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Tax Attractions

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2023

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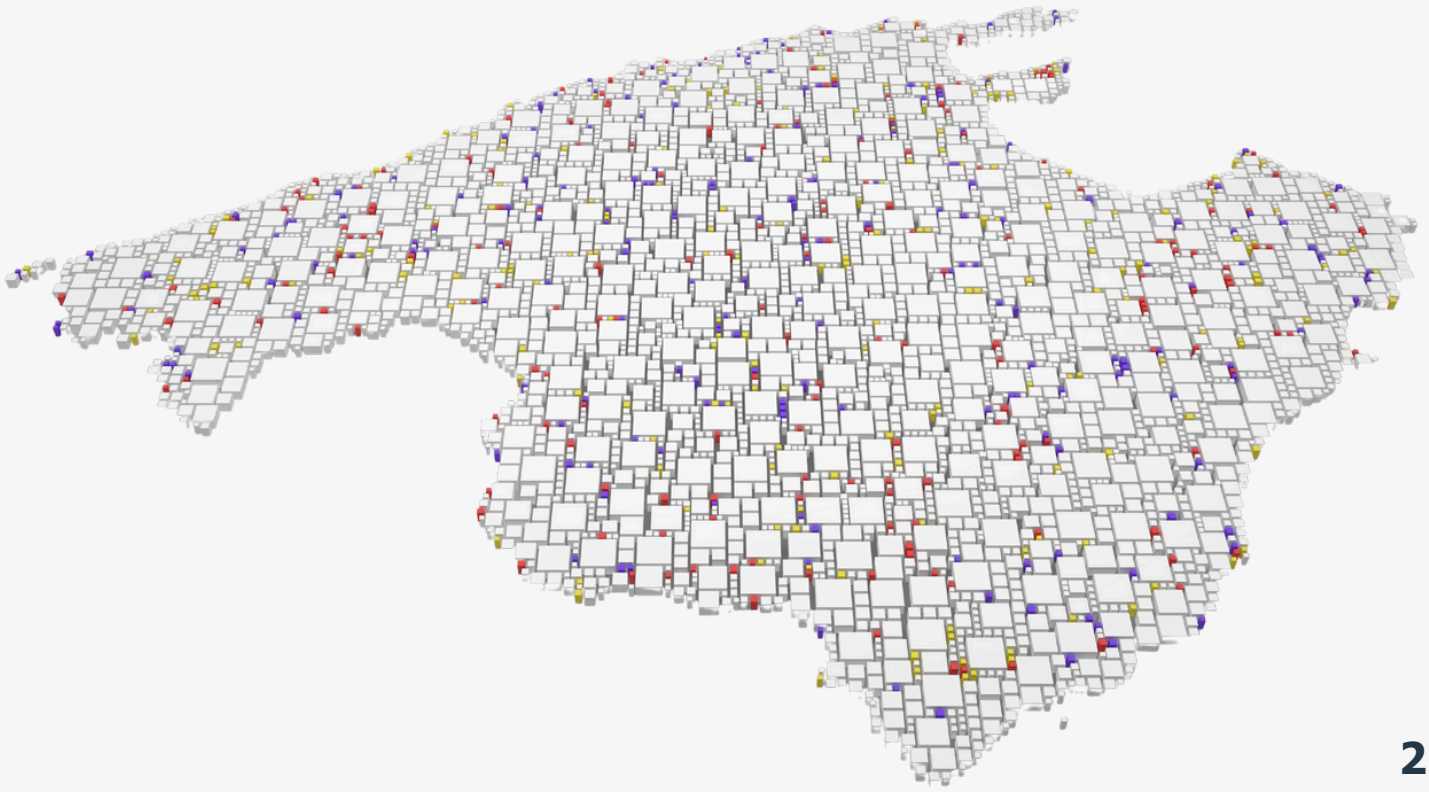

RESEARCH AND DEVELOPMENT TAX INCENTIVES

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In the legislator's and the executive's quest to attract high value-added investment to national territory to promote the competitiveness of the national productive sector and to converge in the weight of investment with respect to GDP with the European Union average, we can find a series of measures that seek to promote scientific research and technological innovation (R&D&I).

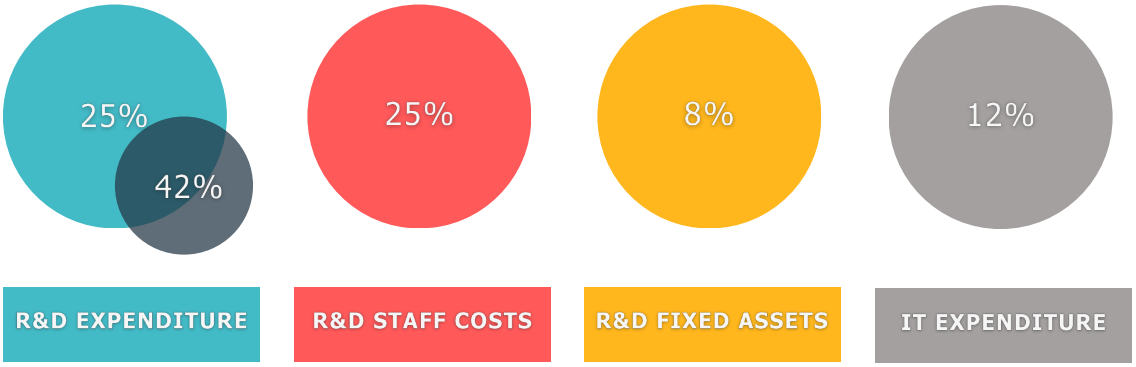
These measures take the form, among others, of tax benefits such as **the deduction for R&D&IT in corporate income tax or the "Patent Box", as well as the freedom to depreciate assets used for these activities.**

> THE DEDUCTION FOR R&D&IT IN CORPORATE INCOME TAX OR THE "PATENT BOX", AS WELL AS THE FREEDOM TO DEPRECIATE ASSETS USED FOR THESE ACTIVITIES.

In this chapter we focus on the first of these, which consists of applying an additional deduction to the tax liability, i.e. the tax payable, in two modalities. Spanish legislation divides the deduction into two scenarios, that which is derived from investments in research and development; and on the other hand, those that refer to technological innovation.

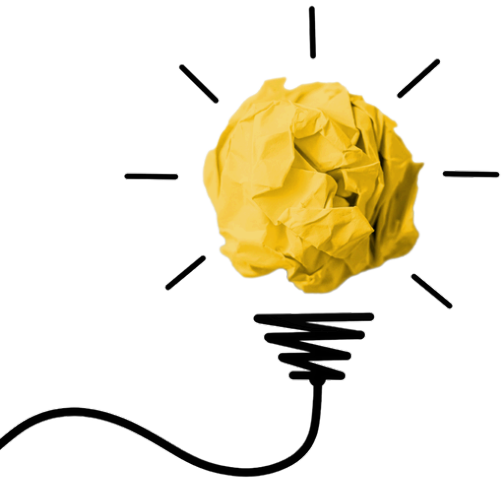
In the first case, **the deduction will be 25% of the expenses incurred in the tax period for research and development (not technological innovation) and can even be increased to 42% if the increase is greater than the average for the company or the business group, if any, in the previous two years.**

In addition, an extra 17% of the expenses corresponding to qualified research personnel assigned exclusively to R&D activities may be deducted from the tax liability, and another 8% on investments in fixed assets different than buildings and land (real estate).



On the other hand, if instead of being classified as scientific research, the investment is considered as technological innovation, a deduction of 12% of the expenses of the tax period corresponding to the rest of the technological innovation activities carried out at the company.

DELIMITATION OF R&D&IT CONCEPTS



Research and development

On the one hand, research shall be considered as original and planned investigation aimed at discovering new knowledge and a better understanding in the scientific and technological field. On the other hand, development shall be considered as the application of the results of research or other scientific knowledge for the manufacture of new materials or products or for the design of new processes or production systems, as well as for the substantial technological improvement of pre-existing materials, products, processes or systems.
It shall also be considered as research and development activity:

- The design and preparation of the sample book for the launch of new products.

- The materialisation of new products or processes in a plan, scheme or design, as well as the creation of a first non-marketable prototype and initial demonstration projects or pilot projects, provided that these cannot be converted or used for industrial applications or for their commercial exploitation.

- The creation, combination and configuration of advanced software, by means of new theorems and algorithms or operating systems, languages, interfaces and applications intended for the development of new or substantially improved products, processes or services. Software intended to facilitate access to information society services for people with disabilities will be assimilated to this concept, when it is carried out on a non-profit basis. It does not include usual or routine activities related to software maintenance or minor software updates.

