EUCOTAX WINTERCOURSE 2024

Tax Reforms between Success and Failure – From the Past through the Present towards the Future

Subtopic 3: Tax Reforms in Relation to Taxation of Income from Labor versus Taxation of Income from Capital and Net Wealth Taxation

Taxation of Income from Labor versus Taxation of Income from Capital and Net Wealth Taxation in the Spanish legislation

Iván Docasar García

Supervisor: Prof. Dr. F. Alfredo García Prats

INTRODUCTION

In line with the prevailing view that capital income should be taxed more favorably than labor income, it is common in OECD countries for both incomes to be taxed differently. This leads, as we will see in one of the sections that make up the work, to the generation of distortions in the taxation of income according to its source, so that capital income from shares is generally taxed at a lower percentage compared to total income than in the case of income from work activities; ultimately causing people with high incomes to end up paying taxes at a similar or even lower effective rate than taxpayers with much more modest incomes. Academic opinions on this matter have varied and evolved over the years, going from perspectives tending to defend that the tax rate on capital was zero (Atkinson and Stiglitz, Judd and Chamley) to more recent works that, contemplating arguments such as that a higher tax on capital would discourage evasive behavior or that a higher tax on labor income can act as a limiting reason for the accumulation of human capital (Jacobs and Boberg, 2010), they are in favor of strengthening taxes on capital. capital.

As for Spain, the taxation model followed, like many other OECD countries, is a Personal Income Tax that is structured on the basis of a Dual System, in such a way that the income The income received by taxpayers who reside in Spanish territory is included in their annual declarations in two separate tax bases and with the application of differentiated rates for income corresponding to work. This tax model offers important advantages in terms of simplicity and offers a very relevant comparative experience, although we will delve into how its assessment in terms of equity has been mostly negative, although there are certain factors that can justify the introduction of a model of this type from the point of view of tax equity. In addition to this general tax, Spain is among the countries that impose a Social Security System both at the individual level and at the employer level that increases the total tax burden on work.

With respect to the structure of work, once the Spanish dual tax system is put into perspective in relation to Comparative Law, we will analyze in detail both the structure of the tax and the form of taxation of each of the income that constitutes the essence of work. : income from labor and income from capital.

Within these we will make special mention of three regimes that, due to their significance at both the internal and international tax level, deserve special mention: the tax exemption for workers displaced outside Spanish territory, the impatriate regime of article 93 of our Tax Law on the income of natural persons and, in relation to this case with capital income, the so-called exit tax of article 95 bis of the law.

Once we have analyzed these incomes and their integration in the annual declaration of taxpayers subject to tax, we will focus our focus on the Wealth Tax mainly from three perspectives: analyzing its integration as a tax transferred to the autonomous communities in our legal system, its structure and content, and its current temporary coexistence with another tax that taxes the taxable event but that has a state character: the Temporary Solidarity Tax on Great Fortunes.

Finally, we will review the main problems that, in the opinion of the doctrine, both direct and patrimonial taxation currently have in our tax legal system, accompanying said analysis of the tax policy reform proposals that they propose to improve the effectiveness of the tax system in these areas.

INDEEX

I. DUAL PERSONAL INCOME TAX MODEL AND EQUITY

I.I BASIC STRUCTURE OF A DUAL MODEL IN THE PERSONAL INCOME TAX IMPOSITION

Income taxation models based on a duality of tax bases, in the case of the Spanish tax system[1], are articulated by computing the entire income received by the taxpayer in two groups:

- On the one hand we find the labor income that is imputed to the General Tax Base and which includes salaries, pensions and income from economic activities (salary income of the self-employed), which are subject to a type of progressive taxation that can even reach 50% in the case of the highest incomes

- On the other hand, we find the capital income that is imputed to the Savings Tax Base and among which are the income from dividends, interest or capital increases derived from the alteration in the composition of the taxpayer's assets[2]. These returns are subject to a much lower progressivity than in the case of income included in the General Tax Base because of the fact that the tax scale will be situated between 21 and 28% maximum[3].

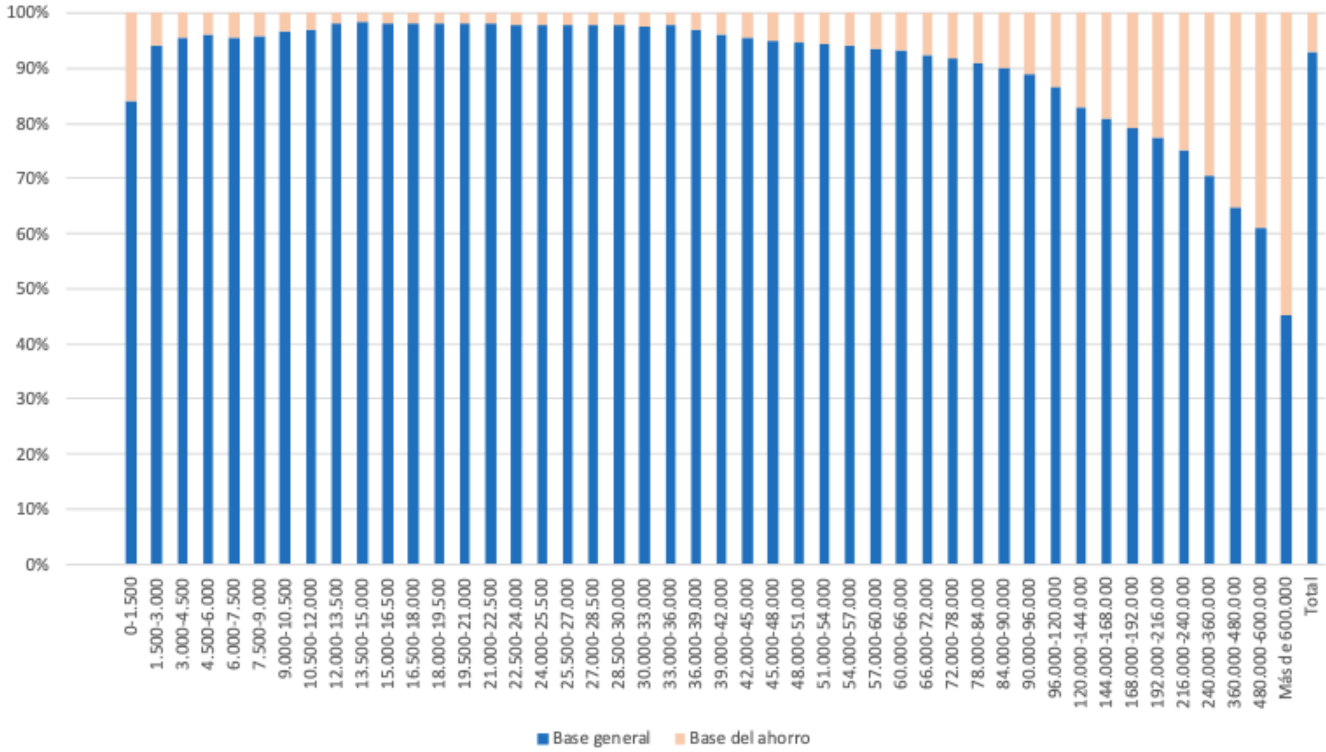
On the next graph elaborated by the Tax Experts Comitte we can see the distribution of both Tax Imponible Base between taxpayers with a different scale of incomes:

[1] At the EU level, the dual model was first implemented in Denmark in 1987 (although this country later abandoned this model) and from there it spread to Sweden in 1991 and Finland in 1993 (Norway introduced it in 1992). Currently, the dual model is in force, with different variants, in Germany, Austria, Belgium, Bulgaria, Cyprus, Croatia, Slovakia, Slovenia, France, Finland, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands , Portugal and Sweden. There are also two countries, Bulgaria and Romania, where there is a dual model, but without progressivity, and another, specifically Estonia, in which we can also speak of a dual model, although only for some dividends.

[2] However, there are voices within the doctrine that defend that the Tax Base of Savings should also include income from real estate capital and income imputations, so that a reform in this direction could be accompanied by the suppression of the current 60% reduction in real estate capital returns derived from housing rentals.

[3] The origin of dual personal income tax in Spain dates back to Royal Decree-Law 7/1996, which introduced a proportional rate of 20% for irregular increases in assets. As argued in the Explanation of Reasons for the Law, the purpose was to relaunch the economy and overcome a system that encouraged the stagnation of investments in that there was a significant tax incentive to maintain investment until the period in which it was reached had passed. the non-subjection of capital increases. Subsequently, with the objective of modernizing the taxation of savings, taxation was imposed through Law 35/2006 at a fixed rate that was initially 18% and which has evolved until reaching the currently current rate, which consists of four sections with rates that grow from 19% (for bases up to 6,000 euros) to 28%.

Gráfico I.36
Estructura porcentual, por tramos, de la base imponible del IRPF (2017)



I.II MAIN OBJETIVES OF A DUAL FISCAL APROACH AND HIS PRINCIPAL PROBLEM: THE FISCAL EQUITY

Among the main objectives that are intended to be achieved with a Dual Taxation system like the Spanish one, essentially three can be named: first, the alleviation of the taxation of capital income in a context of highly competitive international tax competition, using direct taxation as a means to attract revenue to the States; second, maintaining the priority nature of efficiency objectives, insisting as much as possible on tariff flattening policies; and third, the maximum simplification of the income tax structure by resorting to proportional taxation formulas (one bracket-one rate) combined with progressive rates with a very simple structure[4].

Once the main advantages of the Dual Taxation Models have been highlighted, it is time to point out their biggest problem: tax equity. This concept of tax equity is determined by a very simple idea,

[4] GAGO RODRÍGUEZ, A., PICOS SÁNCHEZ, F., ·*Modelo dual de IRPF y equidad:nuevas consideraciones",* University of Vigo, October 2001, pp 1-21, esp. p. 5.

which is that tax systems, given fixed personal characteristics, must treat individuals with equal incomes equally and tax individuals with different incomes differently and progressively higher.

But this simple idea is not clearly visible in tax systems such as in Spain, in which the different form of taxation of income according to its amount and origin (and the latter is extremely important), can cause individuals with equal income and identical personal circumstances of tax adequacy are taxed at different rates, even causing taxpayers with lower incomes but different origins to pay more taxes than other taxpayers with higher net annual returns. Given that the Spanish system especially penalizes labor income, which is what taxpayers with more "modest" incomes especially receive, and benefits the perception of capital income in the form of dividends or interest (the most common form of remuneration of the higher incomes); In practice, it is to be expected that equity in a dual model like ours will be very difficult to achieve based on simple social reality.

In fact, and this is the most dangerous effect that a dual tax model can present, with adequate tax planning it may turn out that the tax becomes a regressive tax for pairs of specific individuals, so that the individual with the highest income but A better structuring of the sources from which they receive their income means they will be able to pay less taxes than a person with a higher income but an inclusion of their income in the Tax Base with a greater degree of progressivity, the general one.

I.III JUSTIFICATION REASONS FOR THE SOFTER TAX TREATMENT OF CAPITAL INCOME

Beyond what was indicated in the previous section, there are some reasons that may justify, or at least qualify, the fact that capital income enjoys more favorable taxation than income from personal and employed work. .

1. The effect of inflation on effective tax rates: as a general rule, all assets are subject to a depreciation process for multiple reasons, but in this depreciation process, without a doubt, one of the elements that contributes the most is the inflationary process. In this way, in an inflationary context, the nominal incomes produced by the assets do not coincide with the real ones, so it is assumed that the former are used exclusively to maintain the real value of the asset.

2. Property taxation: a second issue that can affect tax equity derives from its interaction with property taxation, especially in a country like Spain where there are currently two complementary taxes that tax wealth. In these situations in which the highest incomes, who are those who accumulate greater assets in their assets, can become taxpayers of the wealth tax, an income tax that softens the treatment of capital income will compensate, at least in part, the overtax produced by the imposition on the Heritage[5].

3. Dual tax and equity in a life cycle framework: the problem in these cases is given because an individual who obtains income and consumes all his income in the same tax period will only bear a tax corresponding to that period, while the taxpayer who If you allocate part of your income to savings, you will pay taxes on the returns that savings give you in successive periods. In these cases, a dual tax would partially alleviate the problem since, although capital income is not exempt from taxation, in these cases its treatment would be softened[6].

I.IV CONCLUSIONS

The debate about the adequacy of a dual tax system to reality is a very complex debate whose solution is not intended to be found in this work, since many of the aspects that serve to defend or criticize a system such as the one described depend on economic variables. that go beyond the tax legislation itself.

However, the experience analyzed can help us conclude that under scenarios with the presence of tax inflation and property taxation as at present, a dual tax can present a degree of equity similar to or even greater than that of a synthetic tax. On the other hand, in comparative terms between "savers" individuals and "spenders" individuals, the advantages of this system disappear, although they will not necessarily imply negative effects on taxpayers, but rather the effect on their pockets will tend towards neutrality.

---

[5] GAGO RODRÍGUEZ, A., PICOS SÁNCHEZ, F., *·Modelo dual de IRPF y equidad:nuevas consideraciones",* University of Vigo, October 2001, pp 1-21, esp. p. 12.

[6] SORENSEN, P.B., Recent innovation in Nordic Tax Policy: from the Global Income Tax to the Dual Income Tax, *Tax Policy in the Nordic Countries*, MacMillar Press. Ltd., London, 1998.

I. PERSONAL INCOME TAX SCHEME

The Personal Income Tax in Spain is a self-assessed tax, so the calculation of what each taxpayer must pay is individual. This does not prevent the existence of data that the Tax Administration already has knowledge of due to the cross-referencing of information between presented models, since compliance with some of the taxpayers' tax obligations corresponds to third parties (for example withholders).

In any case, the deductions are calculated by the tax filing program itself (In Spain, the RentaWeb program) through the data entered by the person making the annual declaration. However, it is important that at the time of filing the taxpayer has the material support that justifies his or her right, as it may be required at any time by the tax administration in the exercise of its verification work[7].

The Personal Income Tax is based on five types of rents which are subjects to taxation:

- **Labour Incomes,**
- **Capital incomes, including rents from real estate capital and from furniture capital,**
- **Incomes from economic activities,**
- **Capital gains and Capital losses,**
- **Incomes imputations.**

In Spain, Income Tax taxpayers will be taxed on their worldwide income and on their full returns **(In general, total income - deductible expenses)**. In connection with deductible expenses, it's very important to focus on the idea that there are several types of deductions in such a way that these will be applied at different times when proceeding to the final calculation of the tax.

I.I DEDUCTIONS FROM THE TAX BASE

These type of deductions represent a reduction of the amount that will serve as the basis of the calculation for determining the tax. The result of the reduced tax base with the reductions to which

[7] The general tax law includes, among the powers that the Tax Administration has, the power to verify and investigate the facts, acts, elements, activities, operations, businesses, securities and other circumstances determining the tax obligation to verify correct compliance with the applicable rules.

the taxpayer is entitled will serve to obtain the taxable base as a result. The reductions will be applied in the order in which they are presented, so that the tax base cannot be negative as a result of said reductions[8].

1. Reduction for joint taxation: taxpayers may be entitled to this deduction both in the case of family units made up of both spouses and in the case of single-parent families. The appropriate reduction will be applied, first of all, to the general tax base, without it being negative as a result of such reduction. The remainder, if any, will reduce the tax base of the savings, which may not be negative either.

- Family units made up of both spouses: In joint declarations of family units made up of both spouses who are not legally separated and, if any, minor children who live together, as well as judicially incapacitated adults subject to extended or rehabilitated parental authority, the tax base will be reduced by 3,400 euros annually.

- Single-parent family units: in joint declarations of single-parent family units, that is, those formed, in cases of legal separation or when there is no marital bond, by the father or mother and all legally incapacitated minor or adult children. to extended or rehabilitated parental authority who live with one or the other, the tax base will be reduced by 2,150 euros per year. In cases of separation or divorce, the option for joint taxation will correspond to the person who has custody of the children on the date of accrual of the Tax, as this is the parent who lives with them. In cases of shared guardianship and custody, the option of joint taxation can be exercised by either of the two parents, with the other opting to declare individually[9]. In the event that one of the spouses remarries, that spouse could file a joint declaration with his or her current spouse as a family unit, and must include all minor children, whether common or not, with the exception of those who , with the consent of their parents, live independently of them. Therefore, in that case, the family unit would not be formed only by the two spouses, but would be formed by them and the minor child of the consultant, regardless of whether this is not common. As a consequence, if you opt for joint taxation with your spouse and your child from a previous relationship, you will have to apply the reduction established in article 84.2 in the personal income tax return that you file jointly. 3 of the LIRPF (3,400 euros per year), without being able to apply the reduction provided for in number 4 of

[8] All these reductions are contemplated in the Articles 84.2.3º and 4º of Personal Income Tax Law.

[9] General Directorate of Taxes, Binding Consultation No. V2233-09 of October 6, 2009.

said precept for the second of the modalities of family unity of article 82 of the LIRPF of 2,150 euros per year[10].

Deduction intended for family units from Member States of the European Union

In the case of family units formed by taxpayers of this Tax and residents in another Member State of the European Union or the European Economic Area, a deduction was established, with effect from January 1, 2018, on the amount of the tax intended , given that such family units cannot choose to declare jointly, equate their fee to pay with that which the taxpayer would have borne in the event that all members of the family unit had been tax residents in Spain (Additional Provision 48 of the LIRPF). All of this is because the joint taxation modality is a tax option that is reserved exclusively for taxpayers for this tax in accordance with the rules established in articles 8, 9 and 10 of the LIRPF. All this regardless of whether, as a result of the obligations derived from the Treaty on the Functioning of the European Union and the Agreement on the European Economic Area, a deduction has been established applicable to family units made up of taxpayers of this Tax and tax residents. in Member States of the European Union or the European Economic Area, established in the forty-eighth additional provision of the Tax Law, and a declaration option for taxpayers residing in other Member States of the European Union established in article 46 of the consolidated text of the Non-Resident Income Tax Law, approved by Royal Legislative Decree 5/2004, of March 5 (BOE of March 12). However, the aforementioned deduction and option, as derived from the application of community law, would not be applicable to family units in which its members are not residents of countries of the European Union or the European Economic Area[11].

2. Reduction for contributions and contributions to social security systems: The following contributions and contributions to social security systems may be reduced from the general tax base:

- Contributions and contributions to pension plans: these contributions include those made by participants to pension plans, including business contributions charged as work performance in kind by the promoter of pension plans of the employment system; such as contributions made by participants to the pension plans regulated in Directive (EU) 2016/2341 of the European Parliament and of the Council, of December 14, 2016.

---

[10] General Directorate of Taxes, Consultation Binding No. V1113-22 of May 19, 2022.

[11] General Directorate of Taxes, Binding Consultation V0042-20 of January 14, 2020.

- Contributions and contributions to social security mutual societies: The consolidated rights of mutual members may only be made effective in cases of long-term unemployment, serious illness and from 2025 for contributions 10 years old. Furthermore, in relation to the reduction for said contributions, the following must be taken into account:

In the case of professionals not integrated into any Social Security regime, contributions to social security mutual societies that cover retirement contingencies, total and permanent work incapacity for the usual profession or absolute and permanent for all work will be entitled to a reduction. , and the great disability; death of the participant or beneficiary and severe dependency or great dependency of the participant, provided that said amounts have not been considered a deductible expense for determining the net income from economic activities.

In the case of professionals or entrepreneurs integrated into any Social Security regime, the amounts paid under insurance contracts concluded with social security mutual societies by professionals or individual entrepreneurs integrated into any of the Social Security regimes are entitled to a reduction. by their spouses and first-degree blood relatives, as well as by the workers of the aforementioned mutual societies in the part that has as its objective the coverage of retirement contingencies, total and permanent work incapacity for the habitual profession or absolute and permanent for all work , and the great disability; death of the participant or beneficiary and severe dependence or great dependence of the participant.

In the case of Employed Workers or working partners, the amounts paid under insurance contracts concluded with the social security mutual societies established by the corresponding Professional Associations, by the registered mutualists who are employed workers, are entitled to a reduction. by their spouses and first-degree blood relatives, as well as by the workers of the aforementioned mutual societies, as long as there is an agreement of the corresponding bodies of the mutual society that only allows benefits to be collected when the contingencies of retirement, total incapacity for work and permanent for the habitual or absolute profession and permanent for all work, and great disability; death of the participant or beneficiary and severe dependence or great dependence of the participant.

- Premiums paid to insured pension plans, with the following requirements:

a) The taxpayer must be the policyholder, insured and beneficiary

b) The contingencies covered must be exclusively retirement, total and permanent work incapacity for the usual profession or absolute and permanent for all work, and major disability; death of the participant or beneficiary and severe dependency or great dependency of the participant, and in any case the main coverage must be retirement coverage. In any case, advance withdrawal, total or partial, will only be allowed in the cases of long-term unemployment, serious illness and from 2025 for contributions that are 10 years old.

c)Insured pension plans will have to offer an interest guarantee and use actuarial techniques.

d) The conditions of the policy must expressly and prominently state that it is an insured pension plan.

e) Policyholders of insured pension plans may, by unilateral decision, mobilize their mathematical provision to another insured pension plan of which they are policyholders, or to one or more pension plans of the individual or associated system in which they are participants. Once the contingency is reached, mobilization will only be possible if the conditions of the plan allow it.

- Contributions made by workers to corporate social security plans, such contributions must include the following requirements:

a) The principles of non-discrimination, capitalization, irrevocability of contributions and attribution of rights established in article 5.1 of the consolidated text of the Law on the Regulation of Pension Plans and Funds must be applicable to this type of contract.

b) The policy will establish the premiums that the policyholder must pay, which will be charged to the insured.

c) The conditions of the policy must expressly and prominently state that it is a Corporate Social Security Plan, with this name being reserved for insurance contracts that meet the legally established requirements.

d) The contingencies covered must be only those provided for in article 8.6 of the consolidated text of the Law on the Regulation of Pension Plans and Funds (retirement, total and permanent work incapacity for the usual profession or absolute and permanent for all work, and the great disability; death and severe dependency or great dependency of the participant), and must have retirement coverage as its main coverage in the terms established in article 49.1 of the Personal Income Tax Regulations.

e) Corporate social security plans will have to offer an interest guarantee and use actuarial techniques.

- Amounts paid to private insurance that exclusively cover the risk of severe dependency or great dependency: the premiums that give the right to a reduction in the tax base can be paid by the taxpayer himself, his spouse, the people that the taxpayer had dependent on under the regime. guardianship or foster care, as well as people who have a kinship relationship with the taxpayer, in a direct or collateral line up to and including the third degree. All this with the following requirements:

a) The taxpayer must be the policyholder, insured and beneficiary. Nevertheless. In the event of death, it may generate the right to benefits under the terms provided in the regulations governing pension plans and funds.

b) The insurance will have to offer an interest guarantee and use actuarial techniques

3. Reductions for contributions and contributions to social security systems established in favor of people with disabilities (Articles 53 and additional provision of the tenth Personal Income Tax Law; 50 and 51 Personal Income Tax Regulations): the contributions can be made by the person with a disability themselves, in in which case the right to reduce the tax base will belong to the disabled person himself, as well as to those who have a direct or collateral family relationship with the disabled person up to the third degree inclusive, as well as the spouse or those who have in their care under a guardianship or foster care regime, provided that the person with a disability is designated as the sole and irrevocable beneficiary for any contingency. The maximum reduction limit in the tax base for each year will be:

In the case of contributions made by the person with a disability: 24,250 euros per year.

