRNR, are mutually exclusive: a taxpayer is either an IRPF resident or an IRNR non-resident for the entire calendar year, as Spanish law does not allow split-year treatment. This single feature has consequences that permeate the entire analysis of mobility into and out of Spain.

1.2 Determining tax residence under Article 9 of the LIRPF

Because the choice of regime depends entirely on whether the individual qualifies as a Spanish tax resident, the residence analysis is the pivotal exercise in any mobility case. Article 9 of the LIRPF establishes three alternative tests, any one of which is sufficient to trigger full residence for the entire calendar year.

Physical presence: the 183-day test

An individual is resident if he or she spends more than 183 days on Spanish territory during the calendar year. The test is conceptually simple but procedurally demanding, and two of its features deserve particular attention.

Firstly, sporadic absences are counted as days of presence. This doctrine, codified in Article 9.1.a) of the LIRPF, means that short trips abroad on holiday or for business meetings or family visits do not interrupt the number of days counted in regard to the individual's physical presence in Spain.

Secondly, the test is calendar-year based, not rolling. The Spanish 183-day count resets at midnight on 31 December. An individual can, therefore, spend 180 days in Spain in the second half of one year and 180 days in the first half of the next without becoming a resident for tax purposes.

Centre of economic interests

An individual is a resident if the main centre or base of his or her economic activities or interests is located in Spain, directly or indirectly. The test is qualitative rather than quantitative and has been the subject of substantial case law.

The landmark decision in this regard is the Spanish Supreme Court judgment (STS in advance) of 8 July 2024 (rec. 1909/2023), which held that the centre-of-interests analysis requires a comprehensive examination of the taxpayer's entire economic footprint, which includes their real estate holdings, bank accounts, investment portfolios, sources of recurring income, business interests, directorships and professional activities, rather than a narrow comparison of income sources.

For mobile senior executives, the practical consequence of this ruling is significant: an individual whose salary is paid by a foreign employer for work performed largely outside Spain may still be treated as a Spanish resident if his or her real estate, family wealth, investment structures and recurring capital income are concentrated in Spain. Cases involving individuals with this type of profile, namely wealthy individuals spending below 183 days in Spain but with substantial domestic patrimony, are the most frequently litigated in recent years.

Family presumption

An individual is presumed to be resident in Spain when his or her non-separated spouse and minor children habitually reside on Spanish territory.

The presumption is rebuttable (*iuris tantum*): the taxpayer can disprove this assumption by evidencing their effective residence elsewhere, typically through a double taxation treaty (*El Convenio de Doble Imposición* or CDI)-compliant certificate of tax residence and documentary evidence of a life organised outside Spain. The family presumption is in practice a gateway for the tax administration to open an audit; once opened, the analysis typically converges towards the 183-day and centre-of-interests tests.

Relocation to non-cooperative jurisdiction

Article 8.2 of the LIRPF establishes an additional anti-avoidance presumption: an individual of Spanish nationality who relocates to a jurisdiction classified as non-cooperative (list approved by Order HFP/115/2023) remains a Spanish tax resident in the year of their departure and the four following years, unless the individual proves their effective residence in a third jurisdiction.

This 'quarantine' period is particularly relevant for senior executives relocating to certain Middle Eastern, Caribbean or Pacific jurisdictions, and must be factored into any exit planning.

1.3 Treaty network and the Base Erosion and Profit Shifting (BEPS) Multilateral Instrument (MLI)

Spain's treaty network, which is made up of over 99 double tax treaty conventions, is one of the most extensive among Organisation for Economic Co-operation and Development (OECD) members and covers virtually all relevant inbound talent-related jurisdictions.

The BEPS MLI entered into force in Spain on 1 January 2022 and has modified the majority of Spanish CDIs from 2023 onwards. In regard to mobility, the most consequential MLI changes concern the principal purpose test (applicable across the network), the expanded definition of a dependent agent permanent establishment (PE) and the anti-fragmentation rule.

Dual-residence conflicts are resolved through the tiebreaker clauses set out in Article 4 of the applicable CDI. STS 1393/2024 confirmed that foreign tax residency certificates issued under a CDI cannot be disregarded unilaterally by the Spanish administration, and that the

tiebreaker analysis is binding on the Spanish authorities once a valid certificate has been produced.

2. Taxation of employment income

2.1 Scope of taxable employment income

Employment income is defined broadly in Article 17 of the LIRPF. It encompasses an individual's fixed salary, variable bonuses, sign-on payments, severance, representation allowances and, with limited exclusions, any other consideration derived from a personal employment or statutory relationship. Directors' fees are included, although technically they are classified as income 'by legal decision' rather than as ordinary labour income.

For Spanish tax residents, their worldwide employment income is subject to the IRPF taxable base, with relief for foreign tax paid in regard to the foreign tax credit set out in Article 80 of the LIRPF or, where applicable, under the Article 7.p) exemption, which is discussed in detail in Section 2.5.C below.