Technological innovation

Technological innovation shall be considered to be the activity whose result is a technological advance in obtaining new products or production processes or substantial improvements to existing ones. Products or processes whose characteristics or applications, from a technological point of view, differ substantially from those existing previously, shall be considered new.

> the deduction will be 25% of the expenses incurred in the tax period for research and development (not technological innovation) and can even be increased to 42% if the increase is greater than the average for the company or the business group, if any, in the previous two years.

The optional report: towards greater legal certainty

Aware of the complexity of the classification, art. 35 LIS contemplates the possibility of providing a reasoned report, binding on the administration and issued by the Ministry of Economy and Competitiveness (currently the Ministry of Economic Affairs and Digital Transformation) on whether the activities can be classified as Research and Development (R&D), Technological Innovation (IT) or cannot be classified as any of them and are not entitled to the deduction.

Furthermore, given the very high level of litigation on the matter, Article 38 of the Corporate Income Tax Regulation (RIS) provides for the possibility for entities intending to carry out R&D&IT activities to request a binding report from the tax authorities on the valuation of expenses eligible for exemption.

In addition, there are various private entities that fulfil the function of accreditation and that, when applying these deductions, can serve to pave the way towards the same. At Kreston Iberaudit we have agreements with various entities for the preparation of these reports, which, in a tax inspection process, would represent a significant reduction in risk.

Is it possible to subcontract the process?

The amounts paid for R&D&IT activities, when these have been paid in Spain or in any other EU member state, will give the right to the deduction; and only expenses linked to activities carried out in Spain or in any other member state of the European Union or the European Economic Area, whether carried out by the company itself or by a third party to whom they have been outsourced, can form part of the basis for the deduction.

Quantification

"The basis for the deduction shall be constituted by the amount of research and development expenditure and, where appropriate, by investments in tangible and intangible fixed assets excluding buildings and land.

Expenditure incurred by the taxpayer, including depreciation of assets assigned to the aforementioned activities, shall be considered to be research and development expenditure in so far as it is directly related to those activities and is actually applied to the performance of those activities and is specifically identified by project.

The basis of the deduction shall be reduced by the amount of the subsidies received for the promotion of such activities and attributable as income in the tax period.
Investments shall be deemed to have been made when the assets are put into working order. - art. 35.1.b) LIS -

Thus, in order to quantify the Research and Development deduction, we must first carry out some prior individualisations.

- Determine the total expenditure that can be deducted in accordance with the definitions given above and the subsidies received for this purpose.
- Determine the amount of expenditure on research personnel exclusively assigned to research work.
- Determine the total amount of investments in tangible or intangible fixed assets, assigned to these investments, and that of real estate investments (land and buildings).

Example

Financial Year	field	20X0	field	20X1	field	20X2
Total R&D expenditure	1	1.000,00	2	500,00		500,00
Expenditure on research staff	4	100,00				
Investments in fixed assets	5	400,00				
Subsidies received	6		8		9	
Investments in land and buildings	7					

Basis of deduction (=C1-C6)	8	1000,00	10	500,00	11	500,00
Investments in land and buildings	9	500,00				

The basic subsidy will be 25% of the year's expenses, but in the part that exceeds the average of the last two years, the applicable deduction will be 42%.

In addition, a deduction may be applied, which will be added to the previous amount, of 17% of the expenditure on research personnel and 8% on fixed asset investments other than real estate investments.

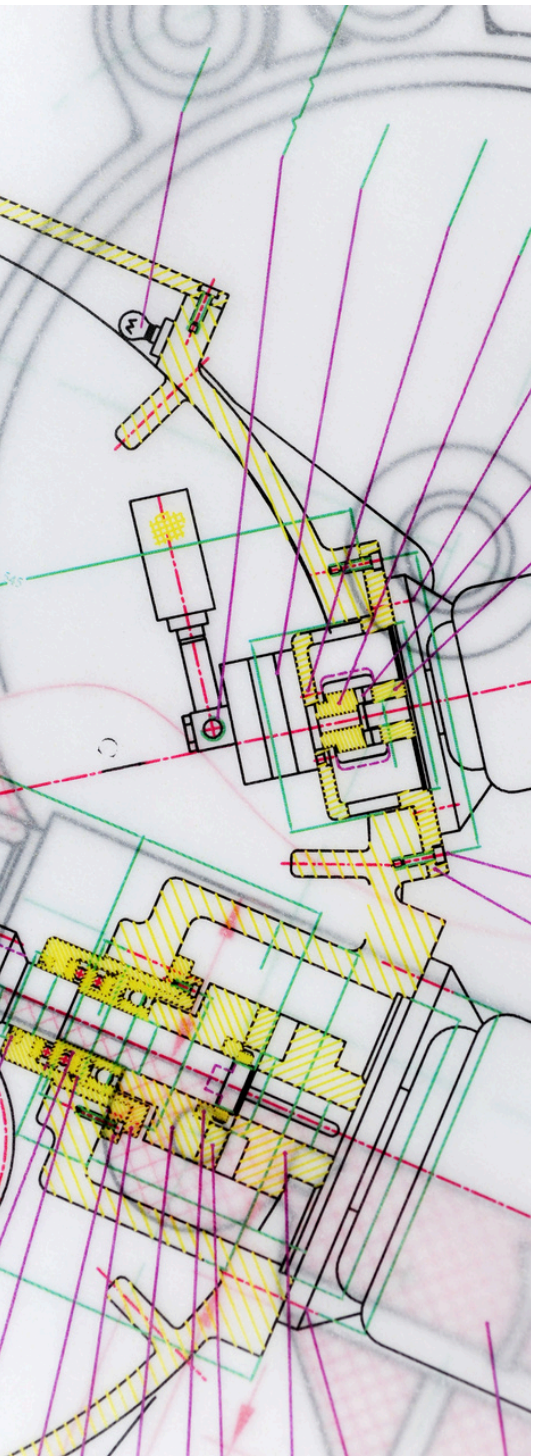
Example

25% deduction (=(C1-C6)-(C10+C11)/2))*0,25)	10	125,00
42% deduction (=C9*0,42)	11	210,00
17 % deduction (=C4*0,17)	12	17,00
8% deduction (=(C5-C7)*0,08)	13	23,00
Deduction total	**14**	**384**

The deduction, together with the other deductions, including the deduction for IT, will be limited to a maximum of 50% of the gross tax liability for the year, i.e. the tax that would have been payable if the deduction had not been taken, for which the corporate income tax must first be calculated. The part that exceeds this tax liability is treated as a Deferred Tax Asset (DTA) and can be carried forward to the next 18 years in which the tax liability is sufficient.

In the above example, if the corporate income tax liability is 400 monetary units, the maximum applicable deduction of 50% would be 200 euros, which would reduce the tax payable to the tax authorities, and the remaining 184 euros could be applied in the following years.

DEDUCTION TOTAL	14	384,00
FULL QUOTA BEFORE DEDUCTION	15	400,00
APPLICABLE DEDUCTION (Maximum 50% C15)	16	200,00
DTA [JMF1] for future financial years(=C14-C16)	17	184,00
EFFECTIVE TAX FOR THE YEAR (=C15-C16)	18	200,00



Technological innovation

The basis for the deduction will be constituted by the amount of the period's expenditure on technological innovation activities corresponding to the following items:

- Technological diagnosis activities aimed at the identification, definition and orientation of advanced technological solutions, irrespective of the results in which they culminate.
- Industrial design and engineering of production processes, which will include the conception and preparation of plans, drawings and supports intended to define the descriptive elements, technical specifications, and operating characteristics necessary for the manufacture, testing, installation and use of a product, as well as the preparation of sample books for textiles, footwear, tanning, leather goods, toys, furniture and wood.
- Acquisition of advanced technology in the form of patents, licences, know-how and designs. Amounts paid to persons or entities related to the taxpayer shall not be eligible for deduction. The base corresponding to this concept may not exceed the amount of 1 million euros.
- Obtaining the certificate of compliance with the quality assurance standards of the ISO 9000, GMP or similar series, not including those expenses corresponding to the implementation of these standards.

A deduction percentage of 12% will be applied to these expenses, the result of which will reduce the tax liability, up to a maximum of 50%.

INCENTIVES FOR R&D THE PATENT BOX

INCENTIVES FOR R&D THE PATENT BOX

The tax incentive known as the "patent box" is part of the incentive plans for certain activities, specifically, the assignment and transfer of intangible assets, provided by the legislator.

The purpose of the rule is to promote the realization of activities for the creation of technical knowledge with industrial or commercial application within the framework of an innovation activity (both R&D and IT).

The incentive consists of a reduction of the income obtained to be included in the taxable income (BI) for this concept, in such a way that it will result in a lower taxation for the companies that can benefit from it.

It should also be emphasized that, in the current regulation, the regime refers both to the transfer of the assets (definitive situation, which implies the removal of the asset from the company), and to the transfer of use.