In the case of contributions made by each of those with whom the person with a disability has a relationship or guardianship, as well as by the spouse, 10,000 euros per year. To this limit will also be added the limit of 24,250 euros per year for all the reductions made by all people who make contributions in favor of the same person with a disability, including those of the person with a disability themselves.

4. Reduction for contributions to protected assets of people with disabilities (Articles 54 Personal Income Tax Law and 71 Personal Income Tax Regulation): these assets are those that are immediately and directly linked to the satisfaction of the vital needs of people with disabilities. That is why Law 41/2003 on the property protection of people with disabilities establishes a series of measures aimed at promoting the creation of assets that can only be owned by people with a degree of mental disability equal to or greater than 33% or a physical disability equal to or greater than 65%. We must distinguish the contributions that may or may not give the right to the reduction:

a) They give the right to the deduction: contributions made by the following taxpayers:

- Those who have a direct or collateral family relationship with the disabled person up to and including the third degree.

- The spouse of the person with a disability.

- Those who were responsible for the person with a disability under guardianship or foster care.

b) They do not generate the right to deduction in personal income tax

- Contributions of elements related to the activity made by personal income tax taxpayers who carry out economic activities.

- Contributions regarding which the contributor is aware, at the date of accrual of the tax, that have been subject to disposition by the owner of the protected assets.

- Contributions made by the disabled person who owns the protected assets.

The contributions made may not exceed 10,000 euros for each contributor and for the set of protected assets to which they make contributions; with the joint limit of 24,250 euros for all the reductions made by all people who make contributions in favor of the same protected assets. Excess contributions with respect to the indicated limits will give the right to reduce the tax base in the 4 subsequent years until the maximum reduction amounts are exhausted in each of them, if applicable.

5. Reduction due to the satisfaction of compensatory pensions: for the payer, the compensatory pension, provided that it has been established in the judicial resolution, or has been agreed upon by the spouses in the agreement regulating the separation or divorce, reduces their general tax base without may be negative as a consequence of this decrease. For the person who receives it, it constitutes work income not subject to withholding because the spouse paying the pension is not obliged to withhold it.

6. Reduction for payment of annuities for child support: these annuities, for the payer, are subject to special treatment consisting of, when the amount of said annuities is lower than the general liquidable base and there is no right to the application of the minimum by descendants, are taxed separately in order to limit the progressivity of the tax scales. For the recipient children, the annuities received are exempt income.

In the event that the annuities for alimony are paid to persons other than the children, for the person who pays them the amounts paid as alimony in favor of persons other than the children, provided that they are established by judicial decision, They reduce the general tax base of the payer without it being negative as a consequence of this decrease. For the person who receives them, these annuities constitute income from work not subject to withholding.

7. Reduction for contributions to the social security mutual fund at a fixed premium for professional and high-level athletes: professional and high-level athletes have the right to reduce the general tax base in the amount of contributions made to the social security mutual fund. a fixed premium for professional athletes. To apply this reduction, a series of requirements must be met:

- The contingencies covered can only be retirement, total and permanent work incapacity for the usual profession or absolute and permanent for all work, and severe disability; death and severe dependency or great dependency of the participant.

- The annual contributions may not exceed the amount of 24,250 euros per year, including the contributions made by the promoters as income from work. Contributions will not be accepted once your working life as a professional athlete ends or you lose your status as a high-level athlete.

-Contributions made in a year that could not have been reduced due to insufficient tax base may be reduced in the following 5 years according to the limit of 24,250 euros per year indicated.

I.II DEDUCTIONS FROM THE AMOUT OF THE TAX

I.II.I DEDUCTIONS APPLICABLE TO THE FULL STATE FEE

The full state fee will be the result of multiplying the general state taxable base X Type of tax plus the taxable savings base X Type of State Tax. The type of tax by which it will be multiplied will be the one that appears in the table included in article 63 of the LIRPF.

Liquidable base - Up to euros	**Full fee – Up to euros**	**Rest liquidable base – Up to euros**	**Tax rate – Percentage**
0,00	0,00	12.450,00	9,50
12.450,00	1.182,75	7.750,00	12,00
20.200,00	2.112,75	15.000,00	15,00
35.200,00	4.362,75	24.800,00	18,50
60.000,00	8.950,75	240.000,00	22,50
300.000,00	62.950,75	En adelante	24,50

To the figure obtained resulting from this first operation, the amount derived from applying to the part of the general taxable base corresponding to the personal and family minimum (5,500) euros, the scale provided in the previous table, will be applied. As the personal and family minimum is 5,500 euros, the applicable rate that will be applied and that will be used to obtain the full state fee will be 527.25 euros (5,500x9.5).

Once the full state quota has been obtained (and the corresponding regional quota by carrying out the same operations), the amount to be taxed may be reduced by applying the deductions in the full quota to which the taxpayer is entitled. The deductions in the full quota that are contemplated in the Spanish legal system are the following:

1. Deduction for investment in habitual residence: as of January 1, 2013, this deduction was eliminated. However, those taxpayers who acquired a habitual residence before this date or carried out works for reasons of disability and had also applied the deduction previously, can continue making the deduction as long as the requirements established by the standard are met (Transitional Provision 18 of the Personal Income Tax Law). The percentage of deduction that can be applied is

15% of the amounts invested by the taxpayer during the year, with a maximum deduction limit of 9,040 euros per year.

In the case of cases of construction of the habitual residence, article 55.1.1 of the Tax Regulations establishes the possibility of making the deduction prior to the legal acquisition of the residence by assimilating its construction to the acquisition of a habitual residence in the cases in which “the taxpayer directly pays the expenses derived from the execution of the works, or delivers amounts on account to the promoter of the works, provided that they are completed within a period of no more than four years from the beginning of the investment. The start date of the investment for the purposes of determining the deadline to complete the construction works – in reference to the application of the deduction for investment in habitual residence –, according to the criteria maintained by the Tax Agency, will be the one on which the The taxpayer pays the first amount for which he makes the deduction or, in another case and if it were earlier, the amount in which he delivers any amount from the balance of his housing account[12].

This deduction requires indebtedness on the part of the taxpayer, either in the form of a mortgage or in the form of a loan, for it to be applied. The right to the deduction for investment in habitual residence is preserved in cases where a change is made to another bank to a new mortgage with variable or fixed interest to improve its previous conditions and provided that the cancellation of the previous mortgage and the constitution of the new one are simultaneous. But in addition, recently the General Directorate of Taxes has stated, with regard to the investment that is susceptible to deduction, the rule does not establish any type of restriction regarding the origin of the financing, which may be its own or someone else's; as long as it is intended to satisfy the acquisition of your habitual residence[13].

2. Deduction for investment in new or recently created companies: under certain circumstances indicated in the thirty-eighth additional provision of the LIRPF, taxpayers can deduct from the full state quota the corresponding amount for investment in new or recently created companies. Taxpayers may deduct 50 percent of the amounts paid in the period in question for the subscription of shares or participations in new or recently created companies, with a maximum deduction base that amounts to 100,000 euros per year and will be formed for the acquisition value of the

[12] General Directorate of Taxes, Binding Consultation No. V2415-09 of 29 October 2009.

[13] General Directorate of Taxes, Binding Consultation No. V0243-23, of February 14, 2023.

subscribed shares or participations. What is relevant for the taxpayer to have the right to the deduction in their personal income for the year will be the effective disbursement of the amounts in that year and not their registration in the Commercial Registry when said registration is mandatory[14]. The deduction is not restricted to the investment in a single new or recent company during the year, but can be applied for investments in different entities, even dedicating themselves to the same economic activity, unless the second investment is in an entity through of which the same activity that was previously carried out through another ownership is carried out[15].

The shares or participations in the entity must be acquired by the taxpayer either at the time of its constitution or through a capital increase carried out, generally, within five years following said constitution, or within seven years following said constitution. in the case of emerging companies, and must remain in their assets for a period of more than three years and less than twelve years. In the event that the company in which he has invested is dissolved before the required minimum period of three years has elapsed, the taxpayer will lose his right to apply the deduction, so he must regularize his tax situation by integrating the amounts that would have been improperly deducted plus late payment interest for each year that the deduction to which you have lost the right has been applied[16].

Furthermore, the direct or indirect participation of the taxpayer, together with that held in the same entity by his or her spouse or any person linked to the taxpayer by kinship up to the second degree, cannot exceed 40 percent of the share capital of the entity or your voting rights

The application of the deduction requires that the taxpayer pay amounts for the subscription of shares or participations in the incorporation of companies or in a capital increase carried out within the five years following said incorporation. Therefore, the granting of financing to a company through loans or other formulas that do not involve the subscription of shares or participations does not grant the right to apply this deduction. Only in the event that such loans are contributed to the company in a capital increase within the aforementioned period of five years following its incorporation, the taxpayer may apply the deduction in the terms indicated above[17].

The entities whose shares are acquired must also comply with the following requirements:

---

[14] General Directorate of Taxes, Binding Consultation No. V2023 -21, July 7, 2021.

[15] General Directorate of Taxes, Binding Consultation No. V0302-20, of February 10, 2020.

[16] General Directorate of Taxes, Binding Consultation No. V3501-20, of December 2, 2020.

[17] General Directorate of Taxes, Binding Consultation No. V0794-22, dated April 11, 2022.

a) Take the form of a Public Limited Company, Limited Liability Company, Labor Limited Liability Company or Labor Limited Liability Company. This requirement must be met during all years of ownership of the share or participation.

b) Carry out an economic activity that has the personal and material means for its development.

c) Have an amount of the entity's own funds of less than 400,000 euros at the beginning of the tax period. When the entity is part of a group of companies within the meaning of article 42 of the Commercial Code, regardless of residence and the obligation to prepare consolidated annual accounts, the amount of own funds will refer to the group of entities belonging to said group.

3. Deductions for incentives and incentives for business investment applicable in economic activities in direct estimation: taxpayers who develop economic activities in direct estimation may apply the incentives and stimuli for business investment established or established in the Corporate Tax regulations with equality of percentages and deduction limits. In addition to the deductions contemplated in the Corporate Tax Law, personal income tax taxpayers whose activities meet the requirements to be considered small entities, may deduct the net income from economic activities of the tax period that are invested in new elements of property, plant and equipment. or real estate investments assigned to economic activities. These deductions to which tax taxpayers may be entitled are the following:

a) Deduction for investment in research and development and technological innovation activities

b) Deduction for investments in film productions, audiovisual series and live performing arts and musical shows

c) Deduction for investment of profits

d) Deduction for job creation for workers with disabilities

4. Special deductions for economic activities carried out in the Canary Islands (only for taxpayers who make and maintain investments in the Canary Islands): personal income tax taxpayers who make investments in new fixed assets in the Canary Islands will have the right to a deduction on the full amount of the tax. of 25% of the amount of the investments made (acquisition price or production cost) with a limit of 50% of the full quota, reduced by the amount of deductions for double taxation and bonuses (Article 94 of Law 20/1991 modification of the fiscal aspects of the Economic Fiscal Regime of the Canary Islands). The deduction may be applied in the year in which the asset is made available or in the subsequent 15 years. To do this, investments must be made in new fixed assets assigned to an economic activity and must remain in operation for 5 years or during their useful life if this is shorter, excluding land. At the same time, the deduction is also allowed to be applied to used fixed assets, provided that they have not previously enjoyed the deduction and represent an obvious technological improvement for the company. Investments made under a financial lease (leasing) regime may also benefit from this deduction, with the exception of buildings.

The taxable person must keep at the disposal of the Tax Administration certification issued by the transferor stating that the element object of the transfer has not previously enjoyed the deduction for investments or the Investment Provident Fund regime.

5. Deductions for donations and other contributions: this section includes donations made to entities included in the scope of Law 49/2002 on Patronage (Associations, non-profit foundations...) as well as donations made to other entities such as political parties, unions or religious congregations. As an element common to all these deductions, it is required that the donations made must be accredited by means of a certification or supporting document in which the data of the contribution is reflected.

The base of the deduction for donations, donations and other contributions may not generally exceed 10 percent of the taxable base for the year, although in the event that the amounts are allocated to the realization and development of priority activities and programs of patronage, the deduction may reach 15 percent of the taxable base for the year.

For its part, article 19 of Law 49/2002 regulates deductions from the personal income tax fee for such donations, so that taxpayers of the Personal Income Tax will have the right to deduct the result from the full fee. To apply to the base of the deduction corresponding to the set of donations, donations and contributions with the right to deduction, determined in accordance with the provisions of article 18 of Law 49/2002, the following scale: up to an amount of 150 euros of base of deduction, the percentage of 80 percent, and for the rest of the deduction base, 35 percent, except in cases in which in the two immediately preceding tax periods donations had been made in favor of the same entity for the same amount or higher, in each of them, than the previous year, to which the percentage of deduction applicable to those specific donations will be 40 percent, instead of the 35 percent mentioned. In relation to this increased percentage of deduction from 35 to 40 percent due to loyalty to donations in favor of the same entity, it is required that in the two immediately preceding tax periods donations, donations or contributions had been made in favor of the same entity. for an equal or greater amount. Therefore, contributions must be made not only in the two immediately preceding fiscal years, but also in the third, since the rule also requires that in the two immediately preceding tax periods donations had been made in favor of an entity. for an amount equal to or greater than that of the previous tax period[18].

In cases of joint taxation, if the couple chooses to file a joint return, the limit of 150 euros to which the 80 percent deduction percentage can be applied cannot be multiplied by two. That is, in the event of opting for joint taxation, the sum of the donations of both spouses will enjoy a deduction percentage of 80 percent up to an amount of 150 euros of deduction base, and a percentage of 35 or 40 percent cent for the rest of the deduction base[19].

6. Deduction for income obtained in Ceuta and Melilla: the amount that taxpayers can deduct will depend on whether or not they have their habitual residence in these cities, and the period of time during which they reside in those cities.

Taxpayers who have their habitual residence in Ceuta or Melilla for a period of less than 3 years can apply this deduction for income obtained in Ceuta and Melilla. The deduction consists of 60 percent of the part of the sum of the full state and regional or complementary contributions that proportionally corresponds to the income computed for the determination of the taxable bases that had been obtained in said territories.

Taxpayers who have resided in Ceuta or Melilla for a period of no less than three years, in the tax periods beginning after the end of that period for income obtained outside of said cities, may also apply the deduction when at least one third of the taxpayer's assets is located in the cities of Ceuta or Melilla.

[18] General Directorate of Taxes, Binding Consultation No. V2972-21, of November 23, 2021.

[19] General Directorate of Taxes, Binding Consultation No. V1028-22, of May 5, 2022.

In the case of taxpayers who do not reside in Ceuta or Melilla but who obtain income from these territories, a maximum deduction of 60% of the total full tax rate may also be applied for those income obtained. However, it should be taken into account that in this case the deduction cannot be applied to income from work or to capital gains from movable property[20].

The concept of residence when considering the right or not to apply the deduction, since the question arises as to whether those workers posted for work reasons to Ceuta and Melilla who do not acquire the status of residents during the calendar year (183 days) may also enjoy the right to apply the deduction for income obtained in that territory. Thus, following the Supreme Court ruling of September 29, 2020 (cassation appeal 1735/2019), the concept of habitual residence for the purposes of the deduction of article 68.4 of the Personal Income Tax Lax cannot necessarily be associated with the vocation of permanence. over time by the taxpayer in the territories of Ceuta or Melilla or to a special roots of the taxpayer in said territories materialized in the existence there of his habitual residence or his main center of interests. Therefore, the status of resident cannot be denied to anyone who temporarily moves to said territories for work or other reasons without a particular desire to remain or establish roots in them. To have such a condition, it is sufficient, therefore, to "reside or dwell as a material and effective reality" in Ceuta or Melilla, this expression being understood as merely living or residing temporarily in said territories with an overnight stay included[21]. The application of the deduction, in these cases, will be proportional to the period of time spent in said territory.

This tax benefit in the form of a deduction in the full amount of the tax also has its projection in terms of the rate applicable to withholdings for the income obtained in those territories, since the withholdings will also be reduced by 60 percent when the income is entitled to the deduction for income obtained in Ceuta or Melilla[22].

7. Deduction for actions for the protection and dissemination of Spanish Historical Heritage and World Heritage: in general, 15% of the investments or expenses made in the acquisition of Spanish Historical Heritage assets, conservation and repair of assets owned by the taxpayer that are declared of cultural interest as well as the Rehabilitation of buildings, the maintenance and repair of

[20] Article 64.4 section 3 of the Personal Income Tax Law.

[21] Resolution of the Central Economic-Administrative Court of July 24, 2023, Criterion No. 00453/2023

[22] General Directorate of Taxes, Binding Consultation No. V3065-20 of October 13, 2020.

their roofs and facades, as well as the improvement of infrastructure owned by them, located in the environment that is the object of protection of Spanish cities or architectural, archaeological, natural or landscape complexes and properties declared World Heritage by UNESCO located in Spain. In any case, the base of the deduction for actions for the protection of Spanish Historical Heritage and World Heritage may not exceed 10% of the taxable base for the year.

8. Deduction for leasing the habitual residence: currently this deduction has been eliminated and can only be applied to those leases that already had the right to apply it prior to January 1, 2015. However, many taxpayers continue to benefit of this incentive but in the full quota of the regional tax, since numerous autonomous communities continue to maintain this tax incentive for their residents in their territory.

I.II.II APPLICABLE DEDUCTIONS ON THE NET TAX AMOUNT

Once we have applied the deductions to which the particular taxpayer is entitled to the full amount of the tax, we will obtain as a result the so-called LIQUID TAX FEE. This liquid quota may also be reduced by the amount to which the taxpayer is entitled through deductions in the liquid quota, resulting in the so-called DIFFERENTIAL FEE. Therefore, the calculation formula is the following:

Liquid tax fee-deductions on the next tax amount= Differential fee

Having said this, it is worth seeing one by one the deductions we are referring to that taxpayers can apply when trying to reduce their tax burden[23]:

1. Deduction for international double taxation: in cases in which the taxpayer's income includes income or capital gains obtained and taxed abroad, the lower of the following amounts will be deducted:

a) The effective amount of what was paid abroad due to a tax of a nature identical or analogous to this tax or to the Income Tax of Non-Residents on said income or capital gains.

b) The result of applying the average effective tax rate to the part of the taxable base taxed abroad.

[23] These deductions are collected in Article 79 of Personal Income Tax Law.

For these purposes, the average effective tax rate will be the result of multiplying by 100 the quotient obtained by dividing the total net amount by the taxable base. To this end, the type of tax that corresponds to general income and savings must be differentiated, as appropriate. The tax rate thus determined will be expressed with two decimal places.

2. Deduction for international double taxation in cases of international tax transparency: in cases in which the imputation of income is appropriate in the international tax transparency regime, the tax or levy actually paid abroad due to the distribution of dividends or shares in profits, either in accordance with an agreement to avoid double taxation or in accordance with the internal legislation of the country or territory in question, in the part that corresponds to the positive income included in the tax base. This deduction will be made even when the taxes correspond to tax periods other than the one in which the inclusion was made.

The deduction may not exceed the full amount that would be paid in Spain for the positive income imputed in the tax base and in no case may taxes paid in countries or territories classified as non-cooperative jurisdictions or tax havens be deducted.

3. Deduction for double taxation in the cases of imputation of income for the transfer of image rights: in the cases of imputation of income for the transfer of image rights, the taxes that can be deducted for this concept by the taxpayers who have included the income derived from said transfer are the following:

a) The personal tax paid, in Spain or abroad, by the person or entity first transferee of the image rights in the part that corresponds to the part of the net income derived from the amount that has been included in the present exercise.

b) The tax or levy actually paid abroad by reason of the distribution of dividends or shares in profits distributed by the first transferee, whether in accordance with an agreement to avoid double taxation or in accordance with the internal legislation of the country or territory of in question, in the part that corresponds to the amount included in its tax base by the declarant.

c) The personal tax of a nature analogous to the income tax paid by the natural person who owns the image abroad or in Spain as a taxpayer of the Non-Resident Income Tax that corresponds to the consideration obtained as a consequence of the first transfer. of the image rights to the assignee.

These deductions will be made even when the taxes correspond to tax periods other than the one in which the inclusion was made. In no case may taxes paid in territories classified as tax havens be deducted and the amount of these deductions may not exceed, as a whole, the full quota that must be paid in Spain for the imputation of income for the transfer of image rights included. in the tax base.

I.II.III APPLICABLE DEDUCTIONS ON THE DIFFERENTIAL FEE

Once all these operations have been carried out, the result we will obtain will be the so-called differential tax rate, which will determine the amount that is payable by the taxpayer, or the amount that is returned in the event that this differential rate is negative. However, this differential fee can still be reduced through the following deductions:

1. Maternity deduction[24]: women with children under three years of age with the right to apply the minimum for descendants provided for in article 58 of this law, who at the time of the child's birth receive benefits contributions or assistance from the unemployment protection system, or who at that time or at any subsequent time are registered in the corresponding Social Security or mutual insurance scheme with a minimum period, in the latter case, of 30 days of contributions, may reduce the differential quota of this Tax by up to 1,200 euros per year for each child under three years of age until the child reaches three years of age. The taxpayer must be registered with a full-time employment contract for at least fifteen days of each month or with a contract for at least 50 percent of the ordinary working day during the entire month. Otherwise, even if you are registered, you will not have the right to apply the deduction for not reaching the necessary minimum contributions[25].

The deduction will be calculated proportionally to the number of months of the tax period following the moment in which you meet the requirements, provided that, during said months, neither of the

[24] Personal Income Tax Law, article 81.

[25] General Directorate of Taxes, Binding Consultation V1978-18 of July 2, 2018.

parents receives, in relation to this minor, the child support supplement. provided for in the Law that establishes the minimum vital income unless one had been entitled to it before January 1, 2023.

However, when you are entitled to the deduction for having registered with Social Security or mutual insurance after birth, in the month in which you reach the minimum contribution period of 30 days, the amount of the deduction corresponding to that month will increase by €150.

This deduction may be increased by up to an additional 1,000 euros when the taxpayer who is entitled to it has paid custody expenses for a child under three years of age in authorized daycare centers or early childhood education centers during the tax period. This increase for daycare expenses is closely linked to the maternity deduction and therefore, even in cases in which it is the father of the child who pays all or part of the expenses incurred for daycare, it will be his spouse, mother of the child. of 3 years, which if the requirements set out in section 1 of article 81 of the Personal Income Tax Law for the practice of the maternity deduction are met[26].

Practical applications of this deduction: In the case of a marriage between two women in which both meet the requirements to be able to apply the deduction for being working mothers and children under 3 years of age, they will be entitled to the maternity deduction for each of the children on a prorated basis between them in equal parts[27].

