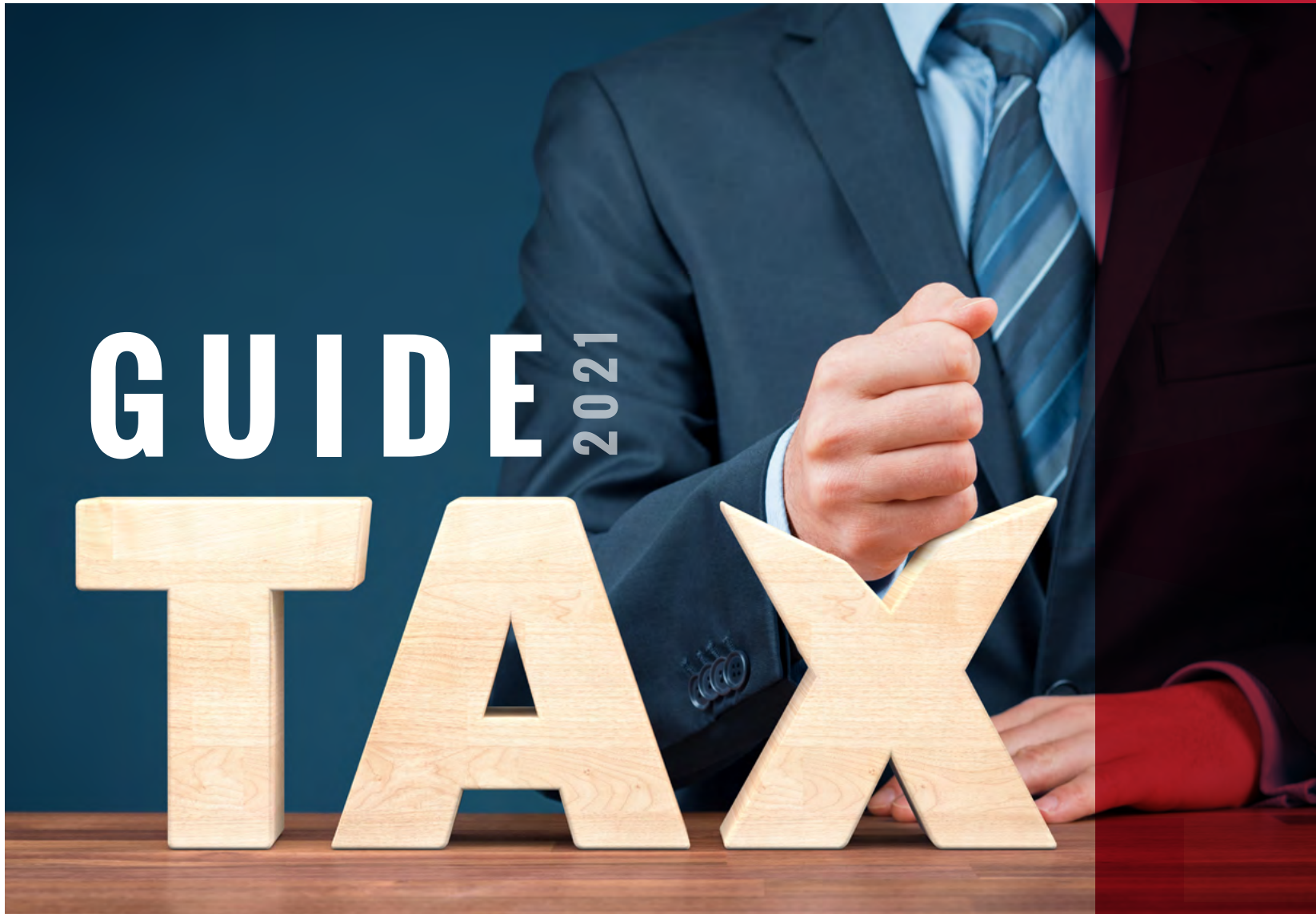


..... for expats in Spain



01

Residence status

- 1.1 Sporadic absences
- 1.2 Tax residence conflicts

02

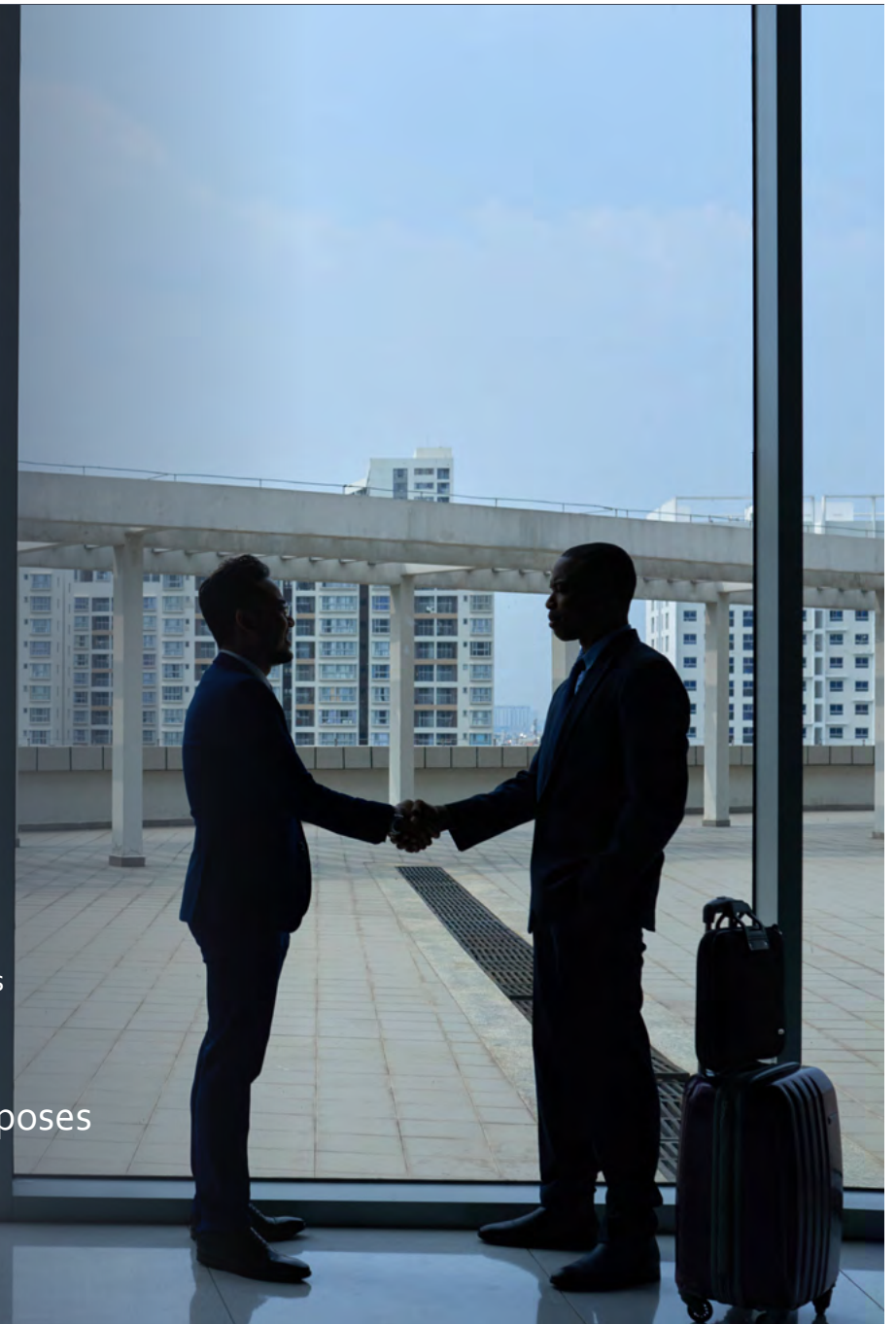
Tax resident in Spain

- 2.1 Tax obligations
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03

Non-resident for tax purposes

- 3.1 Tax obligations
- 3.2 Tax benefits



1. Residence status

In order to know which tax obligations and tax regime will apply to the posted workers, the first thing to determine is their **tax residence**.

Natural persons are residents in Spain if they stay in the territory for more than 183 days during the calendar year, or if their main nucleus or the base of their activities or economic interests lies in Spain, according to Spanish internal regulation (Income Tax Law 35/2006).

Additionally, it is presumed, unless proven otherwise, that the taxpayer has their habitual residence in Spanish territory when the spouse (not legally separated) and minor children who depend on them habitually reside in Spain. However, there are two circumstances to consider when determining residency.

A) Any Agreement to avoid Double Taxation (CDI)

signed by Spain has a higher status than the internal regulations, so, although they usually coincide in criteria, it is advisable to review them in case any of the conditions mentioned above are drafted differently in the agreement.

B) In the internal regulations

there are a series of **special rules** for certain special jobs, specifically:

- a. diplomatic missions;
- b. consular offices;
- c. international organizations;
- d. civil servants.

1.1. Sporadic absences

Sporadic absences are not considered, unless tax residence in another country is proven.

The concept of “sporadic absence” is an indeterminate legal concept that should be analyzed in each specific case, but in a **judgment of the Supreme Court of March 18, 2018**, in relation to a student who had a grant to study abroad, the Court determined that a stay of more than 183 days outside of Spain in the calendar year cannot be considered as a sporadic absence for tax purposes, even when the intention is to return.