A reduction of 50% or 60% is thus established on the income or on the profits, respectively, produced by the assignment or transfer of intangible assets in accordance with the conceptualization made above, the reduction being practiced according to the different reforms on the income from the asset or on the income.

Applicable legislation

Art. 23 LIS, regulates the "reduction of income from certain intangible assets", in the following sections, the objective scope (basis of the reduction), the content and the calculation of the same will be broken down.

As usual, we must take into account the high volatility of tax law and the constant legislative changes. It will therefore be essential to be very clear about the time at which the transfer is made and the accrual of corporate income tax.Notes on the previous regimes are included.

A reduction of 50% or 60% is thus established on the income or on the profits, respectively, produced by the assignment or transfer of intangible assets in accordance with the conceptualization made above, the reduction being practiced according to the different reforms on the income from the asset or on the income.

A. Basis of the reduction

The basis for the reduction will be "**the positive income**" from the assignment of the right of use or exploitation of":

INCENTIVES FOR R&D
THE PATENT BOX

✓ Patents

New inventions that involve an inventive activity and are susceptible of industrial application, i.e., that are not included prior to the state of the art, are patentable. The above is evidenced by the patent registration and the title recognized by the SPTO according to the provisions of Law 11/1986, of March 20, 1986, on patents.

✓ Supplementary protection certificates for medicines and phytosanitary products:

Complementary protection certificates or "CCPS" are industrial property titles for the protection of medicines and phytosanitary products.

✓ Utility Models.

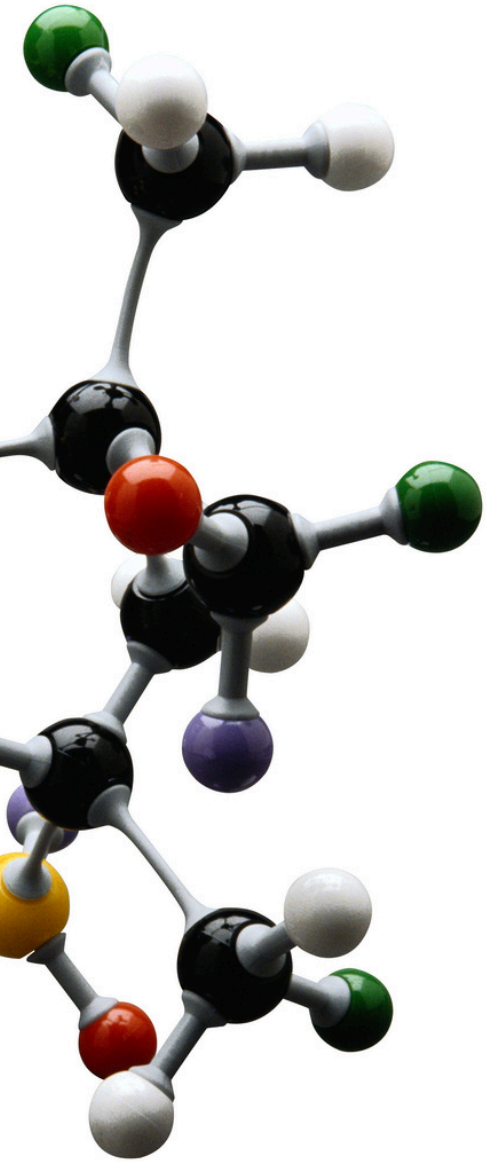
The Utility Model protects inventions with a lower inventive range than those protected by Patents. These are inventions that being new and involving an inventive activity, although of lower rank than the patent, consist of giving an object or a product, a configuration, structure or constitution from which some appreciable advantage results in practice for its use or manufacture, consisting of giving an object a configuration or structure from which some utility or practical advantage is derived.

✓ Technological innovation

ü basically refers to Community Designs, applied for and granted by EUIPO, referring to those exclusivity rights conferred by the external appearance of a product or part thereof derived from lines, contours, colors, shape, texture, materials and/or its ornamentation.

By the wording of art. 23.5 LIS **are excluded** from the incentive the transfer of any asset other than the above, and in particular:

- ✗ **Trademarks**
- ✗ **Industrial, commercial or scientific equipment, plans, secret formulas or procedures, of rights to information relating to industrial, commercial or scientific experiences (know-how).**
- ✗ **Assignment or rights of use of informative programs other than those referred to in ap.1.**
- ✗ **Literary, artistic or scientific works.**



B. Requirements for the application of the reduction

Art. 23.3 LIS, imposes four requirements for the possibility of applying the reduction.

Firstly (i) it is required that the acquirer of the rights of use or ownership of the intangible asset uses it in the development of an economic activity, i.e. the development of a patent for its manufacture and sale to end consumers or entrepreneurs (they would have the status of inventories) will not entitle to the application of reduction, but the patent right itself must be, for another entrepreneur to use it;

(ii) it is also required that the transferee is not a resident in a tax haven or a territory with no taxation, however, this clause, as will be referred to in the "note for tax efficiency", will not have any effect, since it is preferable that the acquirer (if it has such condition) is located in territories with high tax rates; thirdly, it is required that (iii) the services in the transfer or assignment contract, if they are different from those in the transfer or assignment contract, are not resident in a tax haven or in a territory with no taxation, and that they are not resident in a tax haven or a territory with no taxation.

It is worth mentioning the modification of the basis of the reduction or objective scope, since as will be seen in the mention of previous periods, know-how had been subject to the reduction. As from 2018, only assignments or transfers of assets that have been developed within the framework of an R&D or IT project are subject to the reduction, "excluding those intangibles related to industrial, commercial or scientific experiences, which represent knowledge coming from the experience of a company to develop without problems certain functions in the productive or service field", excluding know-how from the reduction as from 2018.

If there are negative incomes from the assignment, they will be integrated in the BI, however, if with respect to the same asset, positive and then negative incomes are recorded, a reduction must be recorded with respect to the reduction applied to the positive incomes.

C. Content and calculation

As from January 1, 2018, the reduction rate will be the result of multiplying by 60% the result of the coefficient: (numerator) expenses incurred by the transferor entity directly related to the creation of the asset, including those derived from subcontracting with third parties not related to it, increased by thirty percent and divided (denominator) by the expenses incurred by the transferor entity directly related to the creation of the asset, including those

derived from subcontracting both with third parties not related to it and with persons or entities related to it and from the acquisition of the asset.

In no case may the numerator be higher than the so-called (this would imply a reduction of more than 60%), and, in any case, indirect expenses are excluded from the calculation.

Described in a more graphic way, the rate for the reduction will be calculated as follows:

- Direct expenses incurred by the entity = X
- Expenses subject to subcontracting (non-related entities) = Y
- Expenses subject to subcontracting (related entities) = V
- Expenses for the purchase of part of the intangible assets = Z

$$\text{APPLICABLE RATE} = 0{,}6 * \frac{1{,}3*(X+Y)}{X+Y+V+Z} \%$$

The result of 1.3*(X+Y) (numerator) can NEVER be higher than X+Y+V+Z (denominator). In case it exceeds it, the limit will be applied (coefficient 1, and therefore a 60% reduction)

ADMINISTRATIVE DOCTRINE: Case Law

Relationships between tax related entities, M&A and other particulars to be taken into account

A) Related entities

The necessary assumption for the reduction to exist is that there is a transfer or use, and it is even admissible that this use is developed by the transferor itself (e.g., CQ transfers ownership of an asset to a third party). CQ transfers the ownership of an asset to a third party so that the third party then transfers the use in some kind of operating lease, since CQ needs to continue using it), but there must be a transfer either in the ownership or in the rights of use. If the asset is being transferred between group companies, it is understood that there is no such transfer, as it remains "in the same hands".

However, in the event that this transfer or assignment requirement is not met, the deductions for R&D and IT expenses may be applicable, as appropriate.

derived from subcontracting both with third parties not related to it and with persons or entities related to it and from the acquisition of the asset.

In no case may the numerator be higher than the so-called (this would imply a reduction of more than 60%), and, in any case, indirect expenses are excluded from the calculation.

Described in a more graphic way, the rate for the reduction will be calculated as follows:

B) Application of the reduction in entity merger transactions

In the case of a structural modification under the special regime of Chapter VII LIS, provided that the transferring entity complies with the previous requirements, the acquiring entity becomes the successor of the rights to the reduction. This will imply that at the time of the transfer the transferring entity will not be able to apply the reduction.

C) Transfer of intangible assets as an ancillary benefit

When intangible assets form part of an ancillary benefit (e.g. instruction manuals and similar) that are necessarily linked to the transfer or assignment of a tangible asset, the proportional application of the latter will not be applicable.