In the case of workers who are tax residents in Spain but who work from home for a company located abroad with the corresponding registration in the social security regime of those countries, it must be understood that the references made in the Tax regulations to Social Security, not only the one made in article 81.bis of the Personal Income Tax Law, but any other reference, must be understood to be made to foreign equivalent public systems[28]. Consequently, working mothers who are tax residents in Spain who meet the requirements of article 81 of the Personal Income Tax Law, taking into account their registration in the social security regime corresponding to the country where they are hired, will have the right to apply the state deduction for maternity[29].

[26] General Directorate of Taxes, Binding Consultation V0070-20 of January 15, 2020.

[27] General Directorate of Taxes, Binding Consultation V3245-19 of November 27, 2019.

[28] General Directorate of Taxes, Binding Consultations V1326-15 of April 29, 2015 or V4674-16, dated November 3, 2016.

[29] General Directorate of Taxes, Binding Consultation V0082-20 of January 16, 2020.

2. Deduction for disabled dependents: Taxpayers who carry out an activity on their own or as an employee for which they are registered in the corresponding Social Security or mutual insurance regime may reduce the differential tax rate in the following deductions:

For each descendant with a disability entitled to the application of the minimum for descendants provided for in article 58 of this Law, up to 1,200 euros per year.

For each ascendant with a disability entitled to the application of the minimum for ascendants provided for in article 59 of this Law, up to 1,200 euros per year.

For the non-legally separated spouse with a disability, provided that he or she does not have annual income, excluding exempt income, exceeding 8,000 euros or generating the right to the deductions provided for in letters a) and b) above, up to 1,200 euros per year.

The deductions may not only be applied by taxpayers who carry out an activity as a self-employed person or as an employee, but also by recipients of contributory and assistance benefits from the unemployment protection system and pensions paid by Social Security, Passive Classes or alternative mutual societies.

In accordance with the provisions of the norm, the person who will be entitled to the deduction for a co-disabled person in his or her care will be the person who has the closest degree of kinship with the ascendant or descendant, or person legally sheltered in accordance with the regulation of articles 172. to 174 of the Civil Code. In the case of legal shelter of a person when they have the right to apply the minimum for descendants with respect to a sister with a disability provided for in article 58 of the Personal Income Tax Law, they will also have the right to apply it in the personal income tax return that they present jointly with her husband, from the deduction for dependent disabled people regulated in article 81 bis of the Tax Law provided that the requirements demanded in said provision are met[30]. In cases in which the person who generates the right to the deduction lives during the calendar year with more than one person who, according to the concurrent circumstances, has the right to the application of the minimum for descendants and the deduction referred to in the article. 81 bis of the Personal Income Tax Law, the amount of the deduction will be applied proportionally to the months in which all the required legal requirements are met, and with the limits established in the aforementioned article 81 bis of the Law[31].

[30] General Directorate of Taxes, Binding Consultation V0043-20 of January 14 2020.

[31] General Directorate of Taxes, Binding Consultation V0684 -23 March 21, 2023.

3. Deductions for large families: article 81.bis.1.c) of the Personal Income Tax Law establishes that taxpayers who carry out an activity on their own or as an employee for which they are registered in the corresponding Social Security or mutual insurance regime may reduce the differential tax rate for being an ascendant, or an orphaned sibling of a father and mother, who is part of a large family in accordance with Law 40/2003, of November 18, on the Protection of Large Families, or for being a legally separated ascendant, or without a marriage bond, with two children without the right to receive annuities for maintenance and for whom he or she is entitled to the entire minimum provided for in article 58 of this Law, up to 1,200 euros per year. In the case of large families in a special category, this deduction will be increased by 100 percent. Furthermore, for each of the children who are part of the large family, which exceeds the minimum number of children required for said family to have acquired the status of large family of general or special category, the above amounts can be increased up to €600. annual[32].

It will be a matter of analysis, case by case, of whether the family seeking the large family deduction meets the requirements of Law 40/2003 to enjoy that consideration. Thus, for example, a family unit with two ascendants and two descendants with disabilities will have the status of a general large family and the number of children that exceeds the number of children necessary to acquire the status of a general large family is zero, and, Therefore, you will not be entitled to the increase in the deduction for large families in article 81 bis c) of the Personal Income Tax Law[33].

According to article 7 of Law 40/2003, the benefits granted to large families will take effect from the date of submission of the application for recognition or renewal of the official title. Therefore, in the case of presentation of the application by two parents not legally separated with three children under 25 years of age who have obtained the corresponding large family certificate from the Autonomous Community where they reside, they will have the right to apply the deduction for large families from the date of submission of the application for recognition of the title, applied proportionally to the corresponding months taking said application into account. In the event that both parents meet the requirements indicated in the previous paragraph, with respect to the same large family in accordance with Law 40/2003, both will have the right to apply the deduction for

---

32 General Directorate of Taxes, Binding Consultation V0268-18 of February 7, 2018.

33 General Directorate of Taxes, Binding Consultation V0184-22 of February 4, 2020.

large families, and its amount must be prorated between them. in equal parts, without prejudice to the possibility of transferring the right to its collection in favor of any of them[34].

Regarding deductions for large families, when the accreditation title has been obtained from the corresponding Autonomous Community. However, according to the interpretative doctrine established by the Central Economic Administrative Court, in order to apply the deduction for large families, it is necessary to prove the concurrence of the requirements and conditions established in articles 2 and 3 of Law 40/2003, of November 18. , Protection of Large Families (LPFN) by any means of proof admissible by law and not exclusively through the official title of large family granted by the Autonomous Community[35]. Therefore, in accordance with the above, the parent who meets the requirements mentioned in the form and with the limit established in the aforementioned article 81 bis of the Personal Personal Income Law, even without being in possession of that accreditation title, will have the right to apply the deduction for large family in their personal income tax return. In accordance with this criterion, in the case of taxpayers who were not in possession of the title certifying a large family but who, by any means of proof admitted by law, could prove compliance with the requirements in previous years, they may rectify their self-assessments with the limit of the exercises that were already prescribed[36].

Following the interpretative criteria of the General Directorate of Taxes regarding the right to maternity deductions of workers who contribute to regimes equivalent to Spanish Social Security abroad, application of deductions for large families or dependents with disabilities is extends to taxpayers registered abroad in public social protection systems analogous to Spanish Social Security or to social security mutual societies alternative to Social Security, and to those who receive unemployment benefits or pensions from corresponding public social security regimes to States other than Spain[37].

---

[34] General Directorate of Taxes, Binding Consultation V0345-21 of February 24, 2021.

[35] Central Economic-Administrative Court, resolution number 00/00816/2021/00/ 00 of June 24, 2021.

[36] General Directorate of Taxes, Binding Consultation V0465-23 of March 1, 2023.

[37] General Directorate of Taxes, Binding Consultation V0357-21 of February 25, 2021.

II. THE TAXATION OF LABOUR INCOME IN THE SPANISH TAX SYSTEM

II.I INCOMES FROM A WORK ACTIVITY OF AN EMPLOYEE VS FROM A SELF-EMPLOYED/INDEPENDENT CONTRACTOR

In Spain, at the same time that we talk about labour incomes, the incomes can derive from a work activity of an employee or a self-employed/independent contractor. It's very important, in order to understand the different way they pay taxes, to clarify the dividing line in defining self-employment income and employment income. analyzing each of the different elements that allow establishing a clear distinction between both figures.

1. Autonomy in the exercise of the activity

- Income from work: Full income from work will be considered all compensation or profits, whatever their name or nature, monetary or in kind, that derive, directly or indirectly, from personal work or from the employment or statutory relationship and not have the character of income from economic activities[38].

- **Income from economic activities:** Full income from economic activities will be considered to be those that, coming from personal labor and capital together, or from only one of these factors, involve the taxpayer managing the means of production and human resources on his own account. or one of both, with the purpose of intervening in the production or distribution of goods or services[39].

According to these definitions we must go to labor legislation to see if the activity carried out by the person can be subsumed in an employment relationship. And the characteristics that must occur according to the Workers' Statute for a common employment relationship to exist are:

a) **Dependency:** is the performance of work within the scope of organization and management of the employer.

[38] Article 17.1 of the Personal Income Tax Law.

[39] Artículo 27.1 de la 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. BOE núm. 285, de 29/11/2006.

b) **External employment relationship:** means that the worker does not retain ownership of the result of his work and implies that it is the employer who has to provide the worker with the necessary means to carry out his activity[40].

c) **Personal nature of the relationship:** the work is carried out personally by the worker, and a substitute cannot be designated.

d) **Working day and schedule**: the work is provided within a day and schedule set by the employer, although there may be a margin of time flexibility.

e) **Remuneration:** the provision of services is carried out in exchange for remuneration. This remuneration will be what is taxed as income from the work of the recipient.

2. Form of the determination of the performances

In general, the way that the incomes will pay taxes will be ***Incomes-deductible expenses.*** However, there are a los of differences in terms of deductions between both type of incomes which are very important to remark and analyze.

- Income from work: in the case of income from work, the possibility of deductibility of expenses is only limited to the following:

(i) Contributions to Social Security or to mandatory general mutual societies for civil servants. Contributions paid to Social Security - or social insurance management entities - in another State of the European Union will be considered as a deductible expense from work income in the Personal Income Tax, when they are mandatory for workers (Supreme Court, STS 4736/2021 of December 15, 2021).

(ii) Deductions for passive rights

(iii) Contributions to orphan schools or similar entities

(iv) The fees paid to unions and professional associations, when membership is mandatory, in the part that corresponds to the essential purposes of these institutions, and with the limit established by regulation. In the case of fees paid to professional associations, they will only be deductible when the work income refers to an activity that is being carried out and for which the corresponding fee is paid, and cannot be reduced in the case of payment of fees by non-exercisers[41].

---

[40] According to this characteristic the Supreme Court of Justice from Spain in their Resolution number 2924/2020 of September 25, 2020, declared that Glovo delivery drivers have to be considered employees, not self-employed.

[41] General Directorate of Taxes, Binding Consultation V0972-21, April 19, 2021.

The same does not occur in cases of leave of absence that imply a suspension of the employment relationship, so that during the validity of this suspension, the corresponding contributions continue to be paid even though no income is received from the employment relationship. This is why the deductibility of these expenses cannot be excluded[42].

(v) Legal defense expenses derived directly from litigation arising in the relationship of the taxpayer with the person from whom he receives the income, with a limit of 300 euros per year and

(vi) For other expenses other than the above, 2,000 euros per year. These deductible expenses referred to will be limited to the full performance of the work once reduced by the rest of the deductible expenses provided for in this section.

In the case of unemployed people who have moved their municipal residence as a result of employment during the year in which they receive the income and the following year, they may benefit from an additional deduction of 2,000 euros in determining their net income. In general, the increase in the deductible expense for geographical mobility is conditional on the fact that the taxpayer's change of residence to a new municipality, different from that of his or her habitual residence, has actually occurred and that the new job requires said change. In addition, the requirement that the taxpayer must be unemployed and registered in an employment office must be met, prior to accepting the new job that requires the transfer of said person's habitual residence.

In this sense, it should be noted that simple registration alone is not considered a sufficient element of accreditation of residence and habitual residence in a specific location, as neither is the fact of moving or maintaining the tax domicile in a specific location. The realization of said change of residence and its necessity is a matter of fact. The taxpayer must be able to prove compliance with all the aforementioned requirements by any means of proof admitted by Law in accordance with the provisions of article 106 of Law 58/2003, of December 17, General Tax (BOE of 18), corresponding to assessing the evidence provided to the management and inspection bodies of the Tax Administration[43].

- Income from economic activities: when the taxpayer receives income from economic activities, he also has the right to deduct expenses in order to determine his net income from the activity,

[42] Regional Economic Administrative Court of La Rioja, resolution nº26/00558/2019/00/00 of July 30, 2021.

[43] General Directorate of Taxes, Binding Consultation No. V0439-20 of February 25, 2020.

expenses that in any case must be accrued, correctly accounted for and duly justified by documentary support[44].

In relation to the documentary justification of the expense, this is a question of fact that must be proven by any means admitted by law, so the provisions on evidence in the Civil Code must be taken into account, governing in any case the principle of free evaluation of the evidence, so that in any case it will be the administrative or judicial instance which evaluates them in accordance with the principle of free evaluation of the evidence[45].

The expensives from economic activities which can be deductibles are, in general:

(i) **Social Welfare Mutual Funds of the businessman or professional**: as a general rule, contributions to Social Welfare Mutual Funds of the businessman or professional himself are not deductible to determine the income of the economic activity, without prejudice to the fact that they may be subject to reduction of the part general tax base. The self-employment fees paid by the entrepreneur or professional will be directly deductible in the income tax paid by the individual entrepreneur, but not when determining the net income of the activity carried out by the entrepreneur or professional. However, the amounts paid by practicing professionals not integrated into the RETA[46] for which the social security mutual society acts as an alternative to said regime are considered deductible expenses of the activity, in the part that is intended to cover contingencies attended by Social Security and with the limit of the maximum quota for common contingencies that is established, in each financial year, in the RETA. The amounts that these professionals pay to the mutual society above the aforementioned limit may be subject to a reduction in the tax base of the Personal Income Tax[47].

Regarding the fees paid to the Professional Association that a professional may pay, they will be considered a deductible expense for determining the net return of the economic activity carried out by the taxpayer while the expense has been necessary for the exercise of the activity (lawyers, architects...) and meet the requirements of correct temporal imputation, registration in the accounting or in the record books that the taxpayer must keep, as well as being suitably justified[48].

---

44 General Directorate of Taxes, Binding Consultation No. V1159-23 of May 5, 2023.

45 General Directorate of Taxes, Binding Consultation No. V0386-14 of February 14, 2014.

46 RETA: Régimen Especial de Trabajadores Autónomos. It is the mandatory social security scheme for self-employed workers.

47 Artículo 51.2 a) de la 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. BOE núm. 285, de 29/11/2006.

48 General Directorate of Taxes, Binding Consultation No. V0062-21 of January 22, 2021.

(ii) Operating consumption: purchases consumed during the year of merchandise, raw materials and other current purchases of goods made from third parties. The acquisition price will include the price stated in the invoice plus all additional expenses that occur until the goods are in warehouse, such as transportation, customs, insurance, etc.

(iii) Acquisition of assets that are related to the activity: assets affected by an economic activity carried out by the taxpayer will be considered assets, regardless of whether their ownership, in the case of marriage, is common to both spouses (article 22 of the Personal Income Tax Regulation):

a) The real estate in which the activity is carried out. In the case of real estate that is partially affected by the activity, the taxpayer may deduct the expenses derived from the ownership of the home, such as amortization, IBI, community of owners, etc., proportionally to the part of the home affected. However, the expenses derived from supplies (water, electricity, telephone, etc.) will only be deductible when they are used exclusively for the exercise of the activity. In this case, the same rule will be applied to the expenses derived from the ownership of the home. In the event that a mortgage is being paid for the acquisition of that asset, only the amounts corresponding to the interest on the loan will be deductible, as well as the expenses derived from the use of external financing, for the part of the loan that is intended for the acquisition of the asset element affected by economic activity[49].

b) Any other assets that are necessary to obtain the respective income: among these assets that may be necessary for the performance of this activity, the acquisition of a vehicle intended for the exercise of the profession or trade is common. Well, in these cases there is no partial allocation as occurs for example in the case of real estate but it must be used exclusively in the activity. This exclusive impact on the economic activity that is required for certain vehicles, for the purposes of deducting the expenses associated with their use in the economic activities carried out, may be proven by any of the means of proof generally accepted by law[50].

c) Salaries: remuneration to employees for salaries, extraordinary payments, allowances and allowances for travel expenses, remuneration in kind (including payment on account as long as it has not been passed on) will be deductible for the calculation of the net performance of the activity. to the perceivers). Regarding the income paid to a member of the family unit (spouse or minor

[49] General Directorate of Taxes, Binding Consultation No. V0425-09 of March 3, 2009.

[50] General Directorate of Taxes, Binding Consultation No. V0005-22 of January 4, 2022.

children who live with the taxpayer), they may also be deductible as long as they are not higher than the market income corresponding to their professional qualifications and work performed[51].

d) Leases and royalties: this section includes the expenses incurred for the rental of movable or immovable property, as well as the amounts paid for the right to use patents, trademarks and other manifestations of industrial property. In the case of leases and royalties paid to family members, the amounts at market value may also be deducted[52].

e) Repair and conservation expenses: these expenses include expenses intended to maintain the condition of the assets, not to expand or improve them. Following this criterion, therefore, the conservation and repair expenses, that is, those carried out regularly with the purpose of maintaining the normal use of material assets, such as painting, plastering or repairing facilities, or replacing elements, such as heating installations, elevators, security doors or others, will be considered deductible for determining the performance of the economic activity[53]. In the event that the expenses incurred cannot be allocated as repair and conservation expenses and represent an improvement to the property, they will be allocated as a higher value of the asset. In this way, the amounts to which the annual amortization is applied when determining the net income of the activity will be higher[54].

f) Services provided by independent professionals and other external services: includes the fees of economists, lawyers, auditors, notaries, etc., as well as the commissions of independent mediation agents. Also included in this section are other services provided, such as transportation, insurance premiums... or justified expenses for customer or supplier services, which will be deductible up to a limit of 1 percent of the net amount of the turnover for the tax period. These independent professionals, whose income is also taxed as income from economic activities, can also deduct as a higher expense of their activity those training expenses they incur that are related to the

[51] Artículo 30.2 de la 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. BOE núm. 285, de 29/11/2006.

[52] Artículo 30.3 de la 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. BOE núm. 285, de 29/11/2006.

[53] General Directorate of Taxes, Binding Consultation No. V0229-15 of January 21, 2015.

[54] General Directorate of Taxes, Binding Consultation No. V1087-10 of May 24, 2010.

characteristics of the services they provide, for example career or career studies. masters or courses [55].

g) Taxes: taxes such as the Economic Activities Tax (IAE) and the Real Estate Tax (IBI) that fall on elements affected by the activity can be deducted to calculate the net income of the activity. In no case are the penalties, the penalty surcharge and the surcharge for late submission of tax declarations-settlements and self-assessments deductible.

h) *Amortizations:* amortizations are the amounts that are allocated annually and that correspond to the depreciation of the asset that is being used in the development of the activity. The elements of tangible fixed assets and real estate investments will begin to be amortized from the moment they are put into operating conditions and those of intangible fixed assets from the moment they are in a position to produce income. The assets of tangible fixed assets and real estate investments must be amortized within their useful life period, meaning the period in which, according to the amortization method adopted, their value must be fully covered, excluding the residual value. In the case of intangible assets, their useful life will be the period during which they are reasonably expected to produce income.

i) Other tax-deductible concepts: Within this concept, all other expenses that, being deductible, are not expressly included in the previous headings must be recorded. As an example, the following may be cited, among others, provided that there is an adequate correlation with the income of the activity: (i) Acquisition of books, subscription to professional magazines and acquisition of non-amortizable instruments (ii) Expenses for attending courses, conferences or congresses as well as (iii) Fees paid by the businessman or professional to corporations, chambers and legally constituted business associations.

3. Compliance with tax and labor obligations

In the case of recipients of income from work, their tax obligations are reduced to the presentation of their annual personal income tax return, since it is the company for which they provide the services that is responsible for compliance with Social Security obligations and payments. In the case of self-employed people who receive income from their economic activity, the tax obligations

[55] General Directorate of Taxes, Binding Consultation No. V0080-21 of January 22, 2021.

to comply are much more complex and must be carried out on their own account. In general, these obligations can be summarized as[56]:

TAX OBLIGATION	TAX MODEL	PERIODICITY
Payments on account of Personal Income Tax	Form 130	Quarterly
Personal Income Tax (IRPF)	Form 100	Annual
Withholdings from hired employees	Form 111/190	Quarterly
Withholdings from the rental of real estate	Form 115/180	Quarterly
Value Added Tax	Form 303/390	Quarterly

II.II. INCOME INCLUDED UNDER THE HEADING OF "WORK INCOME" IN SPANISH REGULATION

Such a legal vision, will be considerate a Compensation or profits, whatever their name or nature, whether monetary or in kind, that derive, directly or indirectly, from personal work or from the employment or statutory relationship and do not have the character of income from work of economic activities[57]. According to this definition, earnings from work are considered to be salaries, unemployment benefits, representation expenses, per diems and allowances for travel expenses or contributions or contributions paid by employers to meet pension commitments in the established terms by the first additional provision of the consolidated text of the Law regulating pension plans and funds, and in its implementing regulations, when those are attributed to the people to whom the benefits are linked by the promoters of pension plans.

[56] Currently, the Spanish Tax Agency is working on a tax reform that provides for the elimination of the obligations to pay VAT for self-employed people who earn less than 85,000 euros per year starting in 2025. Furthermore, in the case of intra-community operations there is the obligation to declare them specifically in a separate settlement model (form 347); the same as in the case of operations that exceed the amount of 3,000 euros (form 347).

[57] Artículo 17.1 de la 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. BOE núm. 285, de 29/11/2006.

Beyond these incomes, Spanish regulations indicate a series of incomes that will be considered in the taxpayer's income as income from work:

(i) **Pensions and passive assets received from public Social Security schemes and passive classes and other public benefits for situations of disability, retirement, accident, illness, widowhood, or similar**. However, there are a series of specialties regarding some pensions that, even if these requirements are met, will be considered income exempt from taxation:

a) *Pensions recognized in favor of those people who suffered injuries or mutilations on the occasion or as a consequence of the Civil War.*

b) *Benefits recognized to the taxpayer by Social Security or by the entities that replace it as a consequence of absolute permanent disability or severe disability* with the limit of the amount of the maximum benefit recognized by Social Security for the corresponding concept.

c) *Pensions for uselessness or permanent disability of the passive class regime,* provided that the injury or illness that had been the cause of those completely disqualified the recipient of the pension from any profession or trade.

d) *Social Security benefits corresponding to the Minimum Living Income* (state), the economic benefits established by the Autonomous Communities as minimum insertion income to guarantee economic resources for subsistence to people who lack them, as well as other established aid by these or by local entities to serve, in accordance with their regulations, groups at risk of social exclusion, social emergency situations, housing needs of people without resources or needs for food, schooling and other basic needs of minors or people with disabilities when they and their dependents lack sufficient financial means, up to a maximum joint annual amount of 1.5 times the public multiple-effect income indicator.

e) *Benefits received by beneficiaries of mandatory general mutual societies for civil servants, orphan schools and other similar entities.*

f) The benefits received by beneficiaries of pension plans and those received from pension plans regulated in Directive (EU) 2016/2341. Due to their importance, we will dedicate a specific section to the form of taxation of these pension plans.

g) Benefits received by beneficiaries of insurance contracts concluded with social security mutual societies, whose contributions may have been, at least in part, a deductible expense for determining the net income of economic activities, or subject to a reduction in the tax base of the Tax. In the case of retirement and disability benefits derived from said contracts, they will be integrated into the tax base in the amount of the amount received that exceeds the contributions that could not be reduced or reduced in the tax base of the Tax.

h) The benefits received by the beneficiaries of corporate social security plans.

i) The benefits received by the beneficiaries of the insured pension plans.