For non-residents, only Spanish-source employment income is taxed under the IRNR, in accordance with the source rules examined below.

Business travel per diems

Partially exempt within the limits of Article 9 of the Regulation on Personal Income Tax (*Regulación del Impuesto sobre la Renta de las Personas Físicas* or RIRPF) are certain business travel-related expenses: accommodation expenses are exempt up to the amount actually spent; daily allowances for meals are exempt up to €53.34/day in Spain and €91.35/day abroad when overnight stays are involved, with reduced thresholds if no overnight stay occurs. These limits on expenses apply identically to residents and non-residents.

Benefits in kind

Benefits in kind are taxed at fair market value, modulated by the specific statutory rules in Articles 42 and 43 of the LIRPF. Key valuations to note: a company car at 20 per cent of the acquisition cost per year (with reductions of 15 per cent, 20 per cent or 30 per cent for energy-efficient or fully electric vehicles); housing at ten per cent (or five per cent, depending on the cadastral value update) of the cadastral value, capped at ten per cent of the total remuneration; health insurance exempt up to €500 per insured person per year, increased to €1,500 for disabled persons; meal vouchers exempt up to €11/day; and employer contributions to qualifying pension plans within annual thresholds.

Bonus income

Bonuses, performance fees, long-term incentive payments and other variable remuneration paid to residents are, as a starting point, taxed in the same way as ordinary employment income: they form part of the IRPF general base and are subject to the combined state and

regional progressive scale set out in Section A above, with combined top marginal rates in the range of 45 per cent to 54 per cent depending on the individual's autonomous community of residence.

Where the individual's bonus qualifies as income generated over a period of more than two years, or as income that is irregular in terms of time, the taxpayer may apply a 30 per cent reduction to the taxable amount before the general scale is applied. The reduction is capped at a base of €300,000 per year (so the maximum absolute reduction is €90,000) and requires the income to be paid in a single tax period, not in instalments. Long-term incentive plans, multi-year performance bonuses and exit bonuses linked to multi-year service periods typically benefit from these rules. Properly structured, this relief brings the effective rate on qualifying bonuses down meaningfully, for example, at the top of the curve, from around 47 per cent to approximately 33 per cent on the first €300,000 of the qualifying bonus.

There is an additional anti-abuse rule: the relief cannot be applied again to income of the same nature that was received within the previous five tax years. Careful coordination of the timing of multi-year bonuses is, therefore, essential.

Equity compensation

The following rules apply in Spain in regard to equity compensation.

- Stock options crystallise employment income at exercise, equal to the spread between the fair market value and the exercise price. The spread is subject to the general IRPF scale and to payroll withholding.
- Restricted stock units (RSUs) are taxed at vesting, based on the market value of the underlying shares.
- A generic exemption under Article 42.3.f) of the LIRPF covers the award of shares up to €12,000 per employee per year, subject to conditions in terms of the firm's offering policy and retention.
- For employees working for certified emerging companies (startups under Law 28/2022), the threshold rises to €50,000 per year and the requirement to uniformly offer such shares across the workforce is relaxed.
- A 30 per cent multi-year reduction applies where income is earned over a period longer than two years (typical LTIPs), capped at €300,000 of the reducible base.

For cross-border awards, sourcing is computed pro rata over the vesting period based on the individual's workdays in which they were physically present in Spain. Spain follows the OECD approach reflected in paragraphs 12 *et seq* of the Commentary to Article 15 of the Model Convention. This is a critical planning point for inbound executives whose pre-arrival equity-based grants vest after their relocation to Spain.

2.2 Source rules

The distinction between Spanish-source and foreign-source employment income is decisive in two directions: (1) it determines the scope of IRNR liability for non-residents and (2) it determines the availability of foreign tax relief and of the Article 7.p) exemption for residents.

For IRNR purposes, Article 13 of the Non-Resident Income Tax Law (TRLIRNR) treats employment income as Spanish-source income when the underlying services are physically rendered on Spanish territory, regardless of where the payer is established or where payment is made. Two specific situations deserve a mention. First, board members of Spanish companies are always deemed to earn Spanish-source income for their directorship, whether or not meetings occur in Spain. Second, employment income paid by Spanish public authorities is Spanish-source income even when such services are performed abroad.

A non-resident individual physically performing services in Spain is taxable in Spain on the corresponding remuneration, subject to the short-stay relief available under Article 15 of any applicable CDIs (typically the 183-day/employer/PE cumulative test).

2.3 Tax rates

The Spanish tax system applied to residents is dual in nature: income is allocated between two separate taxable bases, each with its own rate schedule.

The general base (*base imponible general*) covers employment income, self-employment and business income, pensions, rental income and other categories of ordinary income.