D) Tax efficiency and rates

The rule contemplates the impossibility for the transferee entity to have tax residence in a territory with little or no taxation or tax haven; although it is true that the rule provides for this, it is also true that, for planning purposes, it must be taken into account that for the transferee entity the acquisition of the rights of use will be a deductible expense, provided that it meets the requirements for deductibility (accounting registration,...), and therefore, in the case of the transferor entity, it will be a deductible expense, provided that it meets the requirements for deductibility (accounting registration,...), and therefore, in the case of the transferee entity, it will be a deductible expense.), and therefore, to the extent that for the transferee it will be an expense, it will be convenient to deduct the expense at a higher rate in order to achieve greater tax efficiency.

Accounting effects

The partial exemption of income obtained from the transfer or assignment of intangible assets, as detailed above and provided that the requirements established therein are met, will result in a lower taxable income than accounting income, which will imply an extra-accounting adjustment and the generation of a negative permanent adjustment asset.

It should be remembered that the transferor or transferring entity (to which the reduction is applied) must have the necessary accounting records to determine the expenses and income corresponding to the intangible assets transferred, although the lack of activation in the balance sheet does not determine the impossibility of applying the reduction.

TAX REGIME FOR HOLDING COMPANIES ETVE

WHAT IS THE TAX REGIME FOR ETVES?

Foreign Securities Holding Entities (hereinafter **ETVEs**) are capital companies whose corporate purpose is solely or, among others, the management of securities of equity investments in non-resident entities in Spanish territory.

Specifically, Spanish law establishes a special corporate income tax (IS) regime for this type of entity that grants them certain tax benefits, subject to the requirements set out therein and which will be discussed below.

Double taxation agreements that follow the OECD model agreement, as is the case of the vast majority of agreements signed by Spain, subject dividends paid by Spanish companies to taxation in Spain, without prejudice to the State of residence of the parent company taxing it and applying the double taxation deduction, exemption or other methods to eliminate international double taxation. However, under this special tax regime, dividends distributed by ETVEs will only be taxed in the state of residence, being considered as obtained outside Spanish territory.

> Spanish law establishes a special corporate income tax (IS) regime for this type of entity that grants them certain tax benefits

WHAT ARE THE BENEFITS OF THE SPECIAL TAX REGIME?

The application of the special tax regime is manifested in two scenarios: (i) in the event that the Spanish holding company distributes dividends that are in turn obtained from its subsidiaries abroad, or, (ii) in the event that the Spanish entity obtains capital gains, i.e. profits, from the sale of shares of its subsidiaries abroad.

The special tax regime will grant one or the other benefits, depending on the legal nature of the shareholder (i.e. whether he/she is an individual or a legal entity) and whether he/she is resident in Spain or not. In a schematic way, we can summarise it as follows:

TAX REGIME FOR HOLDING COMPANIES ETVE

PARTNER TYPE	ETVE RECEIPT OF DIVIDENDS	CAPITAL GAINS ON TRANSFER OF ETVE SHARES
Legal entity resident in Spain or non-resident with a PE in Spain (IS)	Application of the exemption regime, fulfilling the requirements of art. 21.1 LIS.	Application of the exemption regime, fulfilling the requirements of art. 21.1 LIS.
Natural person resident in Spain (IPRF)	They are considered as savings income.	Personal income taxation without specification.
Individual or legal entity not resident in Spain (IRNR taxpayer)	The dividend distributed by the ETVE is not deemed to have been obtained in Spain; it is taxed at the shareholder's place of business.	It is understood that income corresponding to earmarked reserves charged against exempt income or differences in value are not obtained in Spain.

PARTNER LEGAL ENTITY RESIDENT IN SPANISH TERRITORY

Distribution of profits

When the recipient of the profits distributed by the ETVE against exempt income from entities not resident in Spanish territory is an entity subject to Corporate Income Tax or a non-resident entity with a Permanent Establishment in Spain, the profits received will be treated in accordance with the general regime provided for in the Corporate Income Tax Law, being able to apply the exemption on profits contained in art. 21 of Law 27/2014, on Corporate Income Tax, therefore, if the Spanish shareholder complies with the requirement of holding at least 5% of the capital during the year prior to the due date the return will be exempt at 95%.

Therefore, in the case of shareholders who are legal entities with tax residence or PE in Spain, the ETVE regime does not represent a benefit with respect to the general criterion.

Benefits for the transfer of holdings or shares

Likewise, in the case of legal entities with tax residence in Spain or Permanent Establishments in Spanish territory, they may apply the double taxation exemption when they hold a direct or indirect shareholding equal to or greater than 5% of the ETVE and this percentage has been held uninterruptedly for one year during the year prior to the year prior to the transfer.

SHAREHOLDER NATURAL PERSON RESIDENT IN SPANISH TERRITORY

Distribution of profits

In the same way, being the shareholder of the ETVE, the profit distributed by the ETVE will be considered as savings income, taxed at up to 26% as if it were another dividend and without the possibility of eliminating the double taxation that is given to the profit obtained from the ETVE. In other words, in this case the ETVE regime does not represent a benefit compared to the general regime either.

Profits from the transfer of holdings or shares

No special rules are introduced in this case either, and the individual shareholder must pay tax on the income obtained as a capital gain (or loss), which will be included in the savings tax base and taxed at a rate of up to 26%.

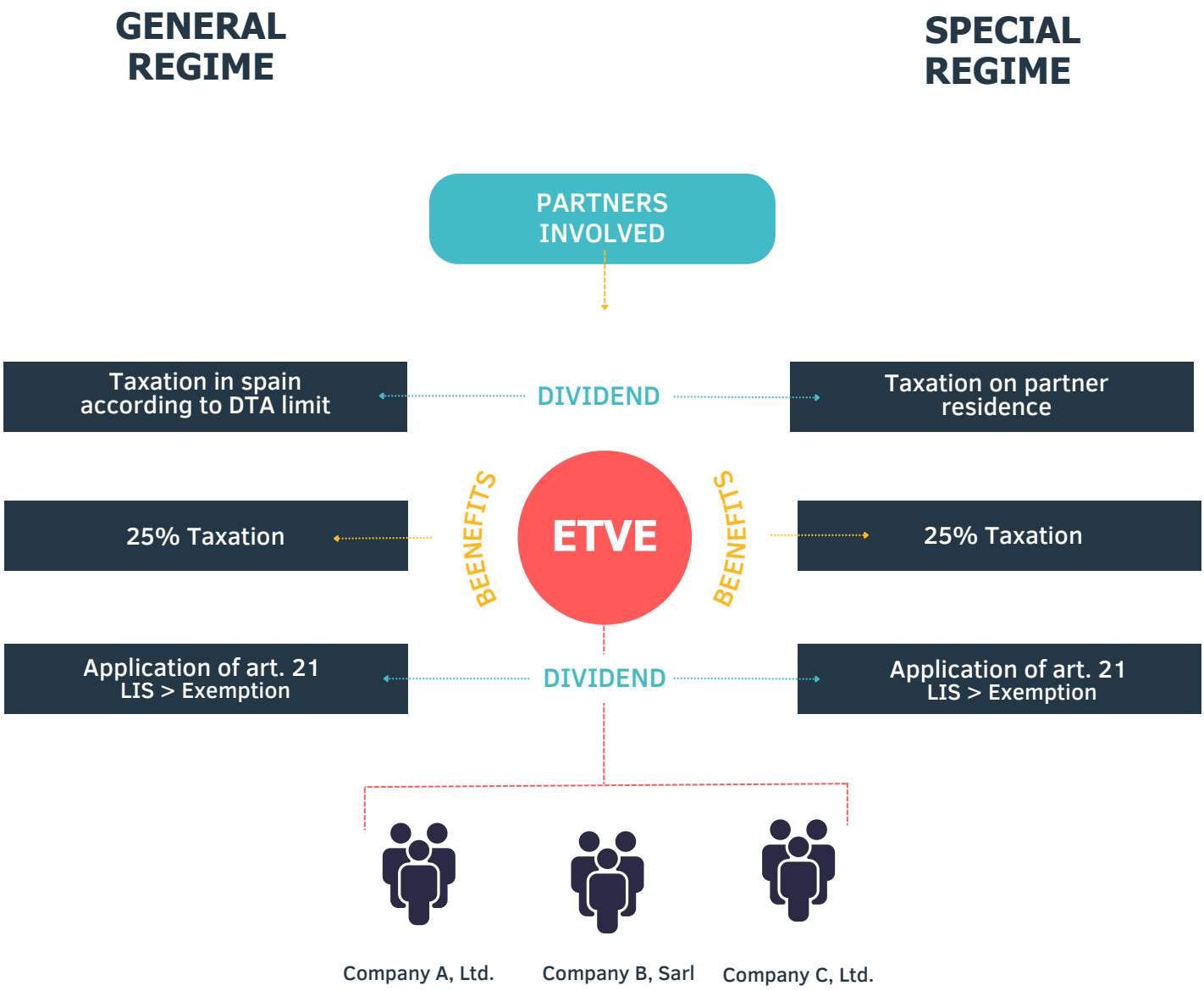
SHAREHOLDER INDIVIDUAL OR ENTITY NOT RESIDENT IN SPANISH TERRITORY

Distribution of profits

In the event that the shareholders of the ETVE are non-residents, whether individuals or legal entities, dividends and issue premiums paid out of exempt income from shares in entities not resident in Spain are considered not to be obtained in Spanish territory and are therefore not taxable in Spain, regardless of the percentage and the length of time the shares in the ETVE have been held.