*j) The benefits received by the beneficiaries of dependency insurance i*n accordance with the provisions of the Law for the promotion of personal autonomy and care for people in a situation of dependency.

k) The amounts paid, by reason of their position, to the Spanish deputies in the European Parliament, to the deputies and senators of the "Cortes Generales", to the members of the autonomous legislative assemblies, city councilors and members of the provincial councils , island councils or other local entities, excluding, in any case, the part of those that said institutions assign for travel and displacement expenses.

l) The income derived from teaching courses, conferences, colloquiums, seminars and similar. However, the delivery of these courses may be considered as a performance of economic activity when it involves self-organization of the activity. This will occur when the taxpayer intervenes as an organizer of the courses, conferences, colloquia, seminars or similar, offering them to the public and arranging, where appropriate, with the professors or lecturers their participation in such events, or when he participates in the prosperous or adverse results that derive from them. Likewise, also in cases in which a taxpayer has already been carrying out economic activities and participates in said events in matters directly related to the object of their activity, so that it can be understood that it is one more service than those provided through of said organization[58].

m) *Income derived from the production of literary, artistic or scientific works, provided that the right to their exploitation is transferred.* In accordance with this classification, the amounts that a natural person could receive for the transfer of intellectual property rights corresponding to their works would be considered income from work, unless their work is carried out as an economic

[58] General Directorate of Taxes, Binding Consultation V1958-23 of July 6, 2023.

(professional) activity, in in which case those amounts would be considered income from economic activities[59].

n) The remuneration of the administrators and members of the Boards of Directors, of the Boards that act in their place and other members of other representative bodies.

o) Compensatory pensions received from the spouse and annuities for food. However, in the case of annuities for alimony paid by virtue of a court decision, these are exempt from taxation in accordance with the provisions of article 7 k) of the LIRPF.

p) Remuneration derived from special employment relationships.

q) Contributions made to the protected assets of people with disabilities in the terms provided in the eighteenth additional provision of this Law.

r) Scholarships, except those received to pursue regulated studies, both in Spain and abroad, at all levels and grades of the educational system, in the terms established by regulation. The latter are exempt from taxation.

s) Special economic rights reserved by the founders or promoters of a company as remuneration for personal services.

II.II.I SPECIFIC CASE: THE TAXATION OF PENSION PLANS

The main advantage of pension plans in terms of taxation lies in the deferral of taxation offered to their holders, so that the contributions made are reducible in personal income tax (up to certain limits). Furthermore, for employers, the contributions they make in favor of their workers are deductible in their Corporate Tax, as well as are credited for Social Security contribution purposes.

In order to study the taxation of this type of plans it's necessary to make a point respect two important moments:

At the time of contribution to pension plans: Spanish Law limits the general deduction for contributions to pension plans to a maximum of 1,500 euros per year, expandable by 8,500 euros if the increase comes from business contributions or contributions by the worker to the same social

[59] General Directorate of Taxes, Binding Consultation V2622-20 of August 4, 2020.

security instrument for an amount equal to or less than the employer's contribution[60]. In accordance with the transcribed provision, the new absolute limits of reduction in tax base applicable for contributions and contributions to social security systems must be interpreted as follows:

- The limit of 1,500 euros per year is a general limit that includes both contributions to individual and employment systems, as well as business contributions to employment systems. This general limit includes contributions from the worker to their employment social security system, without needing to be conditioned on making company contributions. Therefore, the worker could contribute a maximum of 1,500 euros per year to be included in this limit.

- The increase in the previous limit by 8,500 euros per year is an additional limit that includes both business contributions to employment systems and contributions by the worker to the same employment system for an amount equal to or less than such business contributions. Therefore, this additional limit includes contributions from the worker to their employment social security system, but conditional on making business contributions of at least the same amount and provided that the amounts contributed by the company do not derive from a decision of the worker (in which case they would be considered contributions from the worker and could not be included in this limit). Therefore, the worker could contribute a maximum of 4,250 euros per year to be included in this limit (half of the limit increase) as long as the company makes business contributions of another 4,250 euros. This would lead to an increase in the maximum allowable limit of 8,500 euros.

Consequently, if the company makes business contributions (thus qualified) in the amount of 4,250 euros per year, the worker could make contributions to the same social security instrument in the amount of 5,750 euros per year, of which 1,500 euros would be included in the general limit and 4,250 euros in the additional limit[61].

- At the time of withdrawal of the money: taxation when rescuing a pension plan. At the time this circumstance occurs, the funds received are integrated into the general tax base as income from work, therefore being taxed on the amounts received. Therefore, it is recommended that the withdrawal of funds be made through a periodic income that complements the recipient's ordinary income, so that in this way the tax base subject to taxation will not increase too much, and, therefore, the Tax obligations will be much more bearable.

[60] Artículo 52 de la 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. BOE núm. 285, de 29/11/2006.

[61] General Directorate of Taxes, Binding Consultation No. V0300-22 of February 17, 2022.

However, in the case of benefits derived from pension plans, if the benefit is received in the form of capital, the beneficiary may apply a 40% reduction to the part of the benefit that corresponds to contributions made until December 31, 2006. , provided that more than two years have passed between the date of the first contribution to the pension plan and the date of occurrence of the contingency. There is a time limit for the application of this regime so that in the case of contingencies that occurred in the years 2011 to 2014, the transitional regime may only be applicable, where appropriate, to the benefits received until the end of the eighth following year. to the one in which the corresponding contingency occurred. In the case of contingencies that occurred in 2010 or previous years, the transitional regime may only be applicable, where applicable, to benefits received until December 31, 2018.

From a tax perspective, in the case of pension plans it must be understood that, in general, the retirement contingency occurs at the time of accessing retirement in the corresponding Social Security regime. However, if the retirement benefit is collected or begins to be collected in advance, the retirement contingency will be considered to occur at the time of meeting the requirements to be able to receive the retirement benefit in advance. That is, when your employment relationship terminates as a result of collective dismissal and you become legally unemployed[62].

II.III ALTERNATIVE FORMS OF REMUNERATION FOR WORK IN SPAIN

Although it is true that the most common way to remunerate work is by paying a salary, in Spain we can find other forms of remuneration for work; highlighting among all of them the so-called ***remuneration for work in kind.***

Income from work in kind must be distinguished from those other cases, in which there is a simple mediation of payment by the company with respect to expenses incurred by the employee, That is to say, cases in which the company limits itself to paying an amount on behalf and by order of the employee. In these cases, the consideration required by the worker from the company does not consist of the use, consumption or obtaining of goods, rights or services, rather, it is a consideration that the company has the obligation to satisfy in monetary terms, although by virtue of the mandate made by the employee, the payment is made to a third party indicated by the employee. That is, the worker allocates part of his monetary remuneration to the acquisition of certain goods, rights or services, but the payment of these is made directly by the employer. Consequently, in the case of

62 General Directorate of Taxes, Binding Consultation No. V1823/23 of June 23, 2023.

simple payment mediations carried out in the terms described, it cannot be understood that the amounts paid by the company to a third party are classified as income from work in kind for the worker, but rather it will be an application of the income of monetary work to a certain concept of expense[63].

However, it should be noted that not always when the employer satisfies or pays amounts to third parties so that they provide their worker with the good, right or service in question we are in the presence of monetary remuneration, considering that there is mediation of payment, since that sometimes remuneration in kind is implemented through a direct payment from the employer to the third party in compliance with the commitments assumed with its workers, that is, to make the agreed remuneration in kind effective. For this assumption to operate, it is necessary that the remuneration in kind be agreed upon with the workers, either in the collective agreement or in the employment contract itself, that is, that the company is obliged (depending on the agreement or contract) to provide them with the good, right or service. In such a case, the amounts paid by the company to the suppliers would not be considered as a case of payment mediation, in the terms previously indicated, but rather as remuneration in kind agreed in the employment contract, so all the provisions which are included in article 42 of the Personal Income Tax Law would apply. Therefore, for the above to be operational, it is necessary that, through the modification or novation of the existing employment contract, a change is made in the composition of the remuneration system, in such a way that monetary remuneration is replaced by remuneration in kind[64].

II.II.I TAX BENEFITS OF RETURNS IN KIND

Before entering into the analysis of the tax benefits offered by this type of remuneration, it is pertinent to point out that there is a limit by which the annual remuneration in kind cannot in any case exceed 30% of the salary received by the worker. Apart from this, the main advantage of this type of remuneration is that they can be exempt from taxation in certain amounts depending on the type of performance in question:

1. Deliveries to employees of products at discounted prices that are made in company canteens or dining rooms or commissaries of a social nature, when (i) the provision of the service

[63] General Directorate of Taxes, Binding Consultation No. V0156-19 of January 24, 2019.

[64] Directorate General of Taxes, Binding Consultation No. V2234-23 of July 27, 2023.

takes place during business days for the employee or worker and (ii) the provision of the service does not take place during the days in which the employee or worker accrues amounts exempt from tax in the concept of maintenance allowances, due to travel to a municipality other than the usual place of work. In the event that the delivery of products to employees is carried out indirectly by delivering food vouchers to the employee or worker, similar documents, cards or any other electronic means of payment, in addition to the above requirements, the following must be taken into account:

- That its amount does not exceed the amount of 11 euros per day. If the daily amount is higher, there will be compensation in kind for the excess.

- That they are numbered, issued in nominative form and that they include the issuing company and, when delivered on paper, also their nominal amount.

- That they are non-transferable and that the amount not consumed on one day cannot be accumulated to another day.

- That the reimbursement of the amount cannot be obtained, either from the company or from a third party.

- That they can only be used in hospitality establishments, regardless of whether the service is provided on the premises of the hospitality establishment or outside it, after collection by the employee or by delivery to their workplace or to the chosen place. by him to carry out his work on the days when it is done remotely or through teleworking.

- That the company that delivers them, keeps and maintains a list of those delivered to each of its employees or workers, stating:

- In the case of food vouchers or similar documents, document number, delivery day and nominal amount.

- In the case of cards or any other electronic means of payment, document number and the amount delivered each day with indication of the latter.

2. The use of goods intended for the social and cultural services of the employed personnel. This consideration will include, among others, the spaces and premises, duly approved by the competent public Administration, intended by companies or employers to provide the first cycle of early childhood education service to the children of their workers, as well as the hiring, direct or indirectly, of this service with duly authorized third parties, under the terms established by regulation. In these cases, the increase in the deduction in the maternity fee of up to 1,000 euros for daycare expenses may only be applied to the part of income in kind that was not considered exempt income[65].

3. *Premiums or fees paid by companies to insurance entities for coverage of the worker's own illness, or even that of his or her spouse and children, with a limit of 500 euros per year.* However, the fact that it is considered exempt income does not mean that it should not be included in the annual declaration of withholdings from work (form 190), although with a different perception key (key corresponding to exempt income) than that which would correspond to the excess over the limit of 500 euros provided for in said article subject to taxation[66].

4. The provision of preschool, infant, primary, compulsory secondary, high school and vocational training services by authorized educational centers to the children of their employees, free of charge or at a price lower than the normal market price. Said exemption must be interpreted, according to the criteria maintained by the Tax Agency, in a restrictive manner. Therefore, it will only apply to the training listed in the article, so that said exemption is not applicable if the educational service provided to the employees' children is a Bachelor's, Master's or Postgraduate degree[67] (General Directorate of Taxes). , Binding Consultation No. V2716-23 of October 6, 2023).

A different issue is the payment by a company, to the children of its employees, of the education service provided to them. In this case, if the entity pays directly to the educational center the cost of the education service provided, we are faced with non-exempt remuneration in kind for the worker, which will be valued in accordance with article 47.1.1 d) of the Law, while If the entity gives its employee the cash amount corresponding to such service, we will be faced with monetary remuneration. In both cases, said amounts will be considered work performance for Tax purposes, being subject to payment on account or withholding, respectively, by the company[68].

5. The amounts paid to the entities in charge of providing the public service of collective passenger transport with the purpose of promoting the movement of employees between their place

[65] General Directorate of Taxes, Binding Consultation No. V0156-19 of January 24, 2019.

[66] General Directorate of Taxes, Binding Consultation No. V0114-10 of January 26, 2010.

[67] General Directorate of Taxes, Binding Consultation No. V2716-23 of October 6, 2023.

[68] General Directorate of Taxes, Binding Consultation No. V0496-06 of March 27 2006.

of residence and the workplace, with a limit of 1,500 euros per year for each worker. Indirect payment formulas that meet the conditions established by regulation will also be considered amounts paid to the entities in charge of providing the aforementioned public service. In the case of companies that are dedicated to transportation as their main activity, the valuation of this remuneration in kind, as it corresponds to the usual activity carried out by the employer, its determination will be made in accordance with the valuation standard included in article 43.1.1º f) of the Personal Income Tax Law, which establishes that "when the performance of work in kind is satisfied by companies whose habitual activity is the performance of the activities that give rise to it, the valuation may not be lower than the price offered to the public of the good, right or service in question. For these purposes, it adds in a second paragraph that "the price offered to the public will be considered the price provided for in article 60 of the consolidated text of the General Law for the Defense of Consumers and Users and other complementary laws, approved by Royal Legislative Decree 1 /2007, of November 16, deducting ordinary or common discounts. Discounts that are offered to other groups with similar characteristics to the company's workers will be considered ordinary or common, as well as promotional discounts that are general in nature and are in force at the time of payment in kind or that, in Otherwise, they do not exceed 15 percent or 1,000 euros per year. Therefore, in this type of company such as RENFE (a public railway transport company that offers discounts to its employees for traveling), the difference between the amount paid by the employee and the determinant of the existence of remuneration in kind (the price offered to the public, but taking into account the discounts referred to in article 43.1.1º f of the Personal Income Tax Law) would be the valuation that would be appropriate to grant this remuneration in kind [69].

6. The delivery to active workers, free of charge or for a price lower than the normal market price, of shares or participations of the company itself or of other companies in the group of companies, in the part that does not exceed, for the whole of those given to each worker, of 12,000 euros per year, provided that the offer is made under the same conditions for all workers of the company, group or subgroups of the company. The exemption provided for in the previous paragraph will be 50,000 euros per year in the case of delivery of shares or participations granted to the workers of an emerging company referred to in Law 28/2022, of December 21, on the promotion of the ecosystem of emerging companies.

---

[69] *General Directorate of Taxes, Binding Consultation No. V3169-19 of November 13, 2019.*

Regarding this provision, article 43 of the Income Tax Regulations states that for this exemption to be applied, three circumstances must occur:

a) That the offer is made under the same conditions for all the company's workers and contributes to their participation in the company. In the case of groups or subgroups of companies, the mentioned requirement must be met in the company to which the worker to whom the shares are delivered provides services. However, this requirement will not be deemed to have been breached when, in order to receive the shares or participations, workers are required to have a minimum seniority, which must be the same for all of them, or if they are taxpayers for this Tax.

b) That each of the workers, together with their spouses or family members up to the second degree, do not have a participation, direct or indirect, in the company in which they provide their services or in any other of the group, greater than 5%.

c) That the titles be maintained for at least three years. Failure to comply with this deadline will motivate the obligation to present a complementary self-assessment, with the corresponding interest for late payment, within the period between the date on which the requirement is not met and the end of the regulatory declaration period corresponding to the tax period in which it is made. produce such non-compliance. However, it is necessary to examine each case and specific circumstances in order to assess the maintenance of participation during the established period of time of 3 years. For example, the tax administration has in some cases accepted the exemption even when the established period had not been met since, on the one hand, the purpose of the tax benefit must be taken into account, which is none other than to encourage the participation of the workers in the company, through the attribution to them of the political and economic rights that correspond to the partners, and on the other, the circumstances concurrent in the exchange of shares, and which are, according to the consulting entity, that the decision Regarding the exchange of shares, it is beyond the will of the workers and imposed on them and the rest of the shareholders, that the shares delivered in exchange for those initially received have the same market value, and that the shares now delivered comply, equally than the old ones, the objective requirements established in article 42 of the LIRPF and 43 of the RIRPF, since in both cases they are shares of the parent company of the consulting company. Under these circumstances, and if the rest of the requirements established for the application of the exemption are met, the exchange of shares of the former parent company for shares of the current one should not be understood as a breach of the maintenance obligation for three years by the employees of the shares initially received, and for these exclusive purposes the maintenance period of the shares initially received must be considered to have expired, if the new shares are held by the workers for the time remaining, at the time of the exchange, for the conclusion of the aforementioned three-year period.[70]

However, in other cases in which this temporary requirement had not been met nor the other required requirements, the exemption is not admitted and therefore the workers must make a complementary declaration for these share deliveries.[71]

7. Amounts intended for worker training: amounts intended for the updating, training or recycling of employed personnel, when required by the development of their activities or the characteristics of the jobs. For these returns to be considered as exempt remuneration in kind, they must be paid directly or indirectly by the employer, with the exemption not being applicable when the effective payment (reimbursement) is made to the employee in their monthly payroll. This payment is constituted as a monetary remuneration without further ado, consequently subject to personal income tax withholding, as established in article 75 of the Personal Income Tax Regulations.[72]

8. Premiums or fees paid by the company under the worker's accident or civil liability insurance contract.

III. RULES FOR DETERMINING WORK PERFORMANCE

In Spain, Income Tax taxpayers will be taxed on their worldwide income and on their full returns (in general, total income - deductible expenses). The Personal Income Tax in Spain is a self-assessed tax, so the calculation of what each taxpayer must pay is individual. This does not prevent the existence of data that the Tax Administration already has knowledge of due to the cross-referencing of information between presented models, since compliance with some of the taxpayers' tax obligations corresponds to third parties (for example withholders).

In any case, the deductions are calculated by the tax filing program itself (In Spain, the RentaWeb program) through the data entered by the person making the annual declaration. However, it is important that at the time of filing the taxpayer has the material support that justifies his or her

[70] General Directorate of Taxes, Binding Consultation No. V1222-16 of March 28, 2016.

[71] General Directorate of Taxes, Consultation Binding No. V2028-21 of July 7, 2021.

[72] General Directorate of Taxes, Binding Consultation No. V3373-19 of December 11, 2019.

right, as it may be required at any time by the tax administration in the exercise of its verification work[73].

II.III DEDUCTIBLE EXPENSES ON LABOUR INCOMES

In the case of work income, they will be exclusively deductible.

a) Contributions to Social Security or to mandatory general mutual societies for civil servants. Contributions paid to Social Security - or social insurance management entities - in another State of the European Union will be considered as a deductible expense from work income in the Personal Income Tax, when they are mandatory for workers[74]

b) Deductions for passive rights

c) Contributions to orphan schools or similar entities

d) The fees paid to unions and professional associations, when membership is mandatory, in the part that corresponds to the essential purposes of these institutions, and with the limit established by regulation. In the case of fees paid to professional associations, they will only be deductible when the work income refers to an activity that is being carried out and for which the corresponding fee is paid, and cannot be reduced in the case of payment of fees by non-exercisers[75]. The same does not occur in cases of leave of absence that imply a suspension of the employment relationship, so that during the validity of this suspension, the corresponding contributions continue to be paid even though no income is received from the employment relationship. This is why the deductibility of these expenses cannot be excluded[76]

e) Legal defense expenses derived directly from litigation arising in the relationship of the taxpayer with the person from whom he receives the income, with a limit of 300 euros per year and

f) For other expenses other than the above, 2,000 euros per year.

---

[73] The general tax law includes, among the powers that the Tax Administration has, the power to verify and investigate the facts, acts, elements, activities, operations, businesses, securities and other circumstances determining the tax obligation to verify correct compliance with the applicable rules.

[74] Supreme Court of Justice, resolution nº STS 4736/2021 of December 15, 2021.

[75] General Directorate of Taxes, Binding Consultation V0972-21, April 19, 2021.

[76] Regional Economic Administrative Court of La Rioja, Resolution nº 26/00558/2019/00/00 of July 30, 2021.

In the case of unemployed people who have moved their municipal residence as a result of employment during the year in which they receive the income and the following year, they may benefit from an additional deduction of 2,000 euros in determining their net income.

II.IV TEMPORARY RULES APPLICABLE TO LABOUR INCOMES

In Personal Income Tax Law are contemplated some specific rules which are only applicable to the incomes that taxpayers get from their works. Specifically, articles 12, 13 y 14 from Personal Income Tax Law refer precisely to these rules of temporal imputation, determining a general rule followed by certain special rules; rules that in almost everything have to be complemented with the provisions of article 18 of the Personal Income Tax Law.

The rule articulated in article 12 indicates that the tax period will be the calendar year, so that, except in the event of the death of the taxpayer, the tax will accrue on December 31 of each year. This general rule has its projection in the case of income from work in the provisions of article 14.1 of the LIRPF. This article states that “income from labor and capital will be attributed to the tax period in which they are payable by the recipient.” Now, along with this general rule, section 2 of the same article includes special rules for temporary imputation, rules that should be analyzed below:

a) When all or part of an income has not been paid, because the determination of the right to its collection or its amount is pending a judicial resolution, the unpaid amounts will be attributed to the tax period in which it becomes final. In the case, for example, of overtime payments made in other tax periods in a subsequent year as a result of a court ruling, they will be temporarily allocated in the year in which the resolution is published. Regarding the possible application of the 30% reduction for returns obtained irregularly, the application of the reduction will only be viable if there is a generation period of more than two years, which the arrears - computed from date to date: time space to which they correspond—include that period of more than two years, so in that case the 30 percent reduction would be operational, it being also necessary that within the period of the five previous tax periods no other income had been obtained with generation period greater than two years to which the reduction would have been applied, as stated in the reproduced article 18.2 of the Tax Law[77].

[77] General Directorate of Taxes, Binding Consultation No. V0846-22 of April 20, 2022.

b) When, due to justified circumstances not attributable to the taxpayer, the income derived from work is received in tax periods other than those in which it was payable, it will be attributed to them, and, where appropriate, complementary self-assessment will be carried out, without penalty or interest for late payment or surcharge. some. When the circumstances provided for in paragraph a) above occur, the income will be considered payable in the tax period in which the judicial resolution becomes final. The self-assessment will be submitted within the period between the date on which it is received and the end of the immediately following tax declaration period.

II.V DIFFERENT WAYS OF REMUNERATION THAT BELONG EXCLUSIVELY TO LABOUR INCOMES

In the Spanish legislation there are some ways of remuneration which are only planned to labour incomes. The most important form is the reduction for work income obtained irregularly[78], but this tax benefit has many exceptions or limits depending on the type of income to which it refers.

a) In the case of income other than public benefits granted by public Social Security organizations or social security mutual societies, as well as pensions from pension plans (in general, the benefits contemplated in article 17.2 section a.), the returns that have a generation period of more than two years will enjoy this reduction, as well as those that are legally classified as obtained in a notoriously irregular manner over time, when, they are charged in a single tax period.

b) In the case of income derived from the termination of an employment relationship, common or special, the generation period will be considered the number of years of service of the worker. In the event that these returns are collected in fractions, the calculation of the generation period must take into account the number of years of fractionation, in the terms established by regulation. These returns will not be taken into account for the purposes of the provisions of the following paragraph. However, this reduction will not apply to income that has a generation period of more than two years when, within the five tax periods prior to the one in which it is payable, the taxpayer has obtained other income with a generation period of more than two years. generation over two years, to which this reduction would have been applied.

c) In the case of income from work whose amount is between 700,000.01 euros and 1,000,000 euros and derives from the termination of the employment relationship, common or special, or the

[78] The article 18 of the Personal Income Tax Law establishes that certain income from work will enjoy a 30 percent reduction when determining the full income that will be subject to taxation.

commercial relationship of the administrators and members of the Boards of Directors, Administration, of the Boards that take their place and other members of other representative bodies; or both, the amount of the performance to which the reduction will be applied may not exceed the amount resulting from reducing 300,000 euros in the difference between the amount of the performance and 700,000 euros. When the amount of such income is equal to or greater than 1,000,000 euros, the amount of income to which the 30 percent reduction will be applied will be zero.

