

Legal Status

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TAX

Key tax aspects for residing and/or investing in Spain



ALEJANDRO PUYO

Partner

apuyo@bartolomebriones.com

Spain has established itself as one of the most attractive destinations for foreign investment from both Europe and third countries, thanks to its combination of economic stability, strategic location, quality of life and a favourable legal framework, which, in turn, protects the rights of investors by facilitating residence for those who carry out significant operations.

Thus, tax residence is a key aspect in the Spanish tax field, since it imposes a series of obligations on tax residents and non-residents that, depending on their personal and economic situation, they must comply with.

This article outlines the main tax obligations for both categories, with particular emphasis on the legal implications and tax planning opportunities.

The main requirement demanded by the regulation for the determination of tax residence is the stay in the country for more than 183 days during the calendar year. This temporal criterion can play a strategic role if the investor enters Spain after 3 July, since he or she becomes a tax resident the following year and not in the year of his or her entry,

obtaining a greater margin of planning in decision-making.

Tax obligations of tax residents in Spain

Tax residents in Spain are subject to a series of tax obligations, including Personal Income Tax (IRPF), Wealth Tax (IP) and the declaration of assets and rights abroad using Form 720.

Personal Income Tax is levied on worldwide income at progressive rates between 19% and 47%, and provides for deductions for international double taxation to avoid or mitigate duplicate taxation of income obtained abroad.

At the same time, there is a special tax regime, known as the "Beckham Law", which offers a fixed rate of 24% for residents transferred to Spain, applicable only to income obtained in the country, thus obtaining a significant reduction in the tax burden and avoiding taxation by Wealth Tax.

Wealth Tax imposes a tax burden on the total value of assets both in Spain and abroad, with rates ranging from 0.2% to 3.5%. This tax can be mitigated through proper estate planning, taking advantage of exemptions and strategies such as diversification in asset ownership.

Tax obligations of non-tax residents in Spain

For non-tax residents in Spain, tax obligations focus on Non-Resident Income Tax (IRNR) and Wealth Tax. The IRNR taxes income obtained in Spain, such as rents or dividends, at a general rate of 24%, reduced to 19% for

residents in the European Union. However, this tax may be deductible in the taxpayer's country of residence, thus avoiding double taxation. Likewise, Wealth Tax affects non-residents if the value of their assets in Spain exceeds 700,000 euros, and its impact can be reduced through prior planning.

Finally, it should be noted that Inheritance Tax in Spain also applies to non-tax residents, but exclusively for assets and rights located in the country. Tax rates vary by Autonomous Community, with rebates and reductions available for direct descendants or in cases of family businesses, with succession planning being essential to minimize the tax impact.

In conclusion, both tax residents and non-residents in Spain must be up to date with their tax obligations to avoid penalties and optimize their tax situation. The complexity of the Spanish tax system, combined with the possibility of applying various exemptions, deductions and special regimes, highlights the importance of careful tax planning and, in many cases, specialized legal advice.

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New European Union Artificial Intelligence Act



FLORENCIA ARRÉBOLA
Senior Associate
farrebola@bartolomebriones.com

On March 13th, 2024, the European Parliament passed the European Union Artificial Intelligence Act (“AI Act”). The Act was entered into force on August 1st, 2024, and will be fully applicable 36 months later, i.e., August 2nd, 2027.

The AI Act is a regulation applicable to all member states and is considered the first ever legal framework regarding AI. This regulation will impose a series of obligations on AI technology used in the EU dependent on the level of risk they imply and impose a framework of penalties for non-compliance.

AI Risk Classifications Under the AI Act

Under the AI Act, different AI systems will be regulated according to their risk level. An AI system is any computer program or device placed on the market that uses AI in its operation. The AI Act classifies different AI systems under four (4) categories of risks, namely:

(i) Minimal risk systems: include systems that do not pose any significant risk to society and are not subject to any regulations under the AI Act. Minimal risk systems can include AI technology that is used in email spam filters or video

games. For example, when playing chess against a computer, the computer uses AI to respond to the users moves.

(ii) Limited risk systems: include chatbots where human users directly communicate with the AI system and the users receive an output based on the input they provide. These systems are a limited risk because the system provides users with information that the users rely on for their benefit. These limited risk systems are subject to transparency obligations; conspicuous disclaimers that the user is communicating with artificial intelligence. For example, ChatGPT, CoPilot or Gemini would be considered AI chatbots.

(iii) High risk systems: include any AI that is used to process personal health, security, or fundamental rights which includes AI used in employment recruitment processes and legal or health advice. For example, the platform Co-Counsel – an AI service dubbed as the “first AI legal assistant.” –, a platform that helps lawyers review documents, extract contract data, prepare depositions, as well as a host of other legal services would be considered a high-risk system, given that this AI system would be handling legal matters of many clients.

(iv) Unacceptable risk systems: this systems are expressly prohibited under the AI Act. These include AI systems that use social scoring; the process of using a person’s personal data to categorize and potentially criminalize them, and any

other systems that manipulate people or pose a clear threat to their fundamental rights and safety. These unacceptable risk systems will be prohibited by the AI Act six (6) months after the AI Act entries into force. For example, voice-assisted toys that promote dangerous behavior in children.