The following diagram shows the taxation of the entire structure as a whole:

TAX REGIME FOR HOLDING COMPANIES
ETVE



GAINS ON THE TRANSFER OF HOLDINGS OR SHARES

If the income from the transfer of shares in the ETVE is subject to taxation in Spain in accordance with Art. 14 of the Revised Text of the Non-Resident Income Tax Act, the special regime establishes a specific calculation system to determine what part of the income from the sale would be subject to taxation in Spain.

To do so, the following steps must be followed:

- Determine which part of the income corresponds to undistributed profits of the ETVE and which have been generated during the time of holding the transferred shareholding against exempt income derived from the ETVE's shareholdings in entities that meet the requirements of Art. 21 LIS, this part of the profit from the transfer being exempt.

- Determine which part of the profit or loss corresponds to undistributed profit from the ETVE and was not exempt, as the latter will be subject to taxation in Spain and will be taxed in accordance with the double taxation avoidance agreements and the Non-Resident rule.

- Apply the same procedure with respect to indirect shareholdings in other non-resident companies, determining whether or not they are subject to taxation in Spain.

- Determine what percentage of the capital gain or loss is due to differences in value attributable to the rest of the ETVE's assets, income which will be considered taxable in Spain and taxed in accordance with the Non-Resident Income Tax rules.

SUBJECTIVE REQUIREMENTS

The first and essential requirement is that the companies applying for the Special Regime must have an economic activity, i.e. they must have sufficient material and human resources to carry out the management activity themselves, and the provision of the asset management service abroad cannot be subcontracted or outsourced to third parties.

Likewise, although no requirement of shareholding in the entities in which it participates is required for application of the special regime, in order for the dividends obtained by the ETVE from non-residents to be exempt and for the complete elimination of the exemption to be possible (art. 21 LIS), the shareholding must be sufficient for the ETVE to be exempt. 21 LIS), the ETVE's shareholding in the foreign subsidiaries must be at least 5%, since, as we have said, ETVEs do not enjoy any particularity regarding compliance with the requirements established in art. 21 LIS in order to apply the exemption on dividends and capital gains from the aforementioned shareholdings.

It is worth mentioning that as of 2021, the 20 million euro alternative previously contained in art. 21 LIS has disappeared, although the 40th transitional provision of the LIS establishes the applicability until 2025 of the exemption to those shares acquired prior to the amendment of the Corporate IncomeTax Law.

The special tax regime is compatible with the special Spanish consolidation regime, but it is nevertheless incompatible with other types of arrangements, such as joint ventures, UTEs, AIEs and AEIEs, which are used in particular as a legal vehicle to give form to joint ventures.

Finally, it is worth mentioning that the classification of the State of tax residence of the ETVE partner as a tax haven will result in exclusion from the tax regime and will entail the loss of these benefits.

FORMAL REQUIREMENTS: AN OPTIONAL REGIME

The application of the ETVE regime is optional, which means that the main formal obligation is to notify the tax authorities in writing before the end of the ETVE's tax period, generally 31 December, unless otherwise provided for in the companies articles of association. The special regime will be applicable as from the tax period that ends after such notification and to subsequent tax periods that end before the renunciation of the regime is notified, by means of the same procedure.

However, the regulation also establishes a series of additional requirements, which must be observed when setting up the ETVE, or if it has already been set up and intends to apply this regime at a later date, by means of a modification to the articles of association, which will require a resolution of the General Meeting, a public deed and registration.

Thus, the corporate purpose must include, without prejudice to other activities, the management of securities representing equity in non-resident entities, and the entity must itself have sufficient material and human resources (the service cannot be outsourced) to carry it out. Likewise, the bylaws require that the form of the securities must be registered securities, bearer shares not being valid.

Each year, when the annual accounts are drawn up, they must include information on the income that has been exempted by the double taxation exemption and the taxes that have been paid abroad by the subsidiaries; and the shareholders must also be informed of the tax obligations that apply according to their characteristics, i.e. the taxation described above according to the nature or legal personality and tax residence.

EXAMPLE OF TAXATION

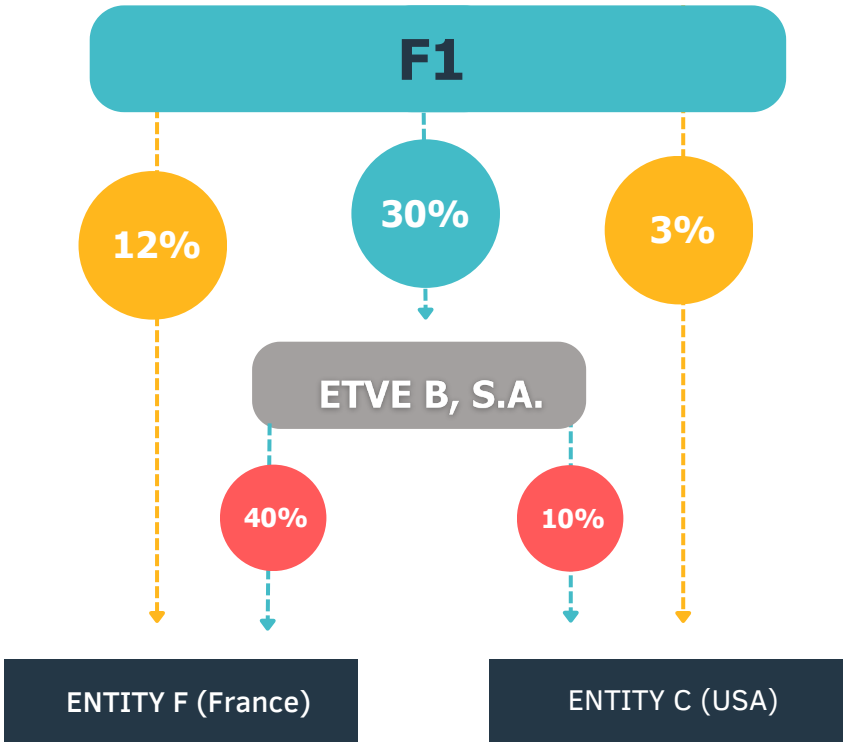
PF1 is a 30% shareholder in ETVE B, SA, which in turn is a shareholder in two non-resident companies that are taxed at a nominal rate of more than 10% in the following percentages:
- 40% Entity F French
- 20% Entity C USA

The income of ETVE B, SA is as follows:

TAX REGIME FOR HOLDING COMPANIES
ETVE

Concept	Amount
Dividend income from F	2.000.000,00
Proceeds from the sale (capital gains) of C	7.000.000,00
Other revenues of ETVE B, SA	1.000.000,00
TOTAL INCOME	10.000.000,00

ETVE B, SA, distributes dividends of 3,000,000.00 euros, of which 900,000.00 euros correspond to PF 1.