For these purposes, the total amount of work income to be computed will be determined by the arithmetic sum of the work income indicated above from the company itself or from other companies in the group of companies in which the circumstances provided for in article 42 occur. of the Commercial Code, regardless of the tax period to which each income is attributed.

d) Finally, in the case of compensation agreed upon by mutual agreement between the employees of a company and the company, these compensations will have the character of income received in a notoriously irregular manner over time. Consequently, if said compensation is allocated in a single tax period, which will occur if it is paid through a single payment, the 30 percent reduction provided for in article 18.2 of the LIRPF will apply. On the contrary, if said compensation is paid in installments, as also proposed, said reduction will not be applicable, since it will have to be allocated in installments over several tax periods[79].

II.VI EXEMPT LABOUR INCOMES

In general, exemptions from the Personal Income Tax are contemplated in article 7 of the LIRPF. However, our focus will be on those exemptions that refer to work income.

1. Dismissal compensation contemplated in the Workers' Statute is exempt from taxation up to the amount of 180,000 euros. This exemption is conditional on cases of termination or dismissal of the worker. Unless proven otherwise, it is presumed that the separation has not occurred if, in the three years following the dismissal or termination, the worker returns to provide services to the same company or to another related company. The wording of article 7 e) of the Income Tax Law, previously in force, was established by section one of the eleventh final provision of Law 3/2012, of July 6, on urgent measures for the reform of the labor market (BOE of July 7, 2012), wording that was introduced with effect from the entry into force of Royal Decree-Law 3/2012, of February 10,

[79] General Directorate of Taxes, ConsultaVinculante nº V0576-22 of March 21, 2022.

on urgent measures for the reform of the labor market, deleted the second paragraph of the previous wording, which referred to the exemption from dismissal compensation when the employment contract was terminated prior to the conciliation act. Therefore, to declare the exemption from dismissal compensation, it will be necessary for the recognition of the unfairness of the dismissal to occur in the conciliation act before the Mediation, Arbitration and Conciliation Service (SMAC) or through a judicial resolution[80]. Therefore, this exemption will not be applicable in cases in which the termination of the employment relationship occurs by mutual agreement and not through dismissal, cases in which the amounts received by the workers must be taxed as income from work in said Tax[81].

2. Pensions in case of permanent disability or severe disability from both Social Security and social security mutual societies that act as alternatives to the special Social Security regime. In the latter cases, the exempt amounts will be limited to the amount of the maximum benefit recognized by Social Security for the corresponding concept. The excess will be taxed as income from work[82].

3. Paternity, maternity or adoption benefits for the duration of this benefit before returning to work. This exemption was declared in 2018 by the Supreme Court for maternity benefits[83] and was later extended for paternity benefits given their identical nature[84]. In the case of paternity benefits paid by the competent foreign body for tax residents in Spain, these benefits will be exempt in accordance with article 7 h) of the LIRPF. In the event that the company satisfies the difference between the normal salary received and the corresponding benefit, said excess will be considered work performance in accordance with article 17 of the Law[85].

---

[80] General Directorate of Taxes, Binding Consultation No. V0777-20 of April 7, 2020.

[81] Directorate General of Taxes, Binding Consultation No. V0576-22 of March 21, 2022.

[82] Personal Income Tax Law, Article 7.1 section f) of the LIRPF.

[83] Supreme Court of Justice, Resolution nº 1462/2018 of October 3, 2018.

[84] General Directorate of Taxes, Binding Consultation V0133-19 of January 18, 2019.

[85] General Directorate of Taxes, Binding Consultation V0082-20 of 16 January 2020.

4. Public financial benefits linked to the service, for care in the family environment and personalized assistance that derive from the Law for the promotion of personal autonomy and care for people in a situation of dependency. In the event that the same person is a creditor of more than one of the benefits exempted by article 7 (pension for exempt permanent disability and financial benefit for care in the family environment and support for non-professional caregivers) but said exemption appears conditional until a certain amount, in these cases each of the benefits will be taken into account separately and will not be added for the purposes of the global calculation of the benefits received[86].

5. Unemployment benefits: since unemployment benefits are designed as a provisional emergency situation, these amounts will not be taxed in any case, regardless of the amount received.

II.VII SPECIAL TAX REGIMES RELATING TO LABOUR INCOMES

Within the heading or framework of general taxation of work income, it is worth highlighting two special regimes contemplated in the Spanish legal system both for workers posted to Spanish territory and for those who, being hired by a Spanish company, are relocated abroad to provide their services. These regimes, which will be analyzed in detail one by one, are:

a) Special regime for workers temporarily displaced to Spanish territory;[87]

b) Special regime for workers temporarily posted abroad.[88]

II.VI.I SPECIAL TAX REGIME FOR WORKERS TEMPORARILY DISPLACED TO SPAIN

Article 93 of the Personal Income Tax Law includes a special tax regime for those subjects who travel to Spanish territory for work reasons, so that even though they have the status of residents in

[86] General Directorate of Taxes, Binding Consultation V1101-22 of May 19, 2022.

[87] Personal Income Tax Law, Article 93.

[88] Personal Income Tax Law, Article 7 p).

Spain[89] , during the tax period in which the change of residence is made and during the following five tax periods they can choose to pay Non-Resident Income Tax, with the following conditions:

1. That they have not been residents in Spain during the five tax periods prior to the one in which their movement to Spanish territory occurs.

2. That the displacement to Spanish territory occurs due to any of the following circumstances:

- As a consequence of an employment contract, with the exception of the special employment relationship of professional athletes. This employment contract may also include the modality of teleworking or remote work as long as it is ordered by the employer.

- As a consequence of the acquisition of the status of administrator of a company. If it is a property entity (entities dedicated to the management of assets), the administrator may not have a participation in said entity that determines its consideration as a related entity.

Regarding these two requirements, it is appropriate to make a clarification, and that is that in the cases of a person displaced to Spanish territory who has an employment contract receiving a payroll from a Company of which they have effective control[90], this situation is expressly excluded from the employment relationship by Law 20/2007, of July 11, on the Statute of Self-Employment. That is why, to the extent that the displaced worker exercises managerial functions in a company of which he has effective control, there is no employment relationship between the consultant and the company of which he is the sole partner and administrator, therefore that the condition provided for in article 93.1.b) 1 of the Personal Income Tax Lax is not met and, given that the condition of article

[89] Namely, (i) that they spend more than 183 days in Spanish territory in a calendar year or (ii) that the main nucleus or base of their activities or economic interests is located in Spain, directly or indirectly. Likewise, the Personal Income Tax Law establishes a presumption, which admits proof to the contrary, that the taxpayer has his tax residence in Spain when, in accordance with the previous criteria, his non-legally separated spouse and dependent minor children habitually reside in Spain. of that one.

[90] It is understood that this effective control of the company exists when the partner has a participation of 50% or more of the share capital.
Furthermore, it is presumed that this control exists, although there is evidence to the contrary, (i) if it is the owner of 33% of the share capital, (ii) if it is the owner of 25% of the share capital and also has been assigned management and direction functions or (ii) if cohabits and is related up to the second degree of partners whose joint participation amounts to 50% of the capital.

93.1.b) 2 is not met, the consultant will not be able to opt for the special regime of article 93 of the Law[91].

- As a consequence of carrying out an activity in Spain that is considered an entrepreneurial activity.

- As a consequence of the performance in Spain of an economic activity by a highly qualified professional who provides services to emerging companies to promote the ecosystem of emerging companies, or who carries out training, research, development and innovation activities, receiving This is a remuneration that together represents more than 40% of all business, professional and personal work earnings.

3. That they do not obtain income that would be classified as obtained through a permanent establishment located in Spanish territory, except in the cases of entrepreneurial activity or economic activities for emerging companies.

In the case of taxpayers who take advantage of the provisions of the aforementioned article 93 of the for determining the full fee, the rates determined on the following scale will be applied to the taxable base:

Liquidable Base – Euros	Tax Rate – Percentage
Up to 600.000 euros	24 %
From 600.000,01 euros onwards.	47 %

A fundamental question of debate at this time lies in determining whether the taxpayers for this tax are also taxpayers with respect to both the Wealth Tax and the Temporary Tax on Large Fortunes, which very recently the Constitutional Court has declared in accordance with Law. .

In relation to the Wealth Tax, taxpayers who take advantage of the special tax regime for workers temporarily displaced to Spanish territory will be liable for the Wealth Tax by real obligation, but in any case they will have to pay tax exclusively on the assets. and rights of which he is the holder that

[91] General Directorate of Taxes, Binding Consultation V0321-17 of February 7, 2017.

are located, can be exercised or must be fulfilled in Spanish territory; although only the charges, encumbrances and debts for invested capital that affect said assets and rights will be deductible[92].

Regarding the Temporary Tax on Large Fortunes, the law that creates it indicates in the regulation of the taxpayer of the ITSGF[93] not only is there an explicit reference to the LIP, but it is expressly indicated that the taxpayers of the ITSGF are "in "the same terms" as the taxpayers of the Wealth Tax. That is why the Tax Administration, in relation to the subjection of the Tax by taxpayers covered by the regime provided for by article 93 of the LIRPF, indicates that they are subject by real obligation to the ITSGF during the entire period in which they are covered by the IRNR[94].

II.VII.II SPECIAL REGIME FOR WORKERS TEMPORALY POSTED ABROAD

Workers posted by their employers outside of Spain during the fiscal year are exempt from paying taxes on labor income generated during trips abroad to provide the services entrusted to them by their companies; provided that the displaced worker has the status of taxpayer of Personal Income Tax in the corresponding tax period.

Specifically, for these returns to be exempt from taxation, the following requirements must be met:

1. **That said work be carried out for a company or entity not resident in Spain or a permanent establishment located abroad under the conditions established by regulation**. In particular, when the entity receiving the work is linked to the entity that employs the worker or to the entity in which they provide their services, the requirements set forth in section 5 of article 16 of the consolidated text of the Corporate Tax Law must be met[95]. Therefore, to apply the exemption, the rule requires both that the worker travel outside of Spanish territory and that the workplace be located, at least temporarily, outside of Spanish territory. In this way, the exemption will not apply to all those cases in which, although the recipient of the work is a non-resident company or entity, the work is provided from Spain[96].

---

[92] Articles 5. One. b) and 9. Four of Law 19/1991, of June 6, on the Tax on the Heritage.

[93] Temporary Tax on Large Fortunes.

[94] General Directorate of Taxes, Binding Consultation V0420-23 of February 24, 2023.

[95] In relation to trips abroad for commercial purposes, if they are services, exclusively, of a commercial nature aimed at achieving commercial agreements, the recipient or beneficiary of the work provided by the posted worker will be the company itself. Therefore, the posted worker may benefit from this exemption: General Directorate of Taxes, Binding Consultation V1557-09 of June 24, 2009.

[96] General Directorate of Taxes, Binding Consultation No. V2683-16 of June 14, 2016.

2**. That in the territory in which the work is carried out a tax of an identical or analogous nature to that of this tax is applied and it is not a country or territory considered a tax haven[97].** This requirement will be considered met when the country or territory in which the work is carried out has signed an agreement with Spain to avoid international double taxation that contains an information exchange clause. In the event that the work is carried out in different countries at the same time, compliance with this requirement will have to be analyzed in each of the countries to which the worker travels, in such a way that the exemption will be applicable with respect to the remuneration that correspond to those countries in which the aforementioned requirement is met [98].

3. The exemption will apply to remuneration accrued during the days spent abroad, with a maximum limit of 60,100 euros per year. To calculate the remuneration corresponding to work performed abroad, the days that the worker has actually been posted abroad must be taken into consideration, as well as the specific remuneration corresponding to the services provided abroad. To calculate the amount of income accrued each day for work carried out abroad, apart from the specific remuneration corresponding to the aforementioned work, a proportional distribution criterion will be applied taking into account the total number of days in the year[99].

This exemption will be incompatible, for taxpayers destined abroad, with the regime of excesses excluded from taxation provided for in the regulations of this tax, whatever the amount. The taxpayer may choose to apply the excess regime to replace this exemption.

In the case of services provided jointly in favor of several related persons or entities, and whenever the individualization of the service received or the quantification of the determining elements of its remuneration is not possible, it will be possible to distribute the total consideration among the beneficiary persons or entities. in accordance with distribution rules that meet criteria of rationality.

---

[97] General Directorate of Taxes, Blinding Consultation No. V3357-23 of December 29, 2023. For the application of this type of exemption, the Spanish Tax Agency is especially careful regarding the application of the domicile requirement of the employing company, regardless of whether the country where the worker performs his duties is not a territory considered a tax haven..
Thus, in cases in which Spanish employees transferred to foreign territories by virtue of an employment contract with a company domiciled in a tax haven, the exemption for income obtained abroad cannot be applied.

[98] General Directorate of Taxes, Binding Consultation No. V2683-16 of June 14, 2016.

[99] Regarding the calculation of the days for determining the exempt tax, it should be noted that the Supreme Court through its Sentence no. 607/2021 established as a doctrine to be followed that the reasonable interpretation of the term "work actually performed" includes both the days of departure and arrival.

This criterion will be deemed to have been met when the method applied takes into account, in addition to the nature of the service and the circumstances in which it is provided, the benefits obtained or likely to be obtained by the recipient persons or entities. In this regard, it should be noted that, in general, to answer the question of whether or not a member of the group has provided a service, exercising such activity for the benefit of one or more members of the group, it would be necessary to determine whether the activity involves an economic or commercial interest for a member of the group that thus reinforces its commercial position. That is, if, in comparable circumstances, an independent company would have been willing to pay another independent company to carry out this activity or if it would have carried it out itself internally. If the activity is not one that an independent company would have been willing to pay for or perform itself, the service should not generally be considered to have been provided[100].

In this regard, it should be noted that in general, to answer the question of whether or not a member of the group has provided a service, exercising such activity for the benefit of one or more members of the group, it would be necessary to determine whether the activity represents a economic or commercial interest for a member of the group that thus reinforces its commercial position. That is, if, in comparable circumstances, an independent company would have been willing to pay another independent company to carry out this activity or if it would have carried it out itself internally. If the activity is not one that an independent company would have been willing to pay for or perform itself, the service should not generally be considered to have been provided[101]. (General Directorate of Taxes, Binding Consultation V1499-09 of June 22, 2009)

III. TAXATION OF CAPITAL INCOME

III.I DEFINITION AND REQUIREMENTS OF CAPITAL INCOME

The definition of capital gains is included in the Spanish legal system in article 21 of law 35/2006 of the personal tax law. Full returns on capital are considered to be all profits or consideration, regardless of their name or nature, monetary or in kind, that come, directly or indirectly, from assets, assets or rights, the ownership of which corresponds to the taxpayer and are not affected by economic activities carried out by it. This definition does not include income derived from the

[100] General Secretary of Autonomous and Local Financing, Consultation nº 369/2018 of June 6, 2019.

[101] General Directorate of Taxes, Binding Consultation V1499-09 of June 22, 2009.

transfer of ownership of assets, which, except in cases where they are expressly classified as such, will be considered capital gains. In any case, the following will be included as returns on capital:

a) Those coming from real estate, both rural and urban, that are not affected by economic activities carried out by the taxpayer.

b) Those that come from movable capital and, in general, from the remaining assets or rights owned by the taxpayer, which are not affected by economic activities carried out by the taxpayer.

From the very definition of what are considered returns on capital, we can conclude the main requirement for an income to be considered a return on capital, and that is that the assets on which the returns received fall are not subject to economic activities. In the case of a condition, the taxpayer's method of taxation will be as income from economic activity and not as income from movable capital, so that the discount of the expenses caused by these assets will be made through a greater expense imputed to the activity.

The determination therefore that a return is classified as capital income and not as another type of income will be a factual issue that will depend on the circumstances in each case. In any case, there will be economic activity when there is an organization and management on its own account of human resources and capital, or only one of them, with the purpose of intervening in the production or distribution of goods or services[102].

However, it is important to highlight a series of specialties with respect to this general rule:

a) In the partner-society remuneration for the provision of services by a natural person, they will be considered an economic activity when the partner carries out activities included in the Second section of the IAE[103] Rates and is included in the special Social Security regime of self-employed or self-employed workers (RETA), or in a social security mutual society that acts as an alternative to the aforementioned special regime. However, the position of the Spanish tax administration has been clarified in relation to expanding the scope of this rule to all those activities, all those companies whose corporate purpose is the provision of professional services that may be qualified in Section 2 of the Tariffs of IAE, although in reality they are registered in another heading or section[104].

---

[102] Personal Income Tax Law, article 27.1.

[103] Tax on Economic Activities.

[104] General Directorate of Taxes, Consultations V1147-15 and V1148-15 of April 13, 2015.

b) Regarding income from real estate capital, income from the leasing of real estate will always enjoy such consideration as long as it is not considered an economic activity, for which it will be essential to have a full-time worker hired. Through this new wording of the provision, the requirement to have a premises also designated for the activity has been eliminated. Now, given that in the case of rentals that are not a habitual residence it may be more beneficial for the taxpayer to tax their profits as income from economic activities and not as income from real estate capital, it is not enough to prove that they have a hired person, but rather that it will be necessary to demonstrate that that person is dedicated to the activity and is necessary to carry it out[105].

Social Security obligations: it is important to determine whether the return received by a natural person is a return on capital or a return on economic activity due to the employment consequences that one or the other entails. In the case of income from capital, there is no obligation regarding the work environment, while if what we carry out is an economic activity, we can be presented with the option that the person who receives income that has that consideration must comply, in addition to their census obligations in tax matters, with obligations in matters of Social Security when being forced to register in the RETA (Self-Employed Regime). This obligation effectively exists when (i) an economic activity is carried out through the organization of productive means for the activity and (ii) there is the exercise of an economic activity in a habitual, personal and direct manner. To determine this habituality, given that it is what we know in Spain as the legal jargon of "indeterminate legal concept", different criteria will have to be followed, among which we can take into account that the person's volume of income who carries out the activity is less than the Minimum Interprofessional Wage of 1,166 euros per month[106].

III.II DIVIDING LINE BETWEEN CAPITAL INCOME AND OTHERS CATEGORIES OF INCOME

II.II.I DIVIDING LINE BETWEEN CAPITAL INCOME AND CAPITAL GAINS

The main dividing line between capital income and capital gains is that while, in general, capital returns come from assets that the taxpayer has in his property portfolio, capital gains derive from variations in the value of the taxpayer's assets. taxpayer that become evident on the occasion of any

[105] TEAC Doctrine of 05/28/2013 collecting the jurisprudence of the TS on this matter.

[106] Supreme Court of Justice, Resolution nº 2483/2007 of March 27, 2007.

alteration in its composition[107]. Therefore, in the latter, there is an exit of the asset from the assets of the taxable person, who receives an amount of money in exchange that may be higher, equal, or lower than the amount he has initially paid for that asset; thus obtaining a capital gain or loss for the difference. This is the general rule, but nevertheless the law establishes certain specialties:

a) In the case of capital reductions, none of the methods of capital reduction immediately give rise to a capital gain or loss derived from said operation, but rather this will be generated when the values or shares affected by the capital reduction are transferred. social, resulting in a deferral in the taxation of these incomes. However, in cases of capital reduction with return of contributions to partners, immediate tax effects may occur, since the amount of the return of contributions, or the normal market value of the assets or rights received, if received in kind, will reduce the acquisition value of the affected securities or participations (taking into account that those acquired in the first place are considered affected) until their cancellation. The excess that may result will be taxed as income from capital in the manner provided for the distribution of the share premium. If the capital reduction comes from undistributed profits, all amounts received will be taxed as dividends.

b) In the case of lucrative transfers due to the death of the taxpayer, the method of taxation of these operations will be through the Inheritance and Donation tax. This tax will accrue at the time of the death of the person leaving the inheritance, although as it is a tax transferred to the Autonomous Communities, some territories have legislated on the matter allowing so-called “succession agreements”. Through these agreements, such as the contribution agreement in Galicia, better inheritance planning is allowed by the deceased. Well, in these cases, and despite the fact that the accrual of the tax occurs when the agreement is made and not due to the death of the taxpayer, it is a lucrative transfer due to the death of the taxpayer, included within art. 33.3.b) of the Tax Law[108].

c) In the case of lucrative business transfers in favor of the spouse and certain relatives. This tax benefit in the form of deferral of taxation will only be applicable to the percentage of the assets assigned to the activity that is transferred and not to all of the shares[109].

d) In the extinction of the marital economic regime of separation of assets, when due to legal imposition or judicial resolution compensation is produced, monetary or through the award of assets, for reasons other than the compensatory pension between spouses.

[107] Personal Income Tax Law, Article 33.1.

[108] Supreme Court of Justice, STS 407/2016 of February 9, 2016.

[109] Central Economic-Administrative Court, RG 1501/2020 of May 29, 2023.

e) In contributions to protected assets created in favor of people with disabilities and intended to satisfy their needs, these contributions are considered income from work for the person with disabilities who owns the assets up to a total maximum of €24,250 per year in set. These work income are exempt, up to a maximum annual amount of 3 times the IPREM. From the contributor's point of view, the contributions made will give the right to reduce their tax base with a maximum limit of 10.000 euros per year.

The Spanish legal system, in its article 33.4 of the Law, also includes tax incentives in the form of exemptions, so that taxpayers will not be taxed either as capital gains or losses:

a) In donations made to associations or non-profit entities, political parties or unions. The capital gain that could arise from the donation by a natural person of a property they own to a City Council would also be exempt[110] or the capital gain derived from the donation of a property to the Catholic Church[111].

b) In donations made by people over 65 years of age or people who are severely dependent on their habitual residence. The gain exemption applies whether the habitual residence is transferred in exchange for capital or in exchange for an income, temporary or for life. The exemption also applies to the transfer of bare ownership of the habitual residence by its owner over 65 years of age, reserving lifetime usufruct over said residence. Unlike the above, when the full ownership of a home is divided between the bare owner and the usufructuary, none of them will be subject to the exemptions provided for on the occasion of its transfer, even in the case of of your habitual residence during the two years prior to the date of transfer.

c) In the case of the payment of the tax debt resulting from the self-assessment of the tax through assets that are part of the Spanish historical patrimony registered in the General Inventory of Movable Property or in the General Registry of Assets of Cultural Interest.

d) On the occasion of the payment of the habitual residence of the debtor or guarantor of the debtor, for the cancellation of debts guaranteed by a mortgage that falls on it.