Penalties Under the AI Act

The IA Act establishes a series of sanctions in case of non-compliance with its provisions. For this purpose, member states must establish rules for penalties and enforcement measures. The penalties must be proportionate, dissuasive, and must consider the interests of small and medium-sized enterprises and startups. Depending on the severity of the violation, non-compliance with certain AI regulations could result in fines up to 35 million EUR or 7% of a company's annual turnover.

Apart from the minimal risk systems, the AI Act will impose obligations on all providers and deployers of AI systems that operate in the EU regardless of whether they are from an EU member state or not. For this purpose, deployers are defined under the AI Act as any agency, person, or entity that uses an AI system under its authority not including personal use of the system, and providers as any person, agency, or entity that develops AI and places it on the market under its own trademark.

Confidentiality

The AI Act addresses the issue of confidentiality of all data accessed by an AI

system. The Act states that all IP rights, trade secrets, confidential information, public and national security interests, processing of criminal or administrative proceedings, and information classified under Union or national law must be held confidential and if not, the entity handling the confidential information risks being sanctioned for doing so.

Conclusions

The AI Act highlights the importance that the EU is placing on AI technology and the key role that the EU is playing to regulate AI. Because of the AI Act, a lot of companies that either provide or deploy AI will have to restructure their business models to continue to provide AI services in the EU in order to comply with regulations. The AI Act intend to alleviate many concerns regarding AI by providing safety and assurance measures for everyday users knowing that the AI services they are using are complying with the regulations in force.

The AI Act intends to provide a strong legal framework for the use of AI in the EU and gives great deference to human oversight in monitoring different AI systems. Even though the AI Act covers a broad scope of Artificial Intelligence, is a constantly changing and developing technology. Therefore, it is important to maintain a close eye on how the AI Act responds to the unpredictable developments of AI and which amendments will be made to this new regulations in the future.

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Latent defects in the sale and purchase of property



ANTONI FAIXÓ

Partner

afaixo@bartolomebriones.com

Spanish law regulates a number of protections for property buyers who discover a defect in the property only after the purchase has been made.

The law includes protections in case of latent defects, which means defects the buyer becomes aware of after the purchase, and which have the following characteristics:

- (a) It must be a serious defect. That is to say, an element that seriously affects the expected usability of the property.
- (b) It must exist before the sale. The buyer must prove that the defect existed before the purchase, and that it was not caused by some subsequent action.
- (c) The defect must be latent. That is to say, it was not observable to the naked eye. This element may vary depending on whether the buyer is an expert, in which case greater diligence is required.

1. Protective actions for latent defects are as follows:

1.1. Warranty against latent defects.

The Civil Code grants protection consisting of giving the buyer the right to choose between

claiming the termination of the contract, with a refund of the amount paid and the costs of the sale; or claiming a reduction of the price, with a refund of part of the price paid, for the lower value of the property due to the defect discovered.

It is worth noting that a buyer's right to claim for latent defects expires six months after the sale.

1.2. Encumbrances warranty.

The Civil Code regulates a different protection in particular when the buyer discovers after purchase a non-apparent encumbrance on the property (i.e. a legal obligation that impairs the free right of the owner).

In this case the buyer can terminate the contract or claim compensation for the value of the damage caused.

The time limit for terminating the contract is one year from the date of sale. The time limit for claiming compensation is one year after the discovery of the pre-existing latent encumbrance.

1.3. Latent construction defects.

Furthermore, the *Ley de Ordenación de la Edificación* [Building Regulation Law] regulates a buyer's right to claim from the builder the repair of material damage in new properties, which are the result of defects in the construction or installation.

In this case the claim periods are longer: 10 years for defects in the structure of the building; 3 years for defects in construction elements or installations that do not comply

with the habitability requirement; and 1 year for defects in the finishes of the building work.

2. Other claims by the buyer

In addition to the special protective actions for latent defects, there are other potential claims available to buyers:

2.1. The action for nullity of the sale contract due to vice of consent.

This action requires buyers to demonstrate a serious error in their consent in relation to the characteristics and utilities of the property bought.

In this respect, it is worth noting that there is a regulation that obliges professional property salespersons to provide detailed and accurate advertising when selling a property to a consumer, and that if a buyer discovers after purchasing a property does it does not have the characteristics advertised, they can claim nullity for this error caused by the seller's inaccurate advertising.

This action never expires.

2.2. Termination action for delivery of a property that has other characteristics or qualities than those indicated.

It is an action similar to that of latent defects, but the defect must be sufficiently serious to prevent the intended use of the property, so that there is a complete frustration of the purpose of the contract. In the case of housing, it must be a defect that makes it impossible to inhabit a property. In the case of premises, it must be a defect that prevents economic activity, such as a state of impending building collapse.

This action has a limitation period of 5 years.

3. Conclusions

There is a number of different claim actions for buyers when they discover a defect after buying a property. It is usual and advisable in these cases to accumulate different actions when filing a claim, in order to give more chances of success to the claiming buyer.

These actions have various limitation and lapse periods, so it is advisable to urgently assess the situation and options once the defect is discovered.

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