Taxation of the dividend of ETVE B, SA to PF1

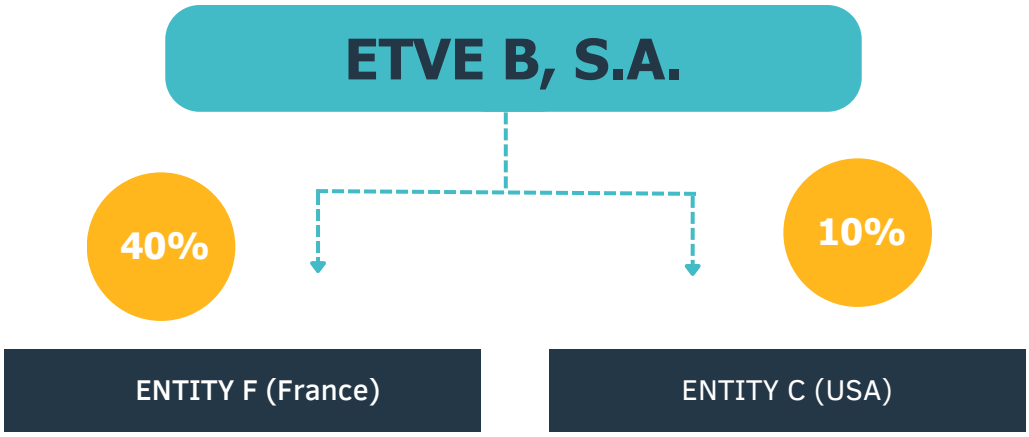
Concept	Amount	%
Dividend income from F	2.000.000,00	20%
Proceeds from the sale (capital gains) of C	7.000.000,00	70%
Other revenues of ETVE B, SA	1.000.000,00	10%

TAX REGIME FOR HOLDING COMPANIES
ETVE

Taxation	Total dividend/ Weight of income	Amount
Income exempted under the ETVE regime		270.000,00
	900.000 * 20%	180.000,00
	900.000 * 10%	90.000,00
Income not exempted under the ETVE regime		630.000,00
	900.000 * 70%	630.000,00

TAXATION OF ETVE B, SA

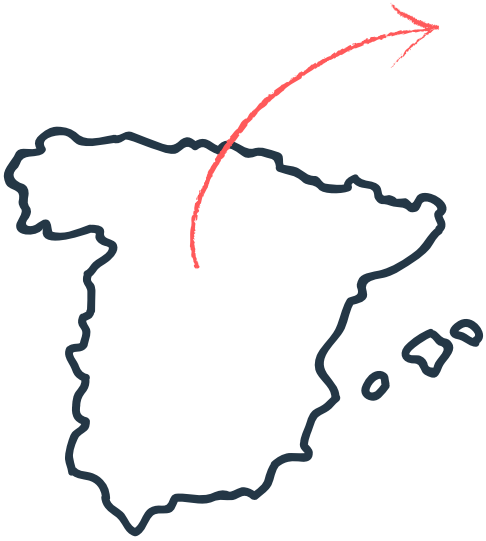
Since ETVE B, SA has a stake of more than 5% in both companies, if they have been taxed at a nominal rate of at least 10%, the income from F and C will be exempt.



Concept	Amount	Taxation
Dividend income from F	2.000.000,00	exempted
Proceeds from sales of units (capital gains) of C	7.000.000,00	Exempted
Other income in Spain of ETVE B, SA	1.000.000,00	Exempted

TAX EXEMPTION FOR WORK PERFORMED ABROAD

TAX EXEMPTION FOR WORK PERFORMED ABROAD



The Personal Income Tax Law includes among various exemptions the exemption of "Income from work effectively carried out abroad". This exemption means that, although the performance of this work constitutes the taxable event and Spain has sovereignty to tax it, the Spanish legislator has decided to exclude it from the basis of the calculation, provided that it corresponds to work performed abroad that meets the requirements detailed below.

This exemption can be applied by the company through its withholding system or can be applied by the employee at the time of filing the annual personal income tax return (form 100). It can also be requested once the tax return has been filed by requesting a rectification of self-assessment and undue income.

The application of this exemption through the company's withholding system is another benefit that companies can offer to their employees as part of the compensation package to improve the annual net salary of the employees, having the same salary cost for the company.

APPLICATION THROUGH THE SYSTEM OF WITHHOLDINGS TO COMPANIES.

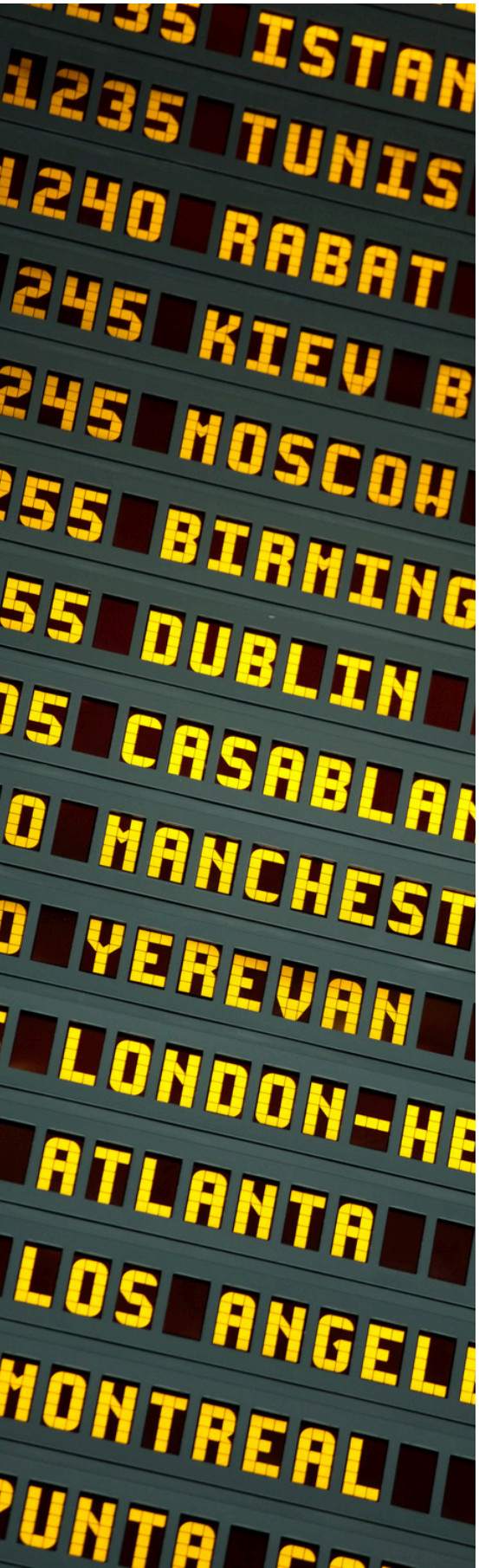
The exemption is conditioned to being able to justify the reason for the trip.

For the correct application of the exemption there must be collaboration between the company and the employee, either when the employee applies the exemption individually or if it is centralized through the company's withholding system, since the administration usually shifts the burden of proof to the company.

In this sense, the company must have, in all cases, documentation detailing the employee's duties, the reason for the trip and the number of days he/she has travelled, since this is the minimum information that the administration will request. All this, without prejudice to the provision of the necessary documentation to justify the trip itself, which is detailed in the following point.

“The application of this exemption through the company's withholding system is one more benefit that companies can offer to their employees as part of the compensation package to improve the annual net salary of the employees, having the same salary cost for the company.”

TAX EXEMPTION FOR WORK PERFORMED ABROAD



When it is decided to apply the exemption in a centralized manner through the company's withholding system, it is important to establish a series of internal processes to review the documentation available to justify the lack of withholding from the employee. Likewise, a thorough analysis of the functions and reasons for the travel of each employee that may be applicable to him/her will be considered a good practice.

In conclusion, the application of the exemption by the company for the purpose of calculating the withholding applicable in the payroll will be a benefit for the employee, increasing his net monthly salary, without increasing the salary cost of the company.

REQUIREMENTS

The exemption of such income is conditioned to the fulfillment of the following requirements, according to art. 6.1 of the Personal Income Tax Regulation:

1.That the income can be qualified according to Spanish Law as earned income.

For these purposes, income from employment must be income from work, both that which is due to a statutory relationship in accordance with the Spanish Workers' Statute (Estatuto de los Trabajadores), as well as the cases of special employment relationships such as, for example, professional sportsmen, actors, or collaborators in humanitarian activities as well as High Executives.

However, its applicability is disputed with respect to political representatives, attendance at conferences and the like, and scholarships abroad, which, in accordance with the Personal Income Tax Law, are assimilated to earned income.

In a ruling dated June 20, 2022, the Supreme Court has established that the exemption for income obtained from work abroad can be applied to income received by directors and members of boards of directors if:

TAX EXEMPTION FOR WORK PERFORMED ABROAD

2.That there is a physical displacement of the worker abroad.

3.That the destination territory in which the employee works "effectively" applies a tax of a similar or analogous nature to personal income tax and is not considered to be a tax haven.
The destination territory will not be considered a tax haven when Spain has signed a Double Taxation Avoidance Agreement with an effective exchange clause with the country of residence of the company benefiting from the work.

As stated by the Directorate General of Taxes (DGT Resolution V1685-05), a minimum effective taxation abroad is not required. However, if the work is provided in countries with which there is no DTA, it is up to the taxpayer to prove the existence of a tax analogous to personal income tax (DGT V907-18).

4.That the entity for which the work is carried out is considered a non-resident or constitutes a Permanent Establishment abroad. If the company benefiting from the work is considered to be an entity related to the Spanish company (employer), it must be demonstrated that such services produce an advantage or utility for the recipient and for this evaluation, the rules relating to related operations of the Corporate Income Tax will be applied.

LIMITS AND EXCLUSIONS

Exempt income is subject to a quantitative limitation of 60,100 euros per year, which means that, in the event that such limits are exceeded, the excess will be subject to taxation.