It is taxed at progressive rates under a combined schedule that results from adding a state (central government) scale and a regional (*Comunidad Autónoma*) scale.

The savings base (*base imponible del ahorro*) covers dividends, interest, most capital gains on the sale of assets and qualifying life insurance returns. It is taxed at a single nationwide progressive scale, with a top marginal rate of 30 per cent, following the introduction of the new top bracket by Law 7/2024 (*Ley 7/2024*), with effect from 1 January 2025.

This dual structure is a defining feature of Spanish personal taxation and is critical for any tax-related conversations: the same individual may face combined rates above 50 per cent on their employment or rental income, while at the same time paying a maximum of 30 per cent on dividends, interest and portfolio gains. For high-net-worth (HNW) clients relocating to Spain, the relative weight of general-base income versus savings-base income is often the single most important variable when evaluating the tax outcome under ordinary residence rules and when assessing the comparative value of the Beckham regime as an alternative.

The general base applied to IRPF residents (2026) combines a state (*Gobierno Central*) scale and a regional (*Comunidad Autonoma*) scale. The figures below reflect the state scale only; the regional component roughly mirrors the state scale, producing combined top marginal rates in the range of 45 per cent to 54 per cent depending on the individual's exact place of residence. Madrid and Andalucía apply the lowest effective rates; Cataluña, Comunidad Valenciana and Asturias the highest.

Taxable base (€)	State marginal rate
Up to 12,450	9.5 per cent
12,450 – 20,200	12 per cent
20,200 – 35,200	15 per cent
35,200 – 60,000	18.5 per cent
60,000 – 300,000	22.5 per cent
Above 300,000	24.5 per cent

Combined top marginal rate (state + regional): approximately 45 per cent–54 per cent depending on the autonomous community of residence.

IRPF savings base — residents (2026)

Dividends, interest, most capital gains and qualifying life insurance returns are taxed on the savings base. The top 30 per cent bracket was introduced by Law 7/2024 and has been in force since 1 January 2025.

Taxable savings base (€)	Marginal rate
Up to 6,000	19 per cent
6,000 – 50,000	21 per cent
50,000 – 200,000	23 per cent
200,000 – 300,000	27 per cent
Above 300,000	30 per cent

IRNR — non-residents (2026)

Non-residents are taxed at flat rates on Spanish-source income, without personal or family allowances. The following table summarises the most relevant categories for talent mobility purposes.

Type of Spanish-source income	EU/EEA residents	Non-EU/EEA residents
Employment income (Art. 25.1.a TRLIRNR)	19 per cent	24 per cent
Directors' fees	19 per cent	24 per cent
Dividends, interest, capital gains	19 per cent	19 per cent

Type of Spanish-source income	EU/EEA residents	Non-EU/EEA residents
Rental income from Spanish real estate	19 per cent (on net)	24 per cent (on gross)
Pensions (progressive scale)	8 per cent – 40 per cent	8 per cent – 40 per cent

Short-stay relief under Article 15 of the applicable CDI (183-day/employer/PE cumulative test) may eliminate Spanish taxation of employment income rendered in Spain by non-residents whose employer is established abroad.

Beckham flat regime — Article 93 of the LIRPF (2026)

Qualifying inbound individuals who elect to use the Article 93 regime compute tax under the IRNR rules with specific modifications for six tax periods (the year of acquisition of residence plus the five following years).

Type of income	Beckham rate
Worldwide employment income up to €600,000	24 per cent (flat)
Worldwide employment income above €600,000	47 per cent (on the excess)
Spanish-source savings items (dividends, interest, capital gains)	19 per cent/21 per cent/23 per cent/27 per cent/30 per cent
Foreign-source savings items and other non-employment foreign income	Outside Spanish tax perimeter
Wealth tax and solidarity tax on large fortunes	Real obligation — Spanish situs assets only

Headline comparison — the three regimes at a glance

Feature	Resident (IRPF — general)	Non-resident (IRNR)	Beckham (Art. 93)
Taxable perimeter	Worldwide income	Spanish-source only	Worldwide employment; Spanish-source for the rest
Employment income rate	Progressive up to ~54 per cent	19 per cent EU/24 per cent non-EU (flat)	24 per cent flat up to €600k; 47 per cent above

Feature	Resident (IRPF — general)	Non-resident (IRNR)	Beckham (Art. 93)
Personal/family allowances	Yes	No	No
Wealth tax scope	Worldwide	Spanish situs only	Spanish situs only
Duration	Indefinite while resident	Indefinite while non-resident	Six tax periods
Election required	No — by operation of law	No — by operation of law	Yes — Form 149 within six months (preclusive)

2.4 Withholding and social security

Employer withholding

Under Spanish tax law, any employer paying employment income to an individual has a legal obligation to withhold funds on account of that individual's income tax and to remit the amount withheld directly to the Spanish Tax Administration Agency (*Agencia Estatal de Administración Tributaria or* AEAT).