---

[110] General Directorate of Taxes, Binding Consultation V2702-21, of November 8, 2021.

[111] General Directorate of Taxes, Binding Consultation V1328-21, of May 11, 2021.

Finally, it seems very important to us to focus on a provision made by the Spanish legislator in article 33.5 of the Law so that transfers of securities or shares admitted to trading in any of the official secondary securities markets will not be computed as capital losses. defined in Directive 2004/39/CE when the taxpayer had acquired homogeneous securities within the two months before or after said transfers. In the case of securities not admitted to trading in these markets, the period of two months provided will be extended to one year. This period is the one that will be taken into account, for example, in the case of transfer at a loss of shares listed in the United States, so that the period for the repurchase of said securities not to occur will be one year before or after the transfer of the shares[112].

The form of taxation of these capital losses on which there were repurchase operations in the two months or in the year before or after their transfer will be by integrating them into the year in which said transfers are considered definitive in the sense advocated by the article. 33.5 of the Law, in such a way that within the period established by it, two months in the case of listed securities or shares, the repurchase of these does not occur[113].

III.II.II DIVIDING LINE BETWEEN CAPITAL INCOME AND LABOUR INCOMES

The main difference between these returns is the labor implications involved in classifying a return as work return, since the definition included in article 17.1 of the Personal Income Tax Law indicates that all compensation or profits, whatever they may be, will be considered full work returns. their denomination or nature, monetary or in kind, that derive, directly or indirectly, from personal work or from the employment or statutory relationship and do not have the character of income from economic activities. Therefore, not only because of the tax implications, but also because of the labor implications that these incomes have, the control that the tax authorities have over them is much greater than in the case of income from movable capital.

Along with this difference, it is also important to mention that, in terms of deduction of expenses, while in the case of income from movable capital, the possibility of deductibility of expenses is practically unlimited as long as the need can be justified in the eyes of the Agency. Tax on the

[112] General Directorate of Taxes, Binding Consultation V0515-16 of February 9, 2016.

[113] General Directorate of Taxes, Binding Consultation V0030-19 of 3 January 2019.

expenses we incur to obtain income, in the case of work income there is a closed catalog of deductible expenses.

IV.II.III DIVIDING LINE BETWEEN CAPITAL INCOME AND INCOME IMPUTATIONS

The main difference between these two concepts that make up the Personal Income Tax in Spain is that while the capital income is real and is received by the taxpayer effectively, the income imputations are a fiction of the income referred to. exclusively to urban or rural properties not affected by economic activities. In this case, the Spanish legislator decides to penalize the owners of empty properties that are not their habitual residence by forcing them to allocate in their annual income tax return a value corresponding to 2% of the unrevised cadastral value or 1.1% in those municipalities in which the values had been reviewed in the previous 10 years[114].

III.III TAX TREATMENT OF CAPITAL INCOME

The tax treatment of each capital income is different depending on the origin of those income, its temporal imputation criteria or its method of determination. For example:

1. **Capital gains taxation:** the additional economic power that a taxpayer withdraws from his assets is taxed at the time of realization of the asset. The Taxpayer will includes within your income the net variation in value (difference between its market value and acquisition and conservation costs). The resulting income (both increased and decreased) will be taxed at progressive tax percentages.

2. Taxation of income from real estate property: income from real estate investments will be allocated in the year in which they are payable by the recipient in their full amount, that is, the difference between the income obtained and the expenses. necessary to obtain the returns[115]. The calculation method in the case of non-residents is the same in the event that the creditor of the income has its tax residence in one of the Member States of the European Union, but this does not occur when they have their residence in a Third State. In this case, the income obtained in

[114] Personal Income Tax Law, Article 85.

[115] Personal Income Tax Law, article 83.

accordance with article 25.1 a) of the IRNR Law[116] will be taxed at a fixed rate of 24 percent without being able to deduct the expenses necessary to obtain the lease. In addition to this right to reduce the expenses necessary to obtain returns by the owners, there are other tax incentives contemplated in the regulations, both state and regional, since the CCAA have certain regulatory and collection powers in the matter. Specifically we will highlight two of them:

a) State deduction for the acquisition of a habitual residence: this tax incentive, of a state nature, allows home buyers for their own residential purposes prior to January 1, 2013 to be able to deduct, depending on their volume of income, up to €9,040 per year or up to €12,080 annually in cases of disability. This deduction has currently been eliminated, but is maintained for those who would have applied it prior to January 1, 2013 because they had acquired the home prior to that date.

b) Regional deductions for renting a habitual residence: the state deduction for renting a habitual residence has disappeared in Spain since January 1, 2015, but the autonomous communities have maintained this tax incentive, in general, subjecting it to the economic requirements of volume of income in the year, percentage that represents the payment of the rent within that volume of income, deposit of the corresponding deposit in the public records and payment by bank transfer of the monthly rental payments.

3. Taxation of income on movable property: Within this category of income we are going to find different very varied returns, both monetary and in kind; and in this way the way in which they will be taxed will be different in one case or another.

For example, in the case of dividends or participation in profits, before considering the way in which they will be taxed in the recipient's assets, we must take into account that the Spanish legal system, with the objective that the companies that distribute these profits do not become descapitalized, articulates a series of requirements which will be met[117]. Once approved, the dividends will be allocated to the tax period in which they are payable by the recipient, that is, on the date established in the distribution agreement or from the day following its adoption, in the

---

[116] Non Residents Personal Income Tax.

[117] This requirements are contemplated in Articles 273 and 274 of the Capital Companies Law say that (i) the value of the net assets is not or, as a result of the distribution, is not lower than the share capital and (ii) that the legal reserve reaches at least 20 percent of the share capital).

absence of determination of the aforementioned date. In the case of separation of a partner, and despite a court ruling declaring the separation, the special rule of temporary imputation will not apply in the case of judicial resolutions so that the dividends paid to the partner who has exercised Their right of separation will be attributed to the year in which they were payable, even if they are satisfied in a subsequent year[118].

In the case of taxation of income from movable capital in the form of interest derived from the transfer of own capital to third parties, the payability of this interest will be attributable to the year in which it is payable, as established in the article 14 of the Law. In the event that we find remunerative interests that constitute a consideration, either for the delivery of capital that must be repaid in the future, or for the deferral of payment, granted by the creditor or agreed upon by the parties; Interest of this nature will be considered income from movable capital. The form of taxation of interests that have a compensatory nature will be different, in which case these interests will be taxed as capital gains and not income from movable capital. This will happen, for example, with late payment interest received by the taxpayer within the framework of a procedure for the return of undue income, and these interests must be taxed as a capital gain to be included in the general tax base[119].

The incomes from these sources will be taxed in sections from 19 per cent to 27 per cent where the income is above 50.001 euros.

III.IV DETERMINATION RULES OF CAPITAL INCOMES

In general, the determination of the capital income subject to taxation will be the difference between the full income obtained less the deductible expenses and reductions contemplated in the law. In any case, it must be taken into account that the determination of each return on capital, even if it is a movable or real estate return, will have its own special rules.

Responsibility of the declaration: when imputing capital income in the taxpayer's annual income declaration, the task of determination corresponds exclusively to the taxpayer. Therefore, he is ultimately responsible for ensuring that what Form 100 reflects corresponds to the reality of the income he has received during the calendar year. As stated in article 120.1 of the General Tax Law,

[118] General Directorate of Taxes, Consultation V2231-21 of August 4, 2021.

[119] Supreme Court of Justice, resolution nº 24/2023 of January 12 of 2023, rec. nº 2059/2020.

given that the income tax is a tax that is self-assessed by taxpayers, in addition to communicating to the Administration the data necessary for the settlement of the tax and other information content, They themselves carry out the qualification and quantification operations necessary to determine and enter the amount of the tax debt or, where applicable, determine the amount to be returned or compensated.

However, it is no less true that even though it is the taxpayer who qualifies and quantifies his or her income, banking information communication systems or declarations made by third parties about income of which the taxpayer is a recipient mean that, in Many times, the taxpayer only has to supervise that the amounts received are correctly allocated. The taxpayer, in any case, can alter the figures communicated by his banking entity, for example, but exposing himself to an additional settlement with interest, and perhaps a penalty, by the Tax Agency in the exercise of its evidentiary powers[120].

The differences in taxation between the different capital incomes basically come from the fact that, depending on the type of performance to which we are referring, the expenses that according to the law are considered deductible will be different. As an example we can cite some of them:

a) In the case of income from real estate capital: financing interests for the acquisition or improvement of the property, improvement and conservation expenses, non-state taxes and surcharges, amounts accrued by third parties for services provided (real estate) or depreciation of the property[121].

b) In the case of income from movable capital: the expenses of administration and deposit of negotiable securities will be exclusively deductible. Expenses inherent to the acquisition or transfer should be understood as those that have a clear and precise link with the operations themselves, a circumstance that does not occur in the case of annual management commissions that represent an expense that must be paid periodically as consideration for a management service. These commissions will be calculated on the effective value of the managed portfolio at the end of the year, regardless of the operations carried out by the managing bank[122].

[120] General Tax Law, Article 120.2.

[121] These expenses are not a close list of deductible expenses as occurs, for example, with labour incomes.

[122] General Directorate of Taxes, Binding Consultation V3292-20 of November 6, 2020.

III.V EXEMPTS CAPITAL INCOMES

In relation to dividends, Community jurisprudence requires the same treatment to be given to dividends from internal sources and those from any other member country of the European Union. In line with recent trends, return to a classic system of non-integration between the Personal Income Tax and the Corporate Tax, and with the reforms carried out in other countries around us, their taxation has been simplified through its incorporation into the savings base and the application of an exempt minimum that will exclude the taxation, for this concept, of numerous taxpayers[123]. In relation to this issue we must distinguish two different taxation systems for dividends received by natural persons:

a) Taxation of dividends before 2014: article 7 y) of Personal Income Tax Law contemplated an exemption provided for dividends and participations in profits referred to in paragraphs a) and b) of article 25.1 of the same Law, an exemption that It operated on the full amount of dividends with the limit of 1,500 euros each year. Therefore, this measure benefited small partners or shareholders who received very low annual income in relation to their investment portfolio in a company, so that the first 1,500 euros were exempt from taxation, and the rest was taxed on the basis of savings to the corresponding type. This exemption, in turn, had replaced the old deduction for dividends, which was more economically important.

b) Taxation of dividends after 2014: in the case of dividends received by individuals, the exemption initially contemplated was eliminated and that is why today dividends received by individuals are taxed for their full amount. In the case of dividends paid by a foreign company, the tax resident in Spain will have the right to deduct from the tax payable in Spain, in accordance with the provisions of article 22.1 of the Double Taxation Agreement and the article 80 of the Personal Income Tax Law, what was actually paid abroad. In general, this deduction will be limited to the amount that, derived from the correct application of the Convention, would be taxable by the source State. However, some Agreements, such as the Spanish-German CDI, provide that residents in Spain who have received dividends from Germany may request the German tax authorities to refund the excess German tax withheld at source on said income, understanding for excess the difference between the amount of the tax rate applied in accordance with German internal

[123] Law 35/2006 on Personal Income Tax, explanatory memorandum.

legislation and the amount applicable taking into account the limits established in Article 10 of the Agreement[124].

III.V.I EXEMPTS CAPITAL INCOMES: THE TAXATION OF DIVIDENDS BETWEEN COMPANIES

Currently, as far as legal entities are concerned, the exemption from taxation of dividends when they are distributed to natural persons has been eliminated. Of course, this exemption is maintained for legal entities under certain conditions:

a) That the percentage of participation, direct or indirect, in the capital or own funds of the entity is, at least, 5 percent or that the acquisition value of the participation is greater than 20 million euros. This participation must be maintained uninterruptedly during the previous year in which the distributed benefit becomes payable, or otherwise maintained for the time necessary to complete said period.

b) Additionally, in the case of participations in the capital or equity of entities not resident in Spanish territory, that the investee entity has been subject to and not exempt from a foreign tax of a nature identical or analogous to this Tax at a nominal rate of , at least 10 percent in the year in which the profits that are distributed or in which one participates were obtained, regardless of the application of any type of exemption, bonus, reduction or deduction on them. This requirement will be considered met when the investee entity is resident in a country with which Spain has signed an agreement to avoid international double taxation, which is applicable to it and which contains an information exchange clause. As of 1-1-2017, in no case will this requirement be deemed to have been met when the investee entity is resident in a country or territory classified as a tax haven, unless it resides in a Member State of the European Union and the taxpayer proves that its incorporation and operational responds to valid economic reasons and that carries out economic activities.

In general, positive income obtained from the transfer of shares in an entity will also enjoy this exemption when the requirements for the exemption on dividends or shares in the profits of entities are met when at the time of the transfer the percentage of participation is equal. or greater than 5% and the company being transferred is subject to and not exempt from a percentage of 10% in a tax

[124] General Directorate of Taxes, Binding Consultation V0097-14 of January 20, 2014.

of the same nature as Corporate Tax. In any case, these circumstances are matters of fact that the taxable person must prove by any means of proof admitted by law in the terms established in articles 105 and 106 of the General Tax Law, approved by Law 58/2003, of 17 December. December (BOE December 18), and whose assessment will correspond, where appropriate, to the competent bodies in matters of verification of the Tax Administration[125] (General Directorate of Taxes, Binding Consultation V0004-15 of January 2, 2015).

The exemption will not apply:

- To the income distributed by the public regulation fund of the mortgage market.

- To income from foreign sources obtained by Spanish and European economic interest groups, and by temporary joint ventures of companies, when at least one of their partners has the status of a natural person.

- To income from a foreign source that the entity integrates into its tax base and in relation to which it chooses to apply, if applicable, the deduction established in articles 31 or 32 of the Corporate Tax Law.

In no case will the exemption apply when the investee entity is resident in a country or territory classified as a tax haven, unless it resides in a Member State of the European Union and the taxpayer proves that its constitution and operations respond to valid economic reasons and that carries out economic activities. Finally, it should be noted that, by virtue of the provisions of article 14.1.k) of the Corporate Tax Law, "Negative income obtained abroad through a permanent establishment, except in the case of transmission of the same or cessation of its activity[126].

In relation to the obligation to withhold, in accordance with the provisions of letter d) of article 128.4 of the Corporate Tax Law, there will be no obligation to withhold with respect to the dividends or shares in profits referred to in section 1 of article 21 of the same Law, therefore, if the requirements set out in said provision, previously transcribed, are met, the dividends distributed to the consulting entity will not be subject to withholding[127].

---

[125] General Directorate of Taxes, Binding Consultation V0004-15 of January 2, 2015.

[126] General Directorate of Taxes, Binding Consultation V0004-15 of January 2, 2015.

[127] General Directorate of Taxes, Binding Consultation V3204-21 of December 23, 2021.

III.VI SPECIAL TIMING RULES WHICH APPLY TO CAPITAL INCOME

As a general rule, income from capital, like income from work, will be attributed to the tax period in which it is payable by the recipient. It will be up to each case to determine the moment in which, according to this rule, the income becomes payable by its recipient. Thus, if the payability of the payment corresponds to the tax period in which the work they compensated was carried out, the imputation will correspond to that period. On the contrary, if the payment is payable corresponds to a tax period subsequent to that in which the work for which they are remunerated has been carried out, the temporary imputation will be carried out in that subsequent tax period[128]. This is the general criterion for the imputation of income, although this rule coexists with some specialties that we will name below:

1. In the case of income that has not been paid because the determination of the right to its collection or its amount is pending a judicial resolution, the unpaid amounts will be attributed to the tax period in which it becomes final. This concept of judicial resolution is equivalent for tax purposes to an administrative resolution that recognizes the right to collection[129]. The way to pay taxes on these incomes will be through the practice of a complementary self-assessment in the year in which these incomes were payable without penalty or late payment interest or any surcharge.

2. Special case: "Unit Linked" (life insurance contracts in which the policyholder assumes the investment risk): Depending on whether or not these insurance contracts meet certain conditions, two different tax regimes may be applicable to them:

a) If the insurance contract meets some of the conditions legally established for this purpose throughout the duration of the contract: the applicable tax regime is that of the exposed life insurance contracts. In this case, as with funds, you do not have to pay to move money from one fund to another, since it is exempt from tax toll. But you will have to pay taxes when you recover your money, being taxed within the savings income as a return on movable capital.

b) If the insurance contract does not comply with the conditions legally established for this purpose throughout the term of the contract: the policyholder must allocate in each tax period as income from capital the difference between the net asset value of the assets covered by the policy to the end and at the beginning of the tax period.

---

[128] General Directorate of Taxes, Binding Consultation V0343-23 of February 2, 2023.

[129] General Directorate of Taxes, Binding Consultation V0184-23 of February 7, 2023.

<u>Legal conditions that must be met throughout the life of the contract for the general regime of life insurance contracts to be applicable:</u>

1. That the policyholder is not granted the power to modify the investments affected by the policy.

2. That the mathematical provisions are invested in:

- Shares or participations in collective investment institutions, predetermined in the contracts, provided that:

- Collective investment institutions adapted to Law 35/2003, of November 4, on Collective Investment Institutions (BOE of November 5).

- Collective investment institutions covered by Directive 2009/65/EC, of July 13, of the European Parliament and of the Council.

- Sets of assets reflected separately in the balance sheet of the insurance entity, provided that the following requirements are met:

The determination of the assets must correspond, at all times, to the insurance entity.

The investment of the provisions of each set of assets must be made in assets that comply with the standards established in article 89 of Royal Decree 1060/2015, of November 20, on the organization, supervision and solvency of insurance and reinsurance entities. In no case may it be real estate or real estate rights. However, it will be understood that these requirements are met by those sets of assets that attempt to develop an investment policy characterized by reproducing a certain stock or fixed income index representative of one of the official secondary securities markets of the European Union.

The policyholder will only have the power to choose between the different separate sets of assets in which the insurance entity must invest the mathematical provision of the insurance, without in any case being able to intervene in the determination of the specific assets in which, within each separate set, the provisions are reversed.

In these contracts, the policyholder or insured may choose, in accordance with the specifications of the policy, between the different collective investment institutions or separate sets of assets, expressly designated in the contracts, without singular specifications being produced for each policyholder or insured.

IV. THE SPANISH TAX EXIT

IV.I INTRODUCTION

Tax residents in Spain who wish to stop having that consideration, in the event that they are owners of shares or participations in companies at the time of the change of residence, must pay an exit tax on any unrealized or latent capital gains that exist at that time. Specifically, article 95 bis of the Personal Income Tax Law states that:

"1. When the taxpayer loses his status due to a change of residence, the positive differences between the market value of the shares or participations of any type of entity whose ownership corresponds to the taxpayer, and their acquisition value, will be considered capital gains, provided that the taxpayer had had such status for at least ten of the fifteen tax periods prior to the last tax period that must be declared for this tax, and any of the following circumstances occur:

a) That the market value of the shares or participations referred to in section 3 of this article exceeds, jointly, 4,000,000 euros.

b) When the provisions of letter a) above are not met, that on the accrual date of the last tax period that must be declared for this tax, the percentage of participation in the entity is greater than 25 percent, provided that the value of the shares or participations in the aforementioned entity referred to in section 3 of this article exceeds 1,000,000 euros.

In this case, only the provisions of this article will apply to the capital gains corresponding to the shares or participations referred to in this letter b)."

IV.II TAXPAYERS AND RESIDENCE CHANGES

Tax payers will be those people who have resided in Spain for 10 years within the fifteen tax periods prior to the last tax period that must be declared. In the case of Spanish tax residents who have opted for the application of the special tax regime applicable to workers posted to Spanish territory, the period of ten tax periods will begin to be computed from the first tax period in which the aforementioned special regime is not applicable[130].

[130] Personal Income Tax Lax, Article 95 bis ap.8.

If the taxpayer acquires the status of taxpayer again without having transferred ownership of the shares or participations taxed when he emigrated, he may request the rectification of the self-assessment that he had to present at the time, in order to obtain the refund of the amounts then entered. The refund will be governed by the provisions of article 31 of the General Tax Law, except in relation to the payment of late payment interest, which will accrue from the date on which the payment was made until the date on which payment is ordered. of the return. The rectification request may be submitted after the end of the declaration period corresponding to the first tax period that the newly resident emigrant must declare for personal income tax[131].

In cases in which the change of residence occurs as a result of a temporary displacement for work reasons to a country or territory that is not considered a tax haven, or for any other reason, provided that in this case the temporary displacement occurs to a country or territory that has signed with Spain an agreement to avoid international double taxation that contains an information exchange clause, upon request of the taxpayer, the payment of the tax debt that corresponds to the capital gains regulated in this article will be deferred by the Tax Administration. In these cases, when the taxpayer again acquires the status of tax resident in Spain at any time within the period of five years following the last one in which he must declare for this tax without having transferred ownership of the shares or participations, the debt subject to deferral will be extinguished, as well as the interest that may have accrued. This 5-year period may be extended for an additional 5 years when there are circumstances that justify a longer temporary transfer, without in any case the extension exceeding five additional years.

IV.III TEMPORARY IMPUTATION AND FORM OF DETERMINATION OF THE TAX BASE

Article 95 bis of the LIRPF[132] itself contains an express temporal determination of the moment in which said tax must be declared, this being the last tax period that must be declared for this Tax.

To determine the value of the shares or participations at the time the alleged "capital gain" must be settled, the market value of the shares or participations on the accrual date of the last tax period that must be declared for this tax will be taken into account. . Following this criterion, it will be taxed

[131] LÓPEZ TELLO, J., *"El nuevo Impuesto español tipo Exit Tax sobre acciones y participaciones",* Actualidad Jurídica Uría Menéndez, 41-2015, pp. 70-79, esp. p. 74.

[132] Personal Income Tax Law.

a) In any case, to taxpayers who have more than 4,000,000 million euros in shares or participations on the date of accrual of the tax, or

b) That they have at least 25 percent of participation in an entity whose market value exceeds 1,000,000 euros.

IV.IV CRITERIA FOR VALUING SHARES AND PARTICIPATIONS

In the event that the taxpayer who must pay the exit tax has his entire portfolio of shares and interests in companies listed on stock markets, the valuation of these shares will be very simple, since they will correspond to the listed value of the same.

In the case of securities not admitted to trading on any of the regulated securities markets defined in Directive 2004/39/EC [...], they will be valued, unless there is proof of a different market value, by the higher of the two. following:

a) The net equity that corresponds to the values resulting from the balance sheet corresponding to the last fiscal year closed prior to the date of accrual of the Tax.

b) The result of capitalizing at a rate of 20 percent the average of the results of the three fiscal years closed prior to the date of accrual of the Tax. For this last purpose, dividends distributed and allocations to reserves will be counted as profits, excluding those for regularization or updating of balance sheets.

Shares or participations representing the capital or assets of collective investment institutions will be valued at the net asset value applicable on the accrual date of the last tax period that must be declared for this tax or, failing that, by the last published net asset value.. When there is no net asset value, the value of the net assets corresponding to the shares or participations resulting from the balance sheet corresponding to the last financial year closed prior to the aforementioned accrual date will be taken, unless proof of a different market value.