On the other hand, it should be noted the incompatibility with the so-called “excess regime”, a different exemption that corresponds to the amount in excess of what the employee would normally receive, due to his travel outside Spain. Therefore, if the requirements to apply both exemptions were met, it would have to be analyzed which of them is more beneficial for the employee.

However, the Directorate General of Taxes has stated in repeated consultations that the exemption for work carried out abroad is compatible with allowances per diems, for travel expenses and normal living and subsistence expenses with the daily limits referred to in the Personal Income Tax Regulations (DGT V2299-16).

“Exempt income is subject to a quantitative limitation of 60,100 euros per year, which means that, in the event that such limits are exceeded, the excess will be subject to taxation.”

TAX EXEMPTION FOR WORK PERFORMED ABROAD

Likewise, the regime is compatible with the deduction for international double taxation for the part of income not exempted for exceeding the maximum limit established in 60,100 euros for income abroad (DGT V2816-10). For the calculation of the abovementioned deduction it will be necessary to apply a proportional criterion to determine the taxes effectively paid abroad on the non-exempt earned income.

CALCULATION OF EXEMPT INCOME

For the computation of exempt income, when there is no specific remuneration for work performed abroad, in which case the appropriateness of applying the excess regime should be analyzed, a proportional distribution should be applied taking into account the total number of days per year (365, in general).

EXEMPT DAYS

The days of travel abroad shall be computed as exempt days and the day of travel shall be taken into account. Vacations and holidays spent abroad shall be included in this computation, except for those at the beginning or end of the trip.

Example

Mr. Y travels for two weeks to another country to carry out an engineering project for another company. Mr. Y spends a total of 14 days abroad, and at the end of the assignment spends an additional two days at the destination visiting the country.

Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
					non-laboral							non-laboral	
Included in the calculation												Not included	

CALCULATION THROUGH THE WITHHOLDING SYSTEM

Example

Mr. X, a civil engineer with a 17 year old son, is sent by the Spanish company for which he works on January 1, 2022 to a subsidiary company with tax and social residence in Chile for technical assistance in a highway construction project in that country. Once the work is completed, after 30 days, Mr. X returns to Spain.

Mr. X receives a base salary of 60,000 euros before taxes and contributions.

	7P APPLIED	7P NOT APPLIED	
GROSS ANNUAL SALARY	60.0000,00 €	60.0000,00 €	
ESTIMATED DEDUCTIBLE EXPENSES	5.080,00 €	5.080,00 €	
EXEMPT SALARY	4.931,50 €	-	
BASIS FOR CALCULATING THE WITHHOLDING RATE	49.988,49 €	54.920,00 €	
WITHHOLDING TAX RATE	23,45	24,56	TAX SAVINGS
ANNUAL WITHHOLDING AMOUNT	12.913,56 €	**14.736,00 €**	1.822,44€

PRACTICAL ISSUES: DOCUMENTATION AND PROOF

For the purposes of the application of the exemption any means of proof will be valid, although the above, the courts have pointed out that "means of proof of utmost importance are the employment contract and payrolls, as well as invoices issued by the resident company to the non-resident company may also be useful, especially if in the description of the concept invoiced there is a breakdown, for example, of circumstantial working hours." (Regional Supreme Court of Justicie of Andalusia of July 27, 2017).

While the above, it will be necessary to accredit not only the existence of the employment relationship, but also the reality of the displacement, therefore, as shown in the summary table below, it will be necessary to have the documentation that proves it, among others it is worth mentioning: airline tickets or other proof of the trip such as toll payments, both for the outward and return trip, proof of entry and exit at the hotel where the employee is staying or rental contracts, the employee's agenda indicating the places where he/she is staying, as well as any other means of proof (cabs, credit card expenses, etc.).

	PROOF OF TRANSPORTATION		PROOF OF REASON FOR TRAVEL
	AIRPLANE/TRAIN TRAVEL	CAR TRIPS	
MANDATORY	• boarding passes • check out from the hotel where the employee has stayed	• tolls, gasoline, technical stop invoices (*) • check out from the hotel where the employee has stayed • restaurant tickets	Employee agenda
SUGGESTION	• Tickets booking • cab tickets taken at destination • tickets for frequented restaurants	• cab tickets taken at destination	• Presentation made by the reason for the work • List of people attending the meeting • Emails specifying a meeting certificate from the destination company describing the functions performed during the trip.

BECKHAM AND DIGITAL NOMAD LAW

BECKHAM AND DIGITAL NOMAD LAW

WHAT IS THE IMPATRIATE REGIME?

The special regime for workers posted to Spanish territory or impatriate regime, popularly known as the Beckham Law, is a special income tax regime (hereinafter, IRPF) regulated in art. 93 LIRPF, **which allows those persons who are initially non-resident taxpayers to continue to be taxed in that condition, paying the Non-Resident Income Tax (IRNR, hereinafter), when they acquire the condition of residents in Spanish territory, despite having obtained the condition of residents, when this fact occurs for work reasons.**

The Tax Regime is intended to be a stimulus to the transfer to Spain of high earned income, granting benefits for taxpayers who can benefit from it in the Personal Income Tax and Wealth Tax (hereinafter, IP).

WHAT ARE THE BENEFITS OF THE IMPATRIATE REGIME?

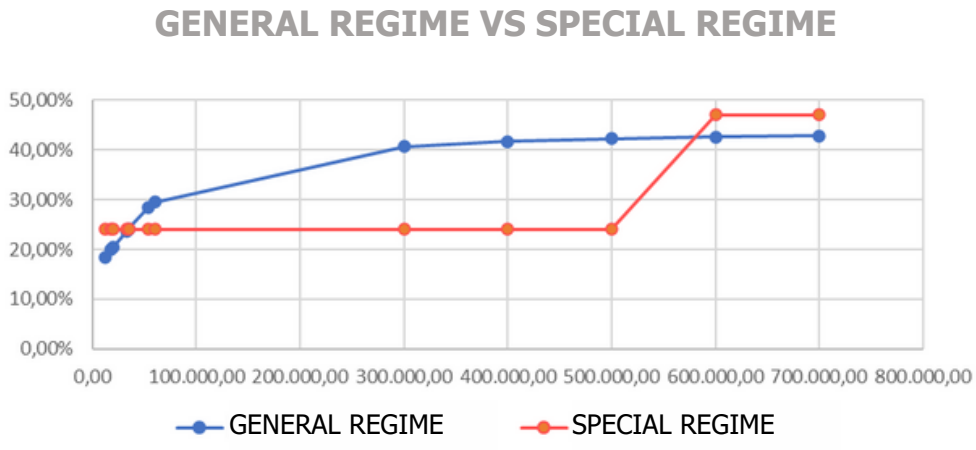
The impatriate regime allows taxpayers who have opted for it to be taxed as non-residents, which implies a lower taxation in both Personal Income Tax and Corporate Income Tax. The application of this regime has a duration of 5 years from the year following the year in which the option to apply it is exercised.

> “Allows those persons who are initially non-resident taxpayers to continue to be taxed in that condition, paying the Non-Resident Income Tax (IRNR, hereinafter), when they acquire the condition of residents in Spanish territory, despite having obtained the condition of residents, when this fact occurs for work reasons.”

Personal Income Tax Benefits

Taxpayers who have opted for the special regime will only be taxed on income obtained in Spanish territory at the fixed rate of 24% up to the first 600,000 euros and 47% in the case of income obtained in excess of this amount, avoiding the progressive scale of the amount that can reach 53% in autonomous communities such as the Valencian Community. +

The following graph shows a comparison of the average effective rates applicable in the general regime and in the special regime, for a taxpayer residing in the Community of Madrid, one of the autonomous communities where the effect is lower:



Wealth tax benefits

Wealth Tax is a tax levied on the net wealth (value of assets and rights (deducting debts) of residents in Spanish territory and of non-residents on the part of their assets that are located in Spanish territory.

Taxpayers under the special impatriate regime will only be taxed on the assets and rights (deducting debts) located in Spanish territory. In the case of displaced workers, being this a regime for workers temporarily residing in Spain, it will be usual that they will have most of their assets abroad. 700,000 per taxpayer and an exemption on the main residence of up to 300,000 euros per taxpayer, this will mean that, in most cases, taxpayers who can benefit from this special regime will not have to pay Wealth Tax.

Example

Mrs. Olsen, a 45 year old Danish computer engineer with two daughters aged 14 and 16 and married in separation of property, works for a Danish company that has a subsidiary in Spain.

Mrs. Olsen's company has a salary in Denmark of 70,000 euros gross per year and has proposed her to move as head of the IT department of the Spanish subsidiary, with a bonus of 30,000 euros per year, which will give her a gross income (before taxes) of 100,000 euros per year.