This obligation applies to Spanish employers, to Spanish PEs of foreign employers and, in regard to certain cross-border configurations, to non-Spanish employers with economically effective activities being carried out in Spain.

The employer's withholding obligation is independent of, and additional to, the employee's own obligation to file an annual tax return. The two residency scenarios give rise to two distinct withholding regimes.

RESIDENTS UNDER THE ORDINARY IRPF REGIME

For residents taxed under the general IRPF regime, the employer withholds funds on account of the IRPF at a personalised rate calculated using the annual tax tables (Article 80 *et seq* of the IRPF Regulations), adjusted for the employee's personal and family circumstances.

Where the employee's actual annual situation results in withholding in excess of the final tax liability, the employee will recover the difference through their annual IRPF return. Where withholding has been insufficient, the employee will pay the difference on filing. The personalised withholding rate is, by design, intended to approximate the employee's final effective tax rate with reasonable accuracy.

NON-RESIDENTS (NO ELECTION TO USE THE BECKHAM REGIME)

For employment income paid to non-residents, the employer withholds IRNR at the flat rates set out in Table C above — 24 per cent as the general rate and 19 per cent for residents of the EU, Iceland, Liechtenstein and Norway — applied to the gross amount without the personalised adjustments applied by the resident regime.

Withholding is reported and remitted through Form 216 on a quarterly basis, with the annual informative return filed through Form 296. Form 145 does not apply in this scenario.

Social security

Social security treatment is entirely independent from personal income tax and applies identically whether the individual is taxed under the general LIRPF regime or not. The election of one tax regime or the other has no impact whatsoever on the social security affiliation, contribution bases or contribution rates.

The default contribution bases for 2026 are €1,381.20 (minimum) and €5,101.20 (maximum) per month, plus an additional 'solidarity contribution' on remuneration above the maximum base (tiered at 1.15 per cent to 1.46 per cent in 2026, progressively rising through to 2045).

Mandatory social security contributions borne by the employee are always deductible for personal income tax purposes, irrespective of the regime applicable to the taxpayer, both under the general PIT rules (as a deductible expense from employment income under Article 19.2.a) of the LIRPF) and under the special inpatriate regime (pursuant to the remission made by Article 93 of the LIRPF to the IRNR rules, Article 24 of the TRLIRNR).

2.5 Specific regimes affecting inbound employees

The Beckham regime in detail — Article 93 of the LIRPF

As mentioned in Section 1.1, Article 93 of the LIRPF establishes a special inbound regime that is, in practice, the single most important planning tool for qualifying foreign employees who are relocating to Spain.

A taxpayer who qualifies and elects to use the regime becomes, formally, a Spanish tax resident (and, therefore, can invoke tax treaty protection as such), but computes tax under the IRNR rules for six tax periods, with specific modifications, as set out in Table D above.

Such taxpayers are taxed on their Spanish-source income and capital gains. As an exception, taxpayers will be taxed on their employment income obtained worldwide. Other types of worldwide income are not taxed in Spain. Ultimately, the applicable tax rate in regard to Spanish-source income is 24 per cent for the first €600,000 of taxable income and 47 per cent on any excess.

The eligibility rules require that the individual has not been a Spanish tax resident during the five tax periods preceding their relocation and that they fall within one of the five statutory entry routes:

- inbound employment with a Spanish employer or with a foreign employer whose employee is seconded to Spain under a written agreement;
- international teleworkers holding a Digital Nomad Visa under Law 14/2013;
- company directors with less than 25 per cent participation (with no cap where the entity is not a holding company (*sociedad patrimonial*));

- qualified entrepreneurs involved in an innovative project certified by the European Union Agency for Cybersecurity (ENISA); and
- highly qualified professionals providing services to certified startups or engaged in research and development and innovation (R&D&I) activities generating over 40 per cent of their aggregate income.

The spouse (or the other parent of any children where no marriage exists) and children under 25 (without an age limit if they are disabled) may opt into the regime alongside the main taxpayer, subject to non-residence conditions and a cap preventing the associated taxpayers' base from exceeding that of the main applicant.

The new Form 149, approved by Order HFP/1338/2023 of 13 December, distinguishes between the principal taxpayer and associated taxpayers and must be filed within six months of the individual's Social Security registration. The Audiencia Nacional (a high court in Spain with jurisdiction over all of the Spanish territory) and the Spanish Central Economic-Administrative Tribunal (*Tribunal Económico-Administrativo Central* or TEAC) have repeatedly endorsed the AEAT's position that this six-month deadline is preclusive and that the *causa* of relocation (employment contract, intra-group assignment, directorship appointment) must pre-date the acquisition of Spanish tax residence. Form 151 is the annual return that must be filed in the context of the ordinary IRPF regime.