IV.V BENEFITS OF EMIGRATION TO A COUNTRY OF THE EUROPEAN UNION VS EMIGRATION TO A TAX HAVEN

In accordance with the contrariness of the community legal system concluded by the Court of Justice Judgment of March 11, 2004[133], the Spanish legislator was forced to modify the wording of Article 95 bis .6 bis of its internal regulation, leaving the wording as follows:

"When the change of residence occurs to another Member State of the European Union, or of the European Economic Area with which there is an effective exchange of tax information (...) the taxpayer may choose to apply to the capital gains regulated in this article the following specialties:

a) The capital gain must only be subject to self-assessment when any of the following circumstances occur within the ten years following the last year that must be declared for this tax:

1. That the shares or participations are transmitted inter vivos.

2. That the taxpayer loses the status of resident in a Member State of the European Union or the European Economic Area.

3. That the communication obligation is breached

The capital gain will be allocated to the last tax period that must be declared for this tax, carrying out, where appropriate, complementary self-assessment, without penalty or interest for late payment or any surcharge.

The self-assessment will be submitted within the period between the date on which any of the circumstances referred to in this letter a) occurs and the end of the immediately following tax declaration period.

b) For these purposes, the transfer value will be increased by the amount of the distributed profits or any other perceptions that would have determined a reduction in the entity's net worth after the loss of taxpayer status, unless such perceptions had been taxed by Non-Resident Income Tax.

---

133 *Resolution number C-9/02, ECLI:EU:C:2004:138 Lasteyrie du Saillant:* the European Court of Justice concluded that immediate collection of tax on capital gains not yet realized on the occasion of the transfer of assets to another Member State is contrary to the principle of freedom of establishment. Indeed, the immediate obligation of taxpayers in their Member State of origin to the taxation of unrealized gains is discriminatory if the same taxation is not applied in comparable national situations. Community law, however does not prohibit a Member State from calculating the income over which it wishes to preserve its taxing power, provided that this does not give rise to immediate taxation and that no additional conditions linked to the deferral are imposed, and that Take into account any decrease in the value of the assets that occurs after the transfer. Member States must therefore provide for an unconditional postponement of collection until the assets are actually realized.

c) The taxpayer must communicate to the Tax Administration, in the terms established by regulation, the option to apply the specialties provided for in this section, the capital gain revealed, the State to which he or she transfers his or her residence, indicating the domicile as well as subsequent variations, and the maintenance of ownership of the shares or participations.

d) In the event that the taxpayer again acquires the status of taxpayer without any of the circumstances provided for in letter a) of this section having occurred, the provisions of this article will be without effect.

In the event that the emigration occurs to a country that is outside the community territory that enjoys the consideration of "tax haven" or "non-cooperative jurisdiction", the capital gains will be attributed to the last tax period in which the taxpayer has his habitual residence in Spanish territory, and for its calculation the market value of the shares or participations referred to in section 3 will be taken on the date of accrual of said tax period.

In the event that the shares or participations are transferred in a tax period in which the taxpayer maintains such status, to calculate the capital gain or loss corresponding to the transfer, the market value of the shares or participations will be taken as the acquisition value. that would have been taken into account to determine the capital gain provided for in this article.

IV.VI THE COMPATIBILITY OF A TAX LIKE THE EXIT TAX IN RELATION TO THE JURISPRUDENCE OF THE COURT OF JUSTICE

While the idea that taxation in matters of direct taxation is the responsibility of each of the Member States is true, it is no less true that they must exercise it in accordance with respect for Community Law. These state powers are also reserved for the determination of the tax residence criteria for both natural persons and legal entities, a criterion that is especially relevant in matters of exit taxes, with the States being obliged to trust that the rest of the territories, such as time to the detriment of their own interests, they would collaborate with them in the collection of future income[134].

[134] SÁNZ GÓMEZ, R., *"Los traslados de residencia fiscal a otros Estados Miembros de la UE: problemas a la luz de las libertades Comunitarias y del Derecho de la Unión Europea",* Problemas actuales sobre la residencia fiscal: perspectivas interna, comunitaria e internacional, Documentos de Trabajo del Instituto de Estudios Fiscales, pp. 196-225, esp. p. 205.

One of the first rulings that at the community level addresses the problem of exit taxes, which has already been cited in this work and which the Court of Justice has repeatedly referred to in other subsequent resolutions, was the *Lasteyie du Saillant* ruling (case C-9/02), of March 11, 2004. The resolution analyzes the compatibility with Community law of a French rule by which taxpayers who have had their tax domicile in France for at least six of the last ten years they should be taxed, on the date they moved their domicile outside the country, on the capital gains of certain corporate rights, calculated as the difference between their value at the time of the transfer of residence and their original acquisition price. The deferral of payment was possible, but conditional on the presentation of a declaration within a certain period, the appointment of a representative domiciled in France and the provision of sufficient guarantees. In the event of transfer of the titles before five years have passed since the taxpayer's departure, the accrual of the tax would automatically occur.

The Court of Justice concluded that the provision represented an unjustified restriction on the freedom of establishment that could not be justified in the prevention of tax evasion since the rule applied to any taxpayer who owned a relevant percentage of the shares in a company and moved his domicile abroad, and that "the transfer of the domicile of a natural person outside the territory of a Member State does not imply, in itself, tax evasion" (paragraph 51 of the Judgment). The measure was therefore considered disproportionate. Neither the general interest objectives indicated by other governments accepted: neither the need to preserve tax collection nor the principle of coherence, as conceived at that time by the CJEU.

However, two years later and through the *Resolution N*[135], the Court of Justice qualified its position following the criterion applied by the OECD Model Convention, so that the Member States were competent, based on the principle of territoriality. and in the absence of multilateral measures for the distribution of tax power, to establish, through bilateral agreements or unilaterally, the corresponding distribution criteria; It is reasonable that latent capital gains are taxed in the country where they were generated.

However, in the same resolution a new issue of great importance is revealed, which is that *"the income tax collection system should take full account of the losses that may occur after the transfer of the taxpayer's domicile. , unless they have been taken into account in the host Member State"*

Its projection in article 95 bis of the LIRPF is found in the change of residence to an EU country with which there is an effective exchange of tax information. In this case, a right of option is

[135] Resolution nº C-470/04, *N*, of September 7, 2006.

established – again –. That is to say, it will be possible to pay taxes on the capital gains generated at the time of the change of residence or apply the following regime:

Firstly, there is an obligation to notify the Tax Administration of the exercise of the option for the alternative regime, the calculation of the capital gain and the State to which the residence is transferred. This communication, which is made through form 113[136], will be presented in the period between the date of the transfer and the end of the personal income tax self-assessment period corresponding to the first financial year in which the taxpayer did not have the status of taxpayer in the IRPF. Thus, if a displacement occurs on March 1, 2017 (therefore losing the status of resident already in that tax period, taking into account the 183-day rule), form 113 must be submitted between March 1, 2017 and June 30, 2018.[137]

IV.VI.I RULES THAT ALLOW THE COMPUTATION OF DISABILITIES IN THE EVENT OF SUBSEQUENT TRANSMISSION

The Law requires that the amount of the capital gain be reduced by the positive difference between the market value of the shares or participations at the time of accrual of the last tax period in which the taxpayer had such status, and their market value. transmission. Thus, if the market value based on which the capital gain was calculated was 100, and at the time of the transfer it was 90, a capital loss has occurred. The difference between 100 and 90 is a positive difference (10) that expresses said loss and will be subtracted from the capital gain. It will be common, as RAMÍREZ GÓMEZ points out, that the handicap is due to "a prior distribution of benefits"[138]. For these purposes, the standard provides that the transfer value is increased by the amount of distributed profits or other perceptions that would have determined a reduction in the entity's net worth after the loss of taxpayer status, unless such perceptions would have been taxed by the IRNR. It can even be considered that the Spanish regulations are more favorable than what the CJEU requires, given that the *ruling N* requires such disadvantages to be taken into account only to the extent that they have

[136] Order HAP/2835/2015, of December 28, which approves model 113 for the communication of data related to capital gains due to a change of residence when it occurs to another Member State of the European Union or the European Economic Area with effective exchange of tax information, the form and deadline for its presentation is established and other tax regulations are modified (BOE no. 312, of December 30, 2015).

[137] SÁNZ GÓMEZ, R., *"Los traslados de residencia fiscal a otros Estados Miembros de la UE: problemas a la luz de las libertades Comunitarias y del Derecho de la Unión Europea",* Problemas actuales sobre la residencia fiscal: perspectivas interna, comunitaria e internacional, Documentos de Trabajo del Instituto de Estudios Fiscales, pp. 196-225, esp. p. 209.

[138] RAMÍREZ GÓMEZ, S., *"Las ganancias patrimoniales por cambio de residencia: el nuevo impuesto de salida en el IRPF"*, en Cubero Truyo, Antonio (dir.), El Impuesto sobre la Renta de las Personas Físicas. Homenaje al Profesor Dr. D. Juan Calero, 2016, págs. 371-391, esp. p. 386.

not been taken into account again by the State of home. However, in Spain the calculation of disabilities is not subject to any type of condition.

Obviously, a unilateral rule cannot resolve double taxation problems (for example, the determination of the acquisition value that must be computed by the State of destination) although it is worth highlighting that, for the purposes of the Non-Resident Income Tax (IRNR), Article 26.4 of the Law regulating said tax provides that if Article 95 bis LIRPF has been applied to a subject who later becomes a taxpayer for the IRNR, if he transfers the corporate shares affected by the exit tax, it must be taken as acquisition value the market value used as a reference when applying article 95 bis LIRPF[139].

[139] SÁNZ GÓMEZ, R., *"Los traslados de residencia fiscal a otros Estados Miembros de la UE: problemas a la luz de las libertades Comunitarias y del Derecho de la Unión Europea",* Problemas actuales sobre la residencia fiscal: perspectivas interna, comunitaria e internacional, Documentos de Trabajo del Instituto de Estudios Fiscales, pp. 196-225, esp. p. 210.

V. EFFECTIVE TAX RATE IN SPAIN

Once the personal income taxation model articulated by the Spanish legal system has been analyzed, as well as the basic scheme and regime for imputation of income from work and capital in the income tax return of an average taxpayer, it is time to assess in depth the effective type of tax that each taxable person who is a tax resident in Spain must pay. To do this, we will carry out an analysis that will fundamentally take into account four variables:

1.Annual volume of income of the taxpayer,

2. Integration of income and progressiveness regime of the tax base in which they are integrated,

3. Source from which the taxpayer's income comes and,

4. Personal conditions of the taxable person

V.I EFFECTIVE TAX ON INDIVIDUALS WHO RECEIVING ONLY LABOUR INCOMES

In Spain, as in many of the countries that make up the OECD, employees with higher incomes may face effective Income Tax rates that can range between 40 and 50%, although in practice Only high-level athletes and senior managers will have to face these high rates. The comparison between the type of effective taxation of several subjects in identical personal circumstances (single employee without children or dependents) will be carried out taking into account the tax pressure on a taxpayer who monthly earns a salary equivalent to the minimum wage, three times the minimum wage, five times the minimum wage and 20 times the minimum wage.

This graph shows the percentage of increase in taxation for a taxpayer as the amount of salary to be received increases, showing us in this way how the greatest percentage increase occurs in the first instances when the individual begins to collect from one to three times the Minimum Wage, while this growth is reduced as their remuneration increases[140].

The percentage of increasing variates a lot between the different countries. In most OECD countries, high-income wage earners face higher ETRs than average wage earners, although the difference in tax burdens varies across countries. The largest differences between average income earners and those earning 20 times the average wage are observed in Japan (29 percentage points) and Israel (28 percentage points)[141], both of which operate highly progressive PIT systems. Most Eastern European and Baltic countries show relatively small differences in ETRs between average income earners and those earning 20 times the average wage (less than 10 percentage points) due to less progressive tax rate schedules. In Germany, differences between average income earners and those earning 20 times the average wage are also comparably low (9 percentage points), although tax rates are highly progressive at lower income levels (i.e. for taxpayers whose income is below the average wage). In most OECD countries, ETRs increase steadily across income levels. For seven countries, ETRs experience a sharp increase between taxpayers earning 1 and 3 times the average wage (Finland, Greece, Ireland, Iceland, Italy, Luxembourg and Sweden), while in Chile, Colombia and Costa Rica, the sharp increase in ETRs occurs between taxpayers earning 5 and 20 times the average wage.

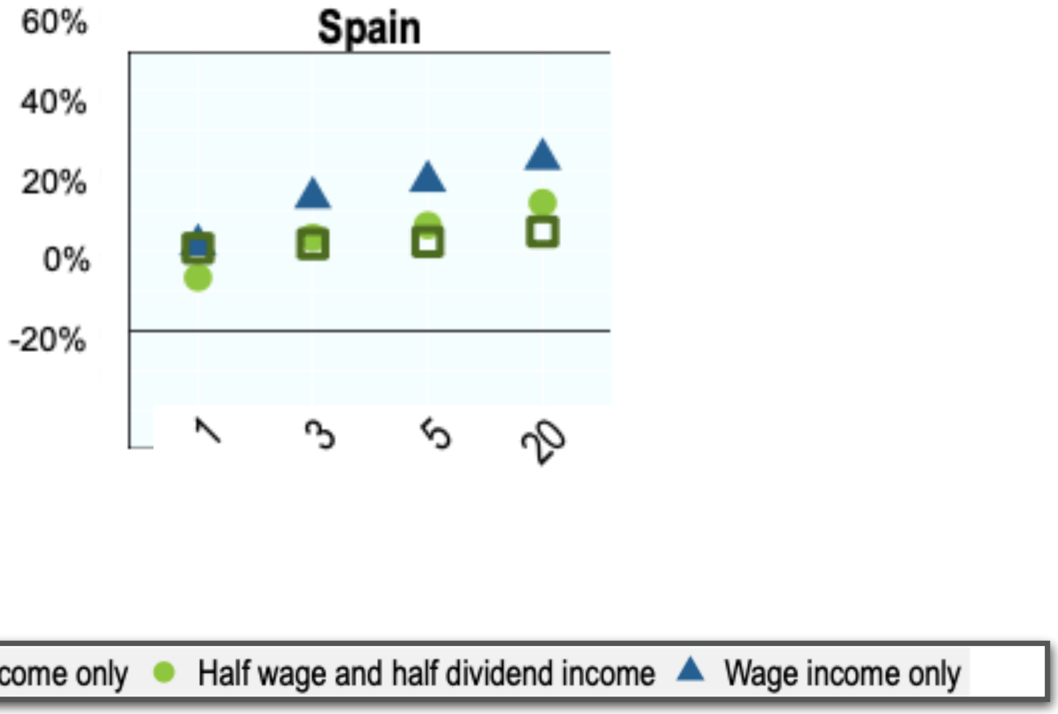
V.II EFFECTIVE TAX RATE ION DIVIDEN INCOMES COMPARED TO WAGE INCOMES

In Spain, and this is the general situation in all OCDE countries members, dividens tributation is more favourably than wage income at the personal level because the progressive rate is lower than in the case of labour incomes which are includes in the General Base of the Tax. This section compares the ETRs for an individual earning only wage income, only dividend income or a combination of wage and dividend income.

---

[140] OCDE, THE TAXATION OF LABOUR VS. CAPITAL INCOME: A FOCUS ON HIGH EARNERS, 2023.

[141] The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

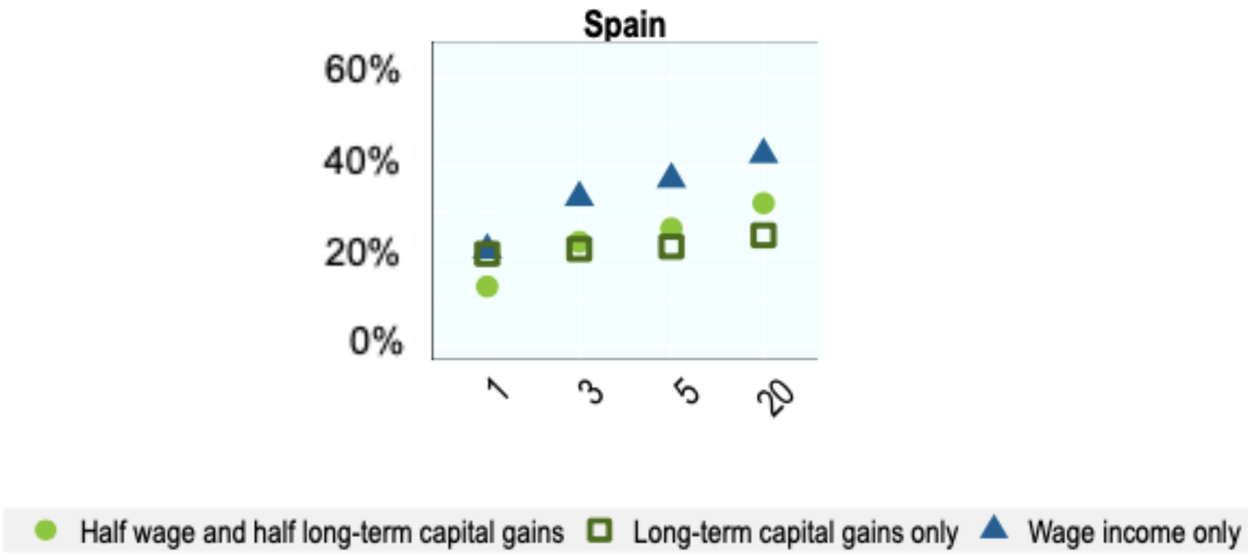


The conclusion of this study is clear: dividend income in Spain is subject to a more favourable progressive tax schedule than wage income as in United Kingdom and United States, but sin not as favourable as other OCDE countries where taxpayers can choose the most favourable tax treatment, between a flat dividend tax rate or taxation under a progressive PIT schedule (Germany, France, Japan or Portugal) or where dividend income attracts tax exemptions or special deductions that do not apply to wage income (Belgium, Finland, France[142], Iceland, Luxembourg, Portugal or Türkiye). In some other countries like Estonia or Latvia dividends are not taxed at the personal level if CIT was paid at the company level.

V.III EFFECTIVE TAX RATE ON CAPITAL GAINS ON SHARES COMPARED TO WAGE INCOME

In Spain, Individuals who receive income from capital gains on shares face lower ETRs than people who earn only wage income.

[142] Exemption applies only if taxpayers opt for progressive taxation; it is not available when dividends are taxed under flat rates.



In the same way that dividend incomes, income from capital gains on shares may be subject to a more favourable progressive tax schedule than wage income. However, the taxation of this type of incomes in Spain is not as favourable as in other OCDE countries where income from capital gains on shares may attract exemptions or special deductions that do not apply to wage income. These include the full exemption of some capital gains from shares (Chile, Korea) or long-term capital gains (Czech Republic, Luxembourg, Slovak Republic, Türkiye), or the exemption of a portion of capital gains (Australia, Canada, France, Iceland, Lithuania, Ireland, United Kingdom).

The effective tax rate[143] differential between individuals who receive wage income only compared to some of their income as capital gains increases across income levels in almost all OECD countries. The difference in ETRs between income compositions increases significantly across income levels in countries that apply progressive tax rates to wage income while capital gains are taxed at a flat rate (e.g. Japan) or tax exempt (e.g. Chile, Türkiye). In contrast, ETR differentials remain relatively constant in countries such as those that apply flat PIT rates to wage income (e.g. Estonia, Hungary) and countries that allow for a deduction of a fixed portion of capital gains income (e.g. Australia, Canada).

ETR differentials between wage and capital gains income vary across countries. Figure 7 focuses on higher income earners, showing differences in ETRs for hypothetical individuals earning only wage and only capital gains income at five times the average wage. It shows that the difference is particularly notable in countries such as Belgium, Luxembourg, and Türkiye, where long-term capital gains benefit from full exemptions. Colombia, on the other hand, has higher effective tax

143 In the same document, ETR.

rates on capital gains than on wage income. In Colombia, similar tax rates apply to wage income and long-term capital gains, and only minor provisions reduce the tax base[144].

V.IV STYLISED EFFECTIVE TAX RATE AT THE PERSONAL AND FIRM LEVELS

Before being taxed at the personal level, income is often taxed at the firm level, adding to the total tax burden on labour and capital. Nearly all countries apply employer-level taxes on wage income, typically in the form of employer SSC[145]s or payroll taxes. Employer SSCs are payments for employees' social benefits such as pensions and unemployment insurance, calculated based on employee characteristics such as salary, age and industry. Payroll taxes are a portion of a company's wage bill or a fixed amount per person, which do not confer entitlement to social benefits. All OECD countries also levy CIT[146] on companies' profits. As discussed in section 3, employer-level SSCs, payroll taxes and CIT on company profits contribute to the total tax burdens on labour and capital.

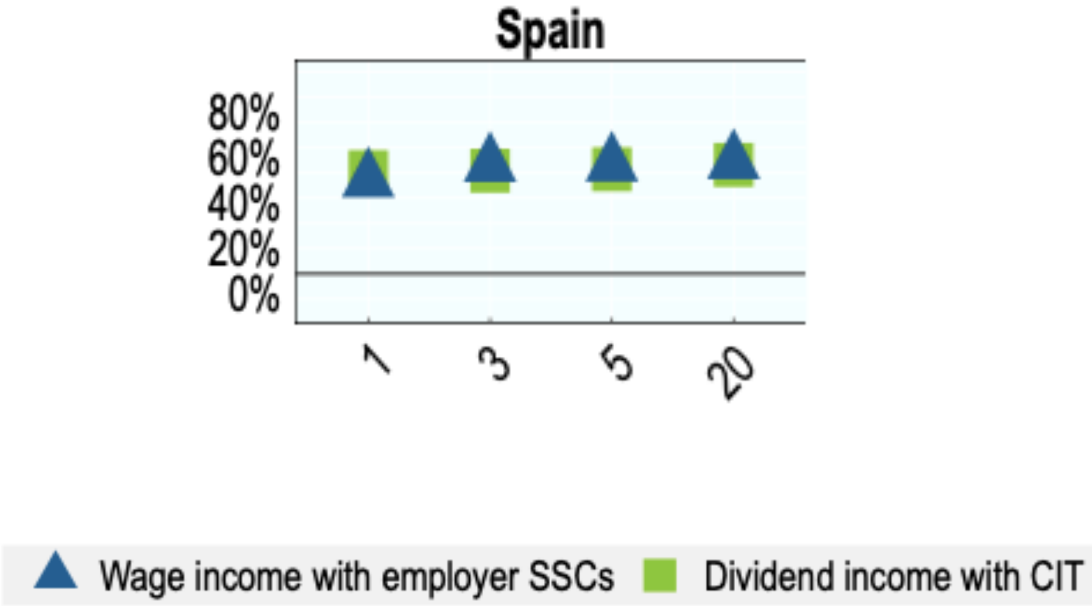
Integrating firm-level taxes in effective tax rate calculations contributes to the comparison of taxes on labour and capital income. This paper has so far calculated ETRs based on personal-level taxes only. However, excluding firm-level taxes from the analysis presents a partial picture of the tax burdens on labour and capital. It also disregards important cross-country heterogeneity regarding the split of income taxation between individuals and firms. For example, some countries do not tax capital income at the individual level if it has been taxed at the firm level. Others compensate individuals at the personal level for the tax paid at the firm level, such as through dividend imputation credits.