As such, the nature of the absence or the intention of returning to Spain at the end of the activity should not be taken into account to determine whether the absence is sporadic.

*Note. The General Directorate of Taxes (DGT), in a resolution of June 17, 2020, determined that the days of the **state of emergency** will be calculated in order to determine tax residence in Spain.*

1.2. Tax residence conflicts

In situations where a person can be considered a resident of two countries, it will be necessary to check the provisions of the **Agreement to avoid Double Taxation (CDI)** signed between Spain and the other country with which the conflict exists.

The aforementioned agreements establish how to proceed (so-called **tiebreaker rules**). The Double Taxation Agreements signed by the two countries will always prevail over internal regulations as mentioned above.





The usual first in the State where permanent housing is available to them. If, for example, the taxpayer owns a home in both States, they will be considered a resident of the State in which they maintain closest personal and economic relations (center of vital interests).

*Note. As the DGT established in response to a consultation in 2018, the determination of the place where the **center of vital interests** is located will depend, among other things, on the facts and circumstances of each natural person.*

Example. How should one proceed when the worker is working in several countries for more than 183 days in total (e.g. one month in one country, two months in another, three weeks in another, etc.)?

If there is a double taxation agreement between Spain and the country to which they travel, and the worker travels to provide a service to an entity in that country, then this income may be exempt from tax in each one of the countries to which the worker is posted.

These three conditions (existence of a double taxation agreement; <183 days in a one-year period; and

provision of services for an entity in the destination country) are the only requirements. If they are met, it is irrelevant if the posting is in different periods, in different countries, and for different companies.

2. Tax resident in Spain

As we have seen, the condition of taxpayer subject to personal income tax implies usual residence in Spain.

Likewise, individuals who acquire tax residence in Spain as a result of their posting to Spanish territory and if the legal requirements are met, may choose to benefit from paying taxes through the expats income tax law, maintaining the status of taxpayers for the resident income tax law (Article 93.1 LIRPF). This special regime is commonly known as the “**Beckham Law**”.

2.1. Tax obligations from arrival in Spain

When a worker is posted outside of Spain, for tax purposes, it is important to be properly **registered with the corresponding tax authority**. In Spain, the communication of a change of tax domicile is carried out using **Form 030 and 247**.

Likewise, the posting of employed workers to Spanish territory can be communicated to the tax authority through **Form 147**. This form is used by employed workers interested in anticipating the effects of the change of residence in the application of the system of withholding that applies in the calculation of the worker’s pay.

It is also very important to take into account **Form 720**, which applies to individuals who are tax residents in Spain (and, in some cases, to legal entities) from the calendar year in which they acquire residence in Spain and who possess assets, rights, or obligations abroad, in order to provide information regarding their value.

Furthermore, in order to benefit from the “**Beckham Law**” it is necessary to make a formal communication to the Tax Agency, through **Form 149**, within a maximum period of six months from the start date of the activity that appears in the registration in Social Security in Spain, or in the document that allows contributions at source. The Personal Income Tax Income Tax return must be submitted in the months of May and June following the year that the declaration is being made for, through **Forms 150 or 151**.





*Note. It is advisable to request the **certificate of tax residence** for the years of the posting in order to be clear about the cut-off date and to have proof at the appropriate time.*

2.2. Tax benefits applicable to residents in Spain

The Personal Income Tax (IRPF) regulations provide various benefits, two of which are the principal for those workers with an international component to their work:

- For those workers who should travel abroad to carry out their work, we have **Article 7p** of the Personal Income Tax Law and the regime of excesses provided for in the Personal Income Tax Regulations.
- For taxpayers who acquire residence in Spain, we can talk about the requirements for benefiting from the “Beckham Law” that allows certain types of income taxation in Spain.

2.2.1. Exemption of salaries in application of Article 7, Point P of the IRPF law

In general terms, Article 7P LIRPF exempts all salary received while working abroad up to a maximum of €60,100 as long as tax residence in Spain is preserved.

This is a tax benefit provided for in Spanish regulations that enables the posted worker to increase the net salary received. However, it cannot be applied in all cases, so it is prudent to carry out a preliminary study to verify that the requirements are met.

In a judgment of February 25, 2021, the Supreme Court determined that, in order to determine the number of days for work actually performed abroad, the time spent both on the outbound and on the return journey should be included.

Example. The case of an expatriate who has been posted for three years in an EU country. He moved to that country in September of year 1. Can he be considered a tax resident of Spain this year 1 and benefit from 7P by being in Spain more than 183 days during that year 1?