Election to use Article 93 is incompatible with the Article 7(p) exemption and with the excess regime set out in Article 9.A.3.b) of the RIRPF. The transition from employment to self-employment during the application of the regime generally results in the forfeiture of the flat-tax benefit (General Directorate of Taxes, *Dirección General de Tributos* or DGT, DGT V2248-24).

Short-stay non-resident employees and treaty relief

Foreign employees who perform services in Spain without becoming a tax resident (typically, short postings of below 183 days) are taxed under the IRNR on the portion of their remuneration corresponding to their Spanish workdays, at the flat rates set out in Table C above. Where the employee is resident in a CDI jurisdiction, Article 15 of the applicable CDI may eliminate Spanish taxation if the three cumulative conditions are satisfied: a presence of below 183 days in any 12-month period, remuneration paid by an employer not resident in Spain and the absence of a Spanish PE bearing the cost of the remuneration. This is the classic 183-day/employer/PE test.

Practical caveats:

- the 183-day count under the CDI is a rolling 12-month period, not a calendar year, and the methods of counting differ between CDIs;
- the 'employer' requirement has been subject to economic employer reinterpretation in some jurisdictions, and Spanish practice has not been fully aligned with that approach; and

- the PE test is directional: a foreign PE bearing the remuneration cost will mean that the relief does not apply.

Article 7.p) exemption — Spanish residents working abroad

This exemption does not apply to inbound employees but is the counterpart regime for the outbound mobility of Spanish tax residents and, critically, is highly relevant for cross-border structures. Article 7.p) of the LIRPF allows Spanish tax residents to exclude up to €60,100 per year of employment income attributable to work physically performed abroad. Two conditions govern this situation: (1) the work must be rendered for the benefit of a non-resident employer or of a foreign PE of a Spanish employer; and (2) the jurisdiction of performance must apply a tax of a nature analogous to the IRPF or qualify as a treaty partner, with an information exchange clause.

The exempt amount is computed by pro-rating the annual remuneration by the days spent abroad. STS 2485/2022 of 20 June 2022 confirmed that members of boards of directors may benefit from the exemption (reversing the prior restrictive DGT line), although the 'intra-group beneficiary test' continues to require that the non-resident recipient derive an identifiable commercial benefit beyond mere shareholder oversight. The Supreme Court has also confirmed that travel days and days spent in quarantine count as days abroad (STS 25 February 2021; TEAC Resolution 8685/2023 of 19 July 2024).

The exemption is incompatible with both the excess regime (Article 9.A.3.b of the RIRPF) and the Beckham regime.

The 'Mbappé Law': Madrid's PIT deduction for new foreign residents

Madrid's Law 4/2024 of 20 November, popularly known as the 'Mbappé Law', introduces a new Article 17 bis into the Consolidated Text of Madrid's regional tax legislation, creating a 20 per cent deduction on the autonomous portion of personal income tax (IRPF) for new taxpayers relocating from abroad, with retroactive effect from 1 January 2024.

The deduction is available to individuals who have not been Spanish tax residents during the five years prior to relocating and who acquire and maintain tax residence in the community of Madrid for a minimum period of six years. The incentive targets investment in fixed-income securities and shares, including foreign-issued instruments, but expressly excludes real estate and entities domiciled in tax havens.

The mechanics of this regime are highly favourable: the 20 per cent deduction applies without any cap on the deduction base, can fully absorb the autonomous quota of the IRPF (approximately 50 per cent of the total tax) and any unused amount may be carried forward to the five following tax periods in the case of insufficient quota.

The investment must generally be made in the year tax residence is acquired or the year after; although, for securities issued by Spanish entities, the investment may also be made in the preceding year.

Restrictions include a six-year holding requirement (with roll-over relief on onerous transfers if fully reinvested within one month), a 40 per cent cap on the taxpayer's shareholding in the investee entity (aggregating family stakes up to the second degree) and a prohibition on taking up executive, managerial or employment roles with that entity.

Critically for planning purposes, the Mbappé deduction is incompatible with the Beckham regime as per Article 93 of the LIRPF, because individuals subject to that special regime are taxed as non-residents (IRNR) at a flat rate and, therefore, cannot apply any autonomous IRPF deductions.

3. PE risks

Cross-border mobility often carries a corporate-level PE exposure that can eclipse individual tax analysis. Spain's domestic PE definition set out in Article 13.1.a) of the TRLIRNR is broader than the OECD Model in certain respects, and CDIs can govern such arrangements where applicable.

The PE analysis is independent from the individual taxation analysis described above and can produce adverse outcomes, even where the individual is properly taxed as a non-resident or is subject to the Beckham regime.

3.1 Dependent agent PEs

A non-resident employer may create a dependent agent PE in Spain when an employee based in Spain has, and habitually exercises, authority to conclude contracts on its behalf, or plays the principal role, leading to the conclusion of contracts that are routinely accepted without material modification.