BECKHAM AND DIGITAL NOMAD LAW

Ms. Olsen has a property in Copenhagen in which she resides with a value of approximately EUR 500,000 and shares in various funds with a value of EUR 250,000. In Spain she has a second residence in Calpe valued at €300,000 which will be her habitual residence in Spain. Therefore:

ANNUAL REMUNERATIONS	100.000,00 €
NET WORTH	1.050.000 €
SHARES	250.000,00 €
PROPERTY DENMARK	500.000,00 €
PROPERTY SPAIN	300.000,00 €

TAXATION IN THE WEALTH TAX

	GENERAL REGIME	SPECIAL REGIME
REAL ESTATE	800.000,00 €	300.000,00
SHARES	250.000,00 €	
TOTAL ASSETS	1.050.000,00 €	
IRPF QUOTA	(33.207,75)	
TAXABLE INCOME	1.016.792,25 €	
REDUCTIONS	(500.000,00)	(500.000,00)
NET BASE	516.792,25 €	0,00
FULL QUOTA	2.167,92 €	0,00

INCOME TAXATION

ITEM	GENERAL REGIME	SPECIAL REGIME
EARNED INCOME*	93.000,00	100.000,00
INCOME FROM REAL ESTATE CAPITAL	2.750,00	
GENERAL TAXABLE INCOME	95.750,00	100.000,00
GENERAL LIQUIDABLE BASE	95.750,00	100.000,00
GENERAL PERSONAL AND FAMILY MINIMUM	10.650,00	
GENERAL FULL FEE	33.207,75	
AVERAGE TYPE	34,67%	24 %
MARGINAL RATE	47,50%	24 %
TOTAL INTEGRATED QUOTA	33.207,75	24.000,00
TOTAL LIQUID QUOTA	33.207,75	24.000,00
RESULTING QUOTA	33.207,75	24.000,00
DIFFERENTIAL QUOTA	33.207,75	24.000,00

*Hypothetical Social Security contributions of 5,000.00 euros are applied.

TOTAL ANNUAL TAXES	35.375,67	24.000,00
DIFFERENCE		-11.375.67

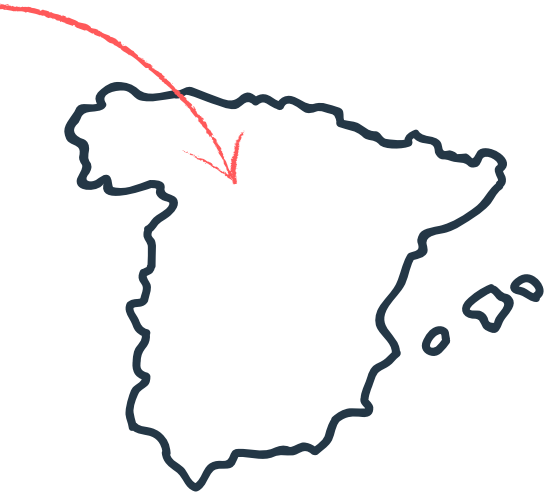
Overall, the application of the special regime results in tax savings for Mrs. Olssen of 13,075.67 euros per year.

ELIGIBILITY REQUIREMENTS

Overall, the application of the special regime results in tax savings for Mrs. Olssen of 13,075.67 euros per year.

As introduced at the beginning, this beneficial tax regime is intended for taxpayers who move to Spain for work purposes. Thus, article 93 of the Personal Income Tax Law establishes a series of subjective and formal requirements that must be fulfilled in order to apply this special regime:

BECKHAM AND DIGITAL NOMAD LAW



- To acquire the condition of tax resident in Spain, in accordance with art. 9 LIRPF.
- Not to have been a tax resident in the last 5 years. (changed in 2023)
- To be an employee (working for someone else) or to be a director of an entity not considered as a patrimonial or "shell" entity.
- Not to obtain income through Permanent Establishment.

PRECISION: Professional athletes are not eligible for this special regime.

In addition, the taxpayer must notify his tax residence to the Tax Agency and inform it that he is under the special regime within a maximum period of 6 months from the date he starts the employment relationship in Spanish territory (and is registered with the Social Security) (art. 116 RIRPF).

COMMUNICATION OF RESIDENCE	SOCIAL SECURITY REGISTRATION	REGIMEN COMMUNICATION
• 030 Form	• Before the beggining of the activity	• 145 Form • Maximum period of six months

MODIFICATIONS MADE IN 2022

The amendments approved at the end of 2022 make the regime significantly more flexible and broaden the taxpayers that could benefit from them, seeking to make this regime more attractive to foreigners, competing with countries such as Portugal, and to encourage the repatriation of talent, especially of those people who left the country some time ago in search of work and who, due to the type of work they perform, can do it remotely.

	BEFORE	NEW REGULATION
PEOPLE WHO CAN APPLY IT	Administrators of unrelated entities and employees with contracts in Spain.	• It is extended to teleworkers (remote workers using exclusively computerized means). • It is extended to administrators, regardless of their relationship, except for patrimonial entities. • It is extended to family members who travel with him/her, under certain conditions.

TYPE		APPLICABLE	PROOF
FREELANCER	Displaced	YES	SCROLLING CHART + HIGH RESOLUTION SS (*)
	New contract	YES	EMPLOYMENT CONTRACT + RESOLUTION OF SS
	Teleworker	YES	HIGH RESOLUTION SS
MANAGERS	Directors of Companies in general	YES	APPOINTMENT CERTIFICATION + LINKAGE CERTIFICATION
	Directors of shell Companies	NO	NON-APPLICABLE
	Related Companies of emerging Companies	YES	APPOINTMENT CERTIFICATION + LINKAGE CERTIFICATION

(*)Pending regulatory development, the requirement is expected to be of high resolution.

WHAT IS TELEWORKING?

The fifth final provision of the Law defines the teleworkers of international character, who will be those who can access this type of visa as "The national of a third State, authorized to stay in Spain to exercise a work or professional activity at a distance for companies located outside the national territory, through the exclusive use of computer, telematic and telecommunication means and systems, is in a situation of residence for telework of international character. In the case of exercise of a labor activity, the holder of the authorization for teleworking of international character will only be able to work for companies located outside the national territory".

In this way, the Law includes a triple requirement for them to be eligible for this modality: (i) they must be employed workers (i.e., contracted employees); (ii) they must work for an international company (otherwise, they could be eligible under the new employment contracts regime, and (iii) their work must be carried out through the exclusive use of computer, telematic and telecommunication means and systems.
For this it will be essential that the company cannot be considered as obtaining income through a Permanent Establishment in Spain, for this purpose, the double taxation agreements signed between the different countries concerned and the domestic legislation must be studied on a case by case basis.

WHAT IS MEANT BY EMERGING COMPANIES?

Article 3 of the Law for the Promotion of the Entrepreneurial Ecosystem defines emerging companies as any legal entity, including technology-based companies that meet the following conditions:

- To be considered newly created by the mercantile legislation, or not being newly created, that the terms stipulated in Art. 3 of the regulation itself have elapsed depending on the sectors and the corporate form.
- Not have arisen from an operation of restructuring operations of companies that are not considered emerging companies.
- Have its registered office, head office or permanent establishment in Spain.
- 60% of the workforce must have an employment contract in Spain.
- Develop an innovative entrepreneurial project with a scalable business model, as defined in art. 4 of the Law.

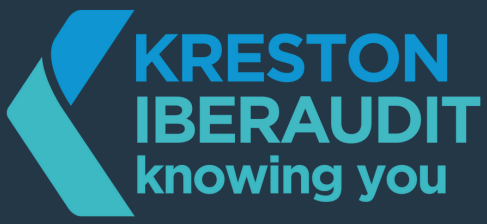
- Not distribute or have distributed dividends or returns.
- Not be listed on a regulated market.
- If it belongs to a group of companies defined in Article 42 of the Code of Commerce, the group or each of the companies that compose it must comply with the above requirements.

WHAT IS MEANT BY EMERGING COMPANIES?

The tax regime for impatriates or Beckham Law is a particularly advantageous taxation option enjoyed by persons who move to Spain for work reasons and who acquire tax residence in Spain, being taxed only on their income and assets that can be located in Spanish territory in accordance with the agreements to avoid double taxation, at more advantageous fixed rates in accordance with the Non-Resident Income Tax.

This tax regime is more favorable the higher the income and assets abroad of the taxpayer; being necessary to comply with some very strict requirements of communication to the tax administration, so that it is necessary to study the case before the displacement takes place in order to make an appropriate tax planning adapted to the specific case.

At KRESTON IBERAUDIT we have experts in international taxation and international mobility, where tax planning and anticipation are key to optimize the tax structure of both workers and the company itself.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