It seems plausible to assume that, at least during that first year of posting, the posted professional will keep the tax residence in Spain; and in this case, the tax exemption of 7P may be applied, or, alternatively, the tax exemption for the regime of excesses (since the requirement of posting for more than nine months has been met).

In addition, the posted worker will most likely have to pay income tax from wages in the destination country, in principle as a expats during the first year.

It is advisable to present Form 247 to notify the tax authorities of the termination of the employer's obligation to withhold in Spain with regards to the worker from January of the second year, regardless of 7Ps.

2.2.2. Regime of excesses

This allows treating as exempt from tax work income, "the excess received by employees of companies, with destination abroad, over the total remuneration that they would obtain for salaries, wages, seniority, extraordinary payments, including benefits, family

assistance or any other concept, by reason of position, employment, category, or profession in the event of being posted to Spain".

To benefit from the exemption, the following **requirements** should be met:

1. The worker should continue to maintain their tax residence in Spain after the posting, which implies that their family residence remains in Spain;
2. There should be an excess between the remuneration received by the worker before their posting and their new remuneration afterwards, which makes it possible to justify that said excess is a supplement for transfer;
3. The trip abroad should be for a period of more than nine months and as a result of a labor contract.

This regime can not be applied to the application of Article 7, Point P of the previously mentioned IRPF tax law.

2.2.3. Special IRPF Regime - "Beckham Law"

Workers posted to Spanish territory can be taxed under this special regime that grants the advantage of paying taxes in accordance with the regulations of non-tax residents in Spain during the first six years (the same year in which it is requested and in the following five).

This regime includes important tax advantages in situations in which the income obtained by the taxpayer from their posting to Spanish territory is high or when the posting is temporary:





This regime includes important tax advantages in situations in which the income obtained by the taxpayer from their posting to Spanish territory is high or when the posting is temporary

- The applicable tax rate is 24% on the first 600,000 euros per year (income from work), instead of the 43% generally contemplated.
- The applicable tax rate is 45% on income that exceeds 600,000 euros per year.

What are the requirements?

- Not having been a tax resident in Spain during the ten tax years prior to moving to Spanish territory;
- That the posting to Spanish territory is linked to an employment contract, to an international assignment, or because the condition of administrator of an entity is to be acquired;
- Income cannot be obtained through permanent establishment in Spain.

As mentioned, in order to benefit from the “**Beckham Law**” it is necessary to make a formal communication to the Tax Agency, through **Form 149**, within a maximum period of six months from the start date of the activity that appears in the registration in Social Security in Spain, or in the document that allows contributions at source.

During this period, the Income Tax return must be submitted in the months of May and June following the year which the declaration is being made for, through **Forms 150 or 151**.

*Note. It is advisable to request the **certificate of tax residence** for the years of the posting in order to be clear about the cut-off date and to have proof at the appropriate time.*

3. Non-resident for tax purposes

Individuals who lose their tax residence in Spain are subject to taxation in Spain for income from Spanish sources through the Non-Resident Income Tax (IRNR).

In the event that the taxpayer is resident in a country with which Spain has an agreement to avoid double taxation, said agreement will have to be verified since in some cases, the taxation of income is lower than that indicated in the internal regulations, and in some cases may be exempt from taxation in Spain.

In cases of income exempt by application of the agreement or with a tax limit, the expats taxpayer should have the corresponding residence certificate issued by the tax authorities of their country of tax residence, which should expressly state that the taxpayer is a resident within the meaning of the Convention in order to apply the exemption.

3.1 Tax obligations

In the case of loss of tax residence in Spain for employed workers, **Form 247** should be processed in order to anticipate the worker’s new tax residence, and be able to apply it to pay, so that there is no need to wait six months to regularize withholdings.

As in the case of residents, in Spain, the

communication of the change of the tax domicile of the posted worker is made through **Form 030**.

Non residents individuals are subject to tax in Spain for income from Spanish sources through Non-Resident Income Tax (IRNR), such as for example income obtained from the rental of real estate in Spain. This income is understood to be obtained as income without permanent establishment in Spanish territory, and is filled and payed through **Form 210**.

In these situations, for those taxpayers residing in a country of the European Union, the deduction of certain expenses is allowed, a deduction that is not available for residents of third-party countries.

3.2 Benefits applicable to expats workers

Amounts paid for allowances and travel expenses for non-EU residents are exempt. In an important ruling, the National Court concluded that the referral that the IRNR Law makes to the IRPF regulations implies that the determination of full income from work will be the same for residents as for expats since, otherwise, it would imply an unjustified discrimination.

Medical insurance, travel checks, and daycare are also exempt in kind payments.





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