Roles most likely to create agency PE risks include sales vice-presidents (VPs), country managers, C-level executives authorised to sign documents and key account managers with commercial closing authority.

Mitigation of these risks typically involves contract approval mechanics that are centralised outside Spain, documented intervention of foreign signatories and the segregation of negotiation from closing. In practice, effective mitigation also requires:

- evidencing that foreign approval is substantive rather than mere rubber stamping;
- aligning external-facing materials (email signatures, LinkedIn titles, business cards) with the declared role, so that the Spanish employee is not deem to have closing authority;
- disciplined customer relationship management (CRM) and email hygiene, as the AEAT routinely reviews Salesforce pipelines, outbound correspondence and internal approval flows to reconstruct de facto authority; and
- the consideration of alternative commercial structures (distributor, limited risk buy–sell) where agency risk cannot be satisfactorily controlled.

3.2 Fixed-place PEs and home offices

The DGT, in case V0066-22, held that no fixed-place PE arose, relying on the following three pillars:

- the employer neither required nor requested that the employee work from Spain;
- the employer did not reimburse any home office expenses and retained an office in the country in which the employer was established that was available to the employee; and
- the use of the dwelling was discontinuous and incidental.

The DGT's ruling aligns with paragraphs 18–19 of the OECD Commentary on Article 5: the 'power of disposal' of the employer over the premises is the decisive factor.

Subsequent consultations issued since 2022 have broadly confirmed this approach, and the position was substantially refined by the OECD 2025 Update to the Model Tax Convention, published on 19 November 2025, which represents the first comprehensive revision of the Commentary on Article 5 since 2017.

The 2025 Update introduces a structured two-step analytical framework:

1. a working-time benchmark under which remote work from home or an equivalent location for less than 50 per cent of the total working time over any 12-month period is generally not considered to give rise to a fixed place of business; and
2. where that threshold is exceeded, a 'commercial reason' test is applied that requires the individual's physical presence in Spain to meaningfully support the enterprise's business (for example, local customer or supplier development, real-time cross-time-zone service delivery or the provision of access to business-relevant expertise).

Cost-saving or employee-retention motivations do not qualify as commercial reasons. Although the DGT has not yet issued a binding consultation expressly applying the 2025 Update, the interpretative weight placed on Spain's CDIs with OECD counterparties is substantial given Spain's historical reliance on the Commentary as a primary interpretative tool.

Situations that shift the balance towards the establishment of a PE include: employer-required telework, the reimbursement of home office costs, Spanish-registered phone numbers and business cards, the signage of the Spanish dwelling as a workplace and company-paid co-working in Spain.

A separate line of analysis deserves attention. Spanish case law and administrative practice have, in parallel, developed a functional or 'virtual' PE doctrine that can determine that a PE has been established without a physical place of business where local activities are integral to the enterprise's Spanish operations. The leading references are the Supreme Court rulings in

Roche Vitamins (2012) and *Dell Products* (2016). This domestic trajectory is more aggressive than the OECD's current framework and remains highly relevant for groups operating through Spanish auxiliaries or low-risk buy–sell distributors employing senior commercial talent.

3.3 Service PEs and other categories

The OECD Model does not contemplate a service PE, and most Spanish CDIs with OECD countries do not include one. However, several CDIs with Latin American and Asian partners contain service PE clauses that generally trigger a PE when personnel render services in the host state for periods exceeding 183 days within any 12-month period.

This is a relevant risk for Spanish companies seconding employees to those jurisdictions and, conversely, for companies sending personnel to Spain.

Construction and installation PEs (Article 5(3) of the OECD Model) deserve separate mention, as it is the category most frequently triggered by employee mobility in engineering, infrastructure and industrial services sectors. The standard threshold under the OECD Model is 12 months, but Spain's CDIs with Latin American counterparties commonly shorten the required duration to six months (and certain CDIs consolidate connected sites or projects). Where personnel are deployed to a site or installation project for periods approaching those thresholds, both the project duration and the employees' on-site presence should be monitored.

Preparatory or auxiliary activities (Article 5(4) of the OECD Model) are excluded. The MLI's anti-fragmentation rule (Article 13(4)) applies to Spain's CDIs with counterparties that match the position, preventing the artificial splitting of functions across related enterprises to benefit from the exclusion.

4. Exit tax/departure rules

4.1 Exit tax under Article 95 bis of the LIRPF

Spain taxes unrealised gains on equity holdings when a qualifying individual ceases to be a Spanish tax resident. The regime applies only to taxpayers who have been tax resident in Spain for at least ten of the preceding 15 years and who, at the time of departure, hold either:

- shares or collective investment vehicle units whose aggregate market value exceeds €4m; or
- where that aggregate threshold is not met, a participation of at least 25 per cent in any single entity whose market value exceeds €1m.

The two tests operate as a cascade, not as parallel alternatives: the 25 per cent/€1m test only comes into play if the €4m aggregate test is not triggered.

The deemed gain equals the difference between the fair market value at departure and the tax base, is characterised as a capital gain under the relevant savings scale (19 per cent up to

€6,000; 21 per cent from €6,000 to €50,000; 23 per cent from €50,000 to €200,000; 27 per cent from €200,000 to €300,000; and 30 per cent above €300,000 for fiscal years 2025 onwards, as per Law 7/2024) and must be reported in the last IRPF return filed by the resident.

A relevant exception applies to individuals who departed Spain having been taxed throughout their stay under the Beckham regime (Article 93 of the LIRPF): during that period they are deemed to be non-residents (IRNR), so they do not accrue the ten-year IRPF-residence history required by Article 95 bis and typically fall outside the scope of the exit tax upon their departure. This is a meaningful planning point for inbound executives evaluating relocation options.

Deferral regimes

Where the new residence is within the EU or an EEA country with an effective exchange-of-information agreement, payment is automatically deferred. Tax crystallises only if, within the ten fiscal years following that in which residence was lost, the shares are disposed of, the taxpayer moves outside the EU/EEA or the relevant reporting obligations are breached.

The second trigger is the existence of a significant operational risk in practice: executives who first relocate to Portugal or the Netherlands and subsequently move to the United Kingdom, Switzerland, the United States or the Middle East within the ten-year window will see the deferred exit tax liability become due in Spain at the moment of that second departure. Exit-route sequencing matters in such a context.

Under Article 95 bis.4 of the LIRPF, if the relocation is linked to an employment posting to a jurisdiction that has concluded a CDI with information exchange commitments and is not blacklisted, payment may be deferred for up to five years, extendable for a further five-year period upon the receipt of an express and duly justified request by the taxpayer (the extension is not automatic).

Under this regime, if the taxpayer becomes a Spanish tax resident within the deferral period without having transferred the shares, the deemed gain is considered not to have arisen and the deferred debt is extinguished. This mechanism is specific to Article 95 bis.6 and should not be conflated with the EU/EEA regime, where the analysis is one of non-crystallisation rather than the extinction of an accrued debt.

4.2 Deferred equity and departure

Unvested equity awards (unvested RSUs, unexercised stock options) fall outside Article 95 bis because they do not constitute 'shares or participations' in the hands of the employee at the moment of their departure. However, post-departure vesting raises sourcing issues.

Spain generally claims taxation rights on the portion of the spread or the RSU value attributable to the number of days worked in Spain during the vesting period, regardless of where the employee resides at the time of the taxable event.

This is achieved either as a result of an applicable treaty (residence-source allocation) or, in the absence of a CDI, due to the direct application of domestic IRNR rules.

4.3 Reporting obligations on departure

Individuals leaving Spain must update the tax census via Form 030 (and, for employees posted abroad who wish to be treated as non-residents for withholding purposes from the outset, Form 247), file a final IRPF return and, where relevant, file the exit tax return on the same Form 100.

Article 14.3 of the LIRPF requires the imputation in regard to the last resident tax period of all pending items (deferred employment income, capital gains with instalment elections, etc), through a supplementary self-assessment to be filed within three months of the change of residence, without surcharges or late-payment interest.

Under the presumption contained in Article 8.2 of the LIRPF, which only applies to Spanish nationals, a move to a non-cooperative jurisdiction (the current list approved by Order HFP/115/2023) means that the individual is taxable as a Spanish resident during the year of departure and the following four years, unless the taxpayer proves that they have effective residence elsewhere. The rule does not apply to foreign nationals who happen to be Spanish tax residents at the time of their departure, which is a material distinction for internationally mobile executives who do not hold Spanish citizenship. For senior executives moving to the Middle East or the Caribbean, this window is of critical strategic importance.

4.4 International information returns

Once departed, former residents may still be subject to Spanish reporting duties regarding Spanish situs assets through the IRNR, principally via Form 210 for recurring Spanish-source income (rental income, dividends, interest, capital gains on Spanish real estate or non-listed participations), filed on a quarterly or event-driven basis, depending on the income category.

While resident, the principal international declarations should be made using Form 720 (foreign assets above €50,000 per category, with three separate categories: (1) foreign bank accounts; (2) securities, rights, insurance and income managed or obtained abroad; and (3) real estate and rights to real estate located abroad) and Form 721 (crypto-assets held abroad).

5. Recent developments and case law

5.1 Law 28/2022 and the modernisation of the Beckham regime

Law 28/2022 of 21 December (*Ley de fomento del ecosistema de las empresas emergentes*) rewrote the subjective scope of Article 93 of the LIRPF with effect from 1 January 2023, as described in Section 2.5.A above.

5.2 Recent DGT guidance

The binding documents on the matter have been produced as a result of several consequential rulings over the past two years.

The ruling in case V0009-24 confirms that a taxpayer subject to the Article 93 regime who voluntarily terminates the employment that triggered the regime may remain subject to it where, after only a brief interval, the individual assumes a remunerated directorship in a Spanish company, provided the Article 93 requirements continue to be met. However, the applicability of the regime would cease if the individual also derives business income from a Spanish PE.

The decision in case V2248-24 of 21 October 2024 took a stricter approach to a move from employment to self-employment: unless the activity falls within the scope of Article 93.1.b).3 or 4, the derivation of business income through a Spanish PE triggers an exclusion from the regime during the tax period in which the breach occurs.

The decision in case V2400-25 of 10 December 2025 clarifies, for Article 7.p) purposes, that actual intra-group invoicing is not a constitutive requirement; what matters is whether the work performed abroad yields a real advantage or utility to the non-resident entity, excluding shareholder activities and any portion of the work that benefits the Spanish entity.

These rulings illustrate a pattern: access to the Beckham regime remains broad after the coming into force of Law 28/2022, but the AEAT is tightening supervision of the transitions between employment, directorship and self-employment during the applicable six-year window.

5.3 Case law

STS 2485/2022 of 20 June 2022 (rec 3468/2020) and STS of 13 December 2022 (no 1642/2022) consolidated the availability of the Article 7.p) exemption to directors and board members, subject to the beneficiary test.

STS of 8 July 2024 (rec 1909/2023) strengthened the weight of the 'centre of economic interests' test under Article 9 of the LIRPF, requiring an examination of the entire economic footprint of the taxpayer, rather than a narrow income source-based approach.

STS 1393/2024 confirmed that foreign tax residency certificates issued pursuant to a CDI cannot be disregarded unilaterally by the AEAT, and dual-residence conflicts must be resolved via the Article 4(2) tiebreaker.

STC 149/2023 of 7 November 2023 upheld the constitutionality of the solidarity tax on large fortunes. A parallel decision on the wealth tax itself is expected in 2026 and will reshape the regional planning landscape for inbound HNW executives.

5.4 Wealth tax, solidarity tax and inbound HNW individuals

The solidarity tax on large fortunes (Law 38/2022, extended indefinitely by RDL 8/2023) applies to net wealth above €3m and operates as a minimum floor for jurisdictions that rebate regional wealth tax. Madrid, Andalucía, Cantabria, Murcia and La Rioja have reacted to the situation with regional 'equalisation' deductions in order to capture the revenue locally.

Inbound executives benefitting from the Beckham regime only declare Spanish situs assets for the purpose of both taxes, which is a significant planning advantage relative to standard residents who are taxed on their worldwide wealth.

5.5 Golden visas and the administrative environment

Spain abolished the residence-by-investment (golden visa) route in April 2025 through the Law on the Efficiency of the Justice Service, closing one of the traditional immigration pathways for HNW individuals. The use of a digital nomad visa remains the principal tool for non-EU mobile professionals, with its tax counterpart to the Beckham regime teleworker track.

6. Key takeaways

6.1 Key risks for employers

Dependent agent PE exposure remains the single most material risk when relocating commercial or managerial talent to Spain, particularly for groups with CDI counterparts that have accepted MLI Article 12.

Home office patterns remain fact sensitive and should be evidenced through written telework policies, documenting the absence of the employer requirement. Payroll-withholding obligations arise automatically where a Spanish PE is found to exist. Pillar Two reporting cycles add a further layer of data-gathering requirements for 2026.

6.2 Key risks for employees

A failure to file Form 149 within the six-month window is preclusive and cannot be resolved through later submissions. Transitioning from employment to self-employment during the application of the regime generally forfeits the flat-tax benefit. Equity awards earned partly abroad and exercised in Spain are taxable on the Spanish workday portion regardless of the residence at exercise. Long-term residents should monitor the ten/15-year trigger for Article 95 bis exit taxation before deciding to relocate to non-EU/EEA destinations.

6.3 Planning considerations

Practitioners should utilise the CDI analysis (residence tiebreaker, treaty tax allocation), the domestic residence trigger (Article 9 of the LIRPF) and special regime eligibility (Article 93 of the LIRPF).

Election of regional residence within Spain is a meaningful planning lever given the four to seven point spread in terms of the top marginal rates across the community of autonomies, subject to the genuine-presence requirements applied by regional inspectorates.

Cross-checking Form 720 and 721 thresholds during the individual's year of arrival avoids any frontloading penalty exposure. Finally, equity plan design for Spanish-based executives should be revisited in light of the €50,000 startup exemption, the deferral until the liquidity event and the potential Global Anti-Base Erosion (GloBE) mitigation provided by the payroll carve-out.