Stylised integrated effective tax rates for wage and dividend income, 2021

[144] OCDE, THE TAXATION OF LABOUR VS. CAPITAL INCOME: A FOCUS ON HIGH EARNERS, 2023, p. 32.

[145] Social Security.

[146] Companies Tax.



In Spain, employer SSCs are capped, so employer- level taxes are smaller shares of the total cost of labour as that cost increases. This makes the total tax burden on labour income less progressive, or even regressive, compared to personal-level taxation. In some countries this results in a total tax burden on labour income that declines after a certain wage level (e.g. in Greece, Italy, and Türkiye), is generally flat across the income distribution, being this last the Spanish situation.

VI. NET WEALTH TAXES

VI.I CONCEPT, DESIGN, GOVERNMENT COMPETENCE AND TAXABLE UNIT OF NET WEALTH TAX

In Spain there are two taxes that directly tax the assets of taxpayers: the Wealth Tax (hereinafter IP) and the Temporary Solidarity Tax on Large Fortunes (hereinafter ITSGF).

That there are two taxes that levy the same taxable event is mainly explained by a fundamental reason, and that is that the territorial tax level of both taxes is different since the Wealth tax is a regional tax (each Autonomous Community decides, within a few limits, whether it is taxed or not and how it is done) while the ITSGF is a temporary tax applicable to the years 2022 and 2023 that has been introduced with the purpose of increasing collection and harmonizing regional regulations by taxing the net assets of natural persons above 3,000,000 euros.

That there are taxes of this nature in Spain is fundamentally explained because the equity of a tax system requires the maintenance of personal taxation on wealth in the 21st century, due to the fact that in our territory there are high levels of concentration of wealth, inequality of distribution of income and wealth and accumulation of savings flows and free intergenerational wealth transfers, so the reasons of equity and better distribution of income and wealth must be taken into account in favor of maintaining the Net Wealth Tax[147].

Regarding the level of government that imposes the tax, it is necessary to differentiate between both taxes:

- Net Wealth Tax: regional level, each Autonomous Community decides how to apply it.

- Temporary Solidarity Tax on Large Fortunes: state level. This tax has been articulated on the basis of avoiding the so-called "fiscal dumping" between the Autonomous Communities, so that taxpayers who reside in an Autonomous Community where the Wealth Tax is very low or non-existent will be taxed on their net assets by this tax. . As for residents in CCAA that apply the Wealth Tax, they will pay taxes on their wealth through this and may, in any case, deduct the amount paid for this concept in a possible obligation to submit a declaration by the ITSGF.

---

[147] GARCÍA DE PABLOS, JESÚS FÉLIX, "Impuesto del Patrimonio sobre las Grandes Fortunas", Revista Quincenal Fiscal, ISSN 1132-8576, Número 1-2 ENERO (2023), Año 2023.

Given that the Temporary Solidarity Tax on Large Fortunes is a complementary tax to the Wealth Tax, from the fee resulting from the application of the rules of the Temporary Tax on Large Fortunes the taxpayer may deduct the Wealth Tax fee. of the exercise effectively satisfied.

Finally, in the case of the Wealth Tax, the taxable unit is natural persons, since Law 19/1991 on Wealth Tax provides that natural persons who have their habitual residence in Spanish territory are taxable persons by personal obligation. , the tax being required for the entire net assets regardless of the place where the assets are located or the rights can be exercised. Furthermore, by royal obligation, any other natural person will also be liable for the tax for the assets and rights of which they are the owner when they were located, could be exercised or had to be fulfilled in Spanish territory[148].

The taxable unit of this tax is the same as in the case of the Personal Income Tax, since in this case the LIRPF indicates that natural persons who, in general, have their habitual residence are taxpayers for this tax in Spanish territory[149] (Article 8.1 a) of Law 35/2006 of Personal Income Tax).

Características básicas del IP a nivel territorial (2021)

Comunidad Autonoma	Mínimo exento	Vivienda	Tipo gravamen	Tope gravamen	Bonificaciones generales
Andalucía	700.000	300.000	0,22%-2,76%*	60%-80%	
Aragón	400.000	300.000	0,20%-2,5%	60%-80%	
Asturias	700.000	300.000	0,22%-3,00%	60%-80%	
Baleares	700.000	300.000	0,28%-3,45%	60%-80%	
Canarias	700.000	300.000	0,20%-2,5%	60%-80%	
Cantabria	700.000	300.000	0,24%-3,03%	60%-80%	
Castilla-La Mancha	700.000	300.000	0,24%-3,3%	60%-80%	
Castilla-León	700.000	300.000	0,20%-2,5%	60%-80%	
Cataluña	500.000	300.000	0,21%-2,75%	60%-80%	
Extremadura	500.000**	300.000	0,30%-3,75%	60%-80%	
Galicia	700.000	300.000	0,20%-2,5%	60%-80%	
Madrid	700.000	300.000	0,20%-2,5%	60%-80%	BONIF. 100%
Murcia	700.000	300.000	0,24%-3,00%	60%-80%	
La Rioja	700.000	300.000	0,20%-2,5%	60%-80%	BONIF. 50%
C. Valenciana	500.000***	300.000	0,25%-3,12%	60%-80%	
Navarra	550.000	250.000	0,16%-2,00%	65%-65%	
Guipuzcua	700.000	300.000	0,25%-2,5%		
Álava	800.000	400.000	0,20%-2,5%	65%-75%	
Vizcaya	800.000	400.000	0,20%-2,00%	65%-75%	

* En 2022 el tipo máx. será 2,5%. ** Exención por discapacidad hasta 800.000 €, según grado. *** Exención por discapacidad: 1.000.000 €.

Fuente: Agencia tributaria. Ministerio de Hacienda. Elaboración propia.

148 Law 19/1991, Article 5.1.

149 Personal Income Tax Law, Article 8.1.a).

Actually, our country is not only the unique OECD country where a similar Tax is applied, and in the next table elaborated by the Experts Tax Commission of Spain we can see an instructive comparison between different countries:

El IP en la OCDE

IMPUESTO SOBRE EL PATRIMONIO (en diversos instrumentos)				
PAIS	NOMBRE	FECHA INNTRODUCCIÓN	MÍNIMO EXENTO (individuos)	MÍNIMO EXENTO (parejas)
Noruega	*Formuesskatt*	1892.	157.833	315.666
España	*Impuesto sobre el Patrimonio*	1977 suprimido en (100% de bonificación) en 2008 y re-implementado en 2011	700.000	1 400 000
Suiza	*Vermögenssteuer*	Introducción gradual en todos los cantones desde entre 1840 y 1970	67.550	135 100
Austria	*Vermögensteuer*	1954 - 1994	Sin umbral	Sin umbral
Francia1	*Impôt sur les grandes fortunes*, renombrado *Impôt de Solidarité sur la Fortune*	1982- Abolido en 1986 pero reintroducido en 1989. Derogado en 2018	1.300.000	1.300.000
Francia2	*Impôt sur la fortune immobilière- IFI. Sustituye al ISF*	2018-….	800.000 Algunos activos como la vivienda habitual tinen reducciones (30%)	800.000 Algunos activos como la vivienda habitual tinen reducciones (30%)
Dinamarca	*Formueskat*	1903 - 1997	250.000	500 0001
Finlandia	*Varallisuusvero*	1919 - 2006	61.355	×
Alemania	*Vermögensteuergesetz*	1952 - 1997	473.248	630 997
Irlanda	Wealth Tax	1975 - 1978	88882	126 974
Luxemburgo	Impôt sur la fortune (Net wealth tax)	1934 - 2006	Sin umbral	Sin umbral
Países Bajos	Vermogensbelasting	1965 - 2001	90.756	113 445
Suecia	Förmögenhetsskatt (Wealth Tax)	1947, changed significantly in 1991, repealed in 2007	166.214	221 619
Italia	I. bb. Inmuebles extranjero	2012-....		
	I. act. Financieros extranjero			
Luxemburgo	Net wealth tax (NWT)	Vigente para personas jurid.		
Portugal	*Imposto municipal sobre imóveis*	2016.personas físicas y jurídicas	600.000	1.200.000
Bélgica	Tax on securities accounts	2021.Personas físicas y jurídicas	1.000.000 euros	

Fuente: The Role and Design of Net Wealth Taxes in the OECD (2018c). Elaboración propia.

VI.II NET WEALTH TAX EXEMPTIONS: ASSETS AND TAXABLE UNIT EXEMPTS

The following assets that are part of the taxpayer's personal assets will be exempt from the tax:

1. The assets that make up the Spanish Historical Heritage, registered in the General Registry of Assets of Cultural Interest or in the General Inventory of Movable Property. The assets that are part of the Historical Heritage of the Autonomous Communities, which have been qualified and registered in accordance with the provisions of their regulatory standards, will also be exempt.

2. Objects of art (paintings, sculptures, drawings, engravings, lithographs or other analogues) **and antiques** (movable, useful or ornamental property that is more than one hundred years old and whose fundamental original characteristics have not been altered by modifications or repairs carried out during the last hundred years), as well as the works of art themselves while they remain in the author's estate.

3. Domestic trousseau, understood as personal and household effects, household utensils and other movable property for private use of the taxable person, except jewelry, luxury furs and vehicles, boats and aircraft; as well as art objects and antiques.

4. The rights of economic content of beneficiaries of pension plans, those that correspond to premiums paid to the insured pension plans provided for in the Personal Income Tax Law, the rights of economic content derived from the premiums paid by the taxpayer to collective insurance contracts, the economic content rights that correspond to premiums paid to private insurance that covers dependency and the economic content rights derived from contributions to pan-European individual pension products.

5. The rights derived from intellectual or industrial property while they remain in the author's estate and in the case of industrial property are not affected by business activities.

6. Securities whose income is exempt under the provisions of the Non-Resident Income Tax Law and Tax Regulations.

7. The assets and rights of natural persons necessary for the development of their business or professional activity, provided that this is exercised in a habitual, personal and direct manner by the taxable person and constitutes their main source of income.

8. Full ownership, bare ownership and the right of lifelong usufruct over shares in entities, whether listed or not, provided that the entity's main activity is not the management of movable or real estate assets, that the participation of the taxable person in the capital of the entity is at least 5 percent computed individually, or 20 percent jointly with his or her spouse, ascendants, descendants or second-degree collateral and that the taxpayer effectively exercises management functions in the entity, receiving This is a remuneration that represents more than 50% of all business, professional and personal work earnings.

Regarding the tax exemption per taxable unit, will be exempt from tax when the value of the assets of the natural person who owns them, whether or not they are exempt from tax, and computed without considering the charges and encumbrances that reduce their value, nor the debts or personal obligations for which the person must be responsible. owner thereof, is greater than 2,000,000 million euros. In the case of non-residents who pay this tax due to real obligation, they will only take into account the value of the assets and rights they own that are located, could be exercised or must be fulfilled in Spanish territory.

However, this is not a limit that must be taken into account in many cases since even if the total value of your assets or rights is less than 2,000,000 euros, you will have to submit the Wealth Tax declaration if the amount resulting goes out to enter. This will occur in the majority of cases in which the value of the net assets of the taxable person is greater than 700,000 euros but, at the same time, it greatly complicates the verification work of the Tax Administration[150]. However, this same administrative work is favored for the purposes of other taxes, since the Wealth Tax would help the administration of the Income Tax and the Inheritance and Donation Tax, by allowing verification of the income and assets declared in said taxes. , as well as by highlighting the income from the ownership of different assets and rights, as well as the capital gains made by altering the composition of the taxpayers' assets. At the same time, providing the value of the assets of the taxpayers at the beginning and end of each year, which would facilitate the control of their income.

In the case of the Temporary Tax on Large Fortunes, the minimum exempt is the same, 700.000 euros. It should be noted that in this tax, of a temporary nature, at first Non-Residents were excluded from the benefits that Residents did enjoy; benefits among which were the minimum tax exemption. However, as of December 28, 2023, through **Royal Decree-Law 8/2023,** the Government has approved different measures of a fiscal nature. And in particular, it has decided to extend the aforementioned exemption of €700,000 to non-resident taxpayers of the Large Fortunes

[150] GARCÍA DE PABLOS, JESÚS FÉLIX, "Impuesto del Patrimonio sobre las Grandes Fortunas", Revista Quincenal Fiscal, ISSN 1132-8576, Número 1-2 ENERO (2023), Año 2023.

Tax. And, furthermore, it has done so with retroactive effects, so that they will not only be able to benefit from this exemption in their 2023 (and subsequent) declaration, but they will also be able to rectify their 2022 declaration (submitted in July through the model 718) and request the appropriate tax refund.

VI.III TIMING ISSUES UNDER THE NET WEALTH TAX

In general, in relation to the Wealth tax, the assets and rights will be valued in one way or another depending on the type of asset in question. For example:

a) Real estate: they will be computed at the highest value between the cadastral value, the value determined or verified by the Administration for the purposes of other taxes, or the acquisition value.

b) Assets and rights of natural persons affected by business activities: value resulting from their accounting, being the difference between the real assets and the required liabilities, provided that the former complies with the provisions of the Commercial Code.

c) Deposits in a current or savings account, demand or term: balance shown on the date of accrual of the Tax.

d) Securities representative of the transfer of own capital to third parties: in the case of securities traded on organized markets, according to their average trading value in the fourth quarter of each year. In the event that these are not securities that are traded in organized markets, they will be valued at their nominal value.

e) Values representative of the participation in own funds of any type of entity: if they are traded on any organized market, they will be computed by their average trading value in each quarter of the year. In the event that they are representative securities that are not traded on any organized market, their valuation will be carried out at the theoretical value resulting from the last approved balance sheet.

f) Life Insurance, and temporary or life annuities: their valuation will be carried out at the theoretical value resulting from the last approved balance sheet.

g) Jewelry, luxury furs and vehicles, boats and aircraft: market value at the time of accrual of the Tax.

h) Real rights, administrative concessions for the exploitation of goods and services and contractual options: valuation in accordance with the criteria indicated in the Property Transfer Tax and Documented Legal Acts Law.

i) Other goods and rights of economic content: market price on the date of accrual of the tax.

VI.IV DEDUCTIBILITY RULES AND TAX RATES UNDER THE NET WEALTH TAX

To determine the Tax Base of the Tax, the difference between the value of the assets owned by the taxable person and the charges and encumbrances of a real nature will be taken into account, when the value of the respective assets or rights decreases, except in the case of charges and encumbrances that correspond to the exempt assets. In cases of real obligation to contribute, only the charges and encumbrances that affect the assets and rights that reside in Spanish territory or can be exercised or must be fulfilled therein will be deductible[151]. The tax rates of the Net Wealth Tax are those reproduced in the following table:

Liquidable Base - Up to euros	Tax Fee – Euros	Rest of Liquidable Base – Up to euros	Tax Rate – Percentage
0,00	0,00	167.129,45	0,2
167.129,45	334,26	167.123,43	0,3
334.252,88	835,63	334.246,87	0,5
668.499,75	2.506,86	668.499,76	0,9
1.336.999,51	8.523,36	1.336.999,50	1,3
2.673.999,01	25.904,35	2.673.999,02	1,7
5.347.998,03	71.362,33	5.347.998,03	2,1
10.695.996,06	183.670,29	Onwards	3,5

The tax rates of the ITSGF are those reproduced in the following table:

Liquidable Base – Up to euros	Tax Fee – Euros	Rest of Liquidable Base – Up to euros	Tax Rate – Percentage
0,00	0,00	3.000.000,00	0,00
3.000.000,00	0,00	2.347.998,03	1,7
5.347.998,03	39.915,97	5.347.998,03	2,1
10.695.996,06	152.223,93	Onwards	3,5

[151] Article 9 section. 4 of the Wealth Tax Law.

The full quota of the planned Temporary Solidarity Tax of Great Fortunes, together with the quotas of the Personal Income Tax and the Wealth Tax, for taxpayers subject to personal obligation, may not exceed 60% of the sum of the tax bases of the Personal Income Tax (IRPF). Therefore, the current rules on the limit of the full amount of the Wealth Tax are applied, so that when the sum of the full amounts of the Personal Income Tax, the Wealth Tax and the new tax exceeds the 60% of the Personal Income Tax quota, the Large Fortunes Tax quota will be reduced until this limit is reached, without the reduction being able to exceed 80%.[152]

VI.V TAX ON LARGE FORTUNES CONSTITUTIONALITY: analysis of STC No. 149/2023 of November 7, 2023.

On February 1, 2023, the unconstitutionality appeal filed by the Government Council of the Community of Madrid against art. 3 of Law 38/2022, of December 27, for the establishment of temporary taxes on energy and credit institutions and financial credit establishments and which creates the temporary solidarity tax on large fortunes.

Beyond the formal defects that support the appeal in terms of procedure, what is really relevant to us is the possible unconstitutionality of the tax in terms of its taxable fact overlapping with the pre-existing wealth tax, the collection of which is assigned to the communities. autonomous. While this last tax taxes the assets of natural persons above the exempt minimum of €700,000 (or the exempt minimum set by each autonomous community), the temporary solidarity tax of large fortunes is required from a threshold of €3,000,000, so both share the same taxable event. Therefore, the basis of the two taxes is the same and they tax the same manifestation of the ability to pay. However, the collection of the wealth tax belongs to the autonomous communities, as it is a transferred tax, while that of the new tax corresponds to the State since, according to art. 3.2.2 of Law 38/2022, this cannot be transferred.

Therefore, as far as this matter is concerned, what arises regarding the substance of the matter is the possible violation of two constitutional precepts: the principle of economic capacity and the principle of non-confiscation enshrined in art. 31.1 EC. This violation is justified by the fact that, although the appellant believes that ownership of assets exceeding €3,000,000 is a valid index of economic capacity, he considers that, as stated in STC 182/2021, of October 26, FJ 2 (in relation to

[152] In the case of joint taxation in Personal Income Tax, the full amounts of the three taxes will be added, the full amounts of the Wealth Tax and the Large Fortunes Tax will be added and, where appropriate, the amount will be reduced. quota of the latter tax in proportion to the respective quotas of the taxpayers in the Great Fortunes Tax.

the tax on the increase in value of urban land), the current economic context prevents obtaining sufficient returns to meet the tax rates of the temporary solidarity tax on large fortunes.

Regarding the principle of economic capacity, art. 31.1 CE establishes the duty of everyone to contribute "to the maintenance of public expenses, in accordance with their economic capacity. As the "foundation" of the taxation, this principle requires taxing a factual budget that reveals economic capacity (SSTC 276/2000, of November 16, FJ 4, and 62/2015, of April 13, FJ 3 c), sufficient with that "said economic capacity exists, as real or potential wealth or income in the generality of the assumptions contemplated by the legislator when creating the tax, so that that constitutional principle remains safe. In this regard, the doctrine of the Spanish Constitutional Court has considered that the main manifestations of economic capacity are income, consumption and assets.

In relation to the constitutional prohibition of confiscation of art. 31.1 CE[153], understood in its traditional sense, "obliges not to exhaust taxable wealth—substratum, base or requirement of all taxation—under the pretext of the duty to contribute, which would occur if, through the application of the various tax figures in force, the to deprive the taxable person of his income and properties, which would also be ignoring, through indirect tax means, the guarantee provided for in art. 33.1 of the Constitution [the right to private property]."

For all the above, the Constitutional Court ends up concluding the following:

a) Regarding the violation of the principle of non-confiscatorial nature, the lawsuit links said violation to the fact that the rates of the temporary solidarity tax of large fortunes are excessive in relation to the profitability generated by the taxed assets. But this argument does not take into account that the temporary solidarity tax on large fortunes is a tax on wealth, which would have a confiscatory effect only if its value was exhausted, not the income generated by the taxed assets, which is a distinct manifestation of economic capacity.

b) Regarding a possible violation of the principle of economic capacity, the Constitutional Court also ends up arguing that this second complaint must be rejected since the argument that the tax rates of the temporary solidarity tax of large fortunes are too high in relation to the current profitability of different financial assets, is a parameter unrelated to the economic capacity index levied by the contested tax. This is so since the tax falls on the ownership of assets (just like, for

[153] Spanish Constitution Law.

example, the tax on real estate or the tax on mechanical traction vehicles), not on the income they generate, which is already taxed in other taxes.

VI.VI. THE NET WEALTH TAX IN THE EUROPEAN UNION

In recent years there have been many voices in the European Union that have advocated the articulation, at European level, of a tax that would tax the assets of those who have the most. In fact, the latest report on global tax evasion from the European Union Tax Observatory addresses this issue in depth in Chapter 5 dedicated to "POLICIES TO COLLECT THE TAX DEFICIT OF MULTINATIONALS AND WEALTHY INDIVIDUALS".

On this chapter, the Tax Observatory focus on that globalization and domestic policy changes over the last four decades have tended to benefit the wealthy, while the changes in the tax system have, if anything, exacerbated rather than curbed the rise of inequality. In order to reconcile globalization with tax justice the Tax Observatory proposes six policies that can be implemented, and one of the specific proposals that they make is to introduce a new global minimum tax for the world's billionaires, mimicking what was achieved for multinational companies.

Talking about a coordinated global minimum wealth tax on the very rich, it's esencial to say that minimum taxes are the most powerful tools to address loopholes in existing tax systems because they ensure that no matter the specific exemptions, deductions, or tax avoidance strategies rich taxpayers may use, the amount of tax effectively paid cannot fall below a certain amount. The most logical point of reference for this tax is wealth itself, because income and consumption flows are not well defined at the very top of the distribution, while wealth – the current market value of ones' assets, net of debts – is well-defined.[154]

The inform show how a 2% minimum tax on global billionaires would generate about as much revenue as the Pillar 2 global minimum tax on multinational profits of 15%: in both cases around $220 billion if it had been implemented in 2023. However, a global minimum tax on billionaires can raises specific issues as the valuation of private businesses or the absence of enough liquidity to pay them, forcing them to liquidate assets. Nevertheless, this fact shouldn't be a problem to them

[154] PIKETTY, TOMAS; SAEZ, MANUEL; ZUCMAN, GABRIEL (2023) "Rethinking Capital and Wealth Taxation", Oxford Review of Economic Policy, 2023, vol. 39, p. 575-591.

Billionaires routinely obtain loans secured against their wealth, so they could do the same to pay the minimum tax if they wanted to.

VII. TAX POLICY AND REFORMS

VII.I INTRODUCTION

The Spanish tax system faces a set of present and future challenges, so it is essential to identify these challenges with the aim of channeling tax measures and reforms in order to facilitate their achievement. Among these challenges, it is worth highlighting some as the most fundamental:

- Sustainability and sufficiency of public collection in relation to the level of spending and the problem of population aging,

- Energy transition and mitigation of the impact of climate change,

- Achievement of vertical equity of the entire tax system in a context of increasing income inequality and greater concentration of wealth,

- Digitalization of the economy and international mobility of tax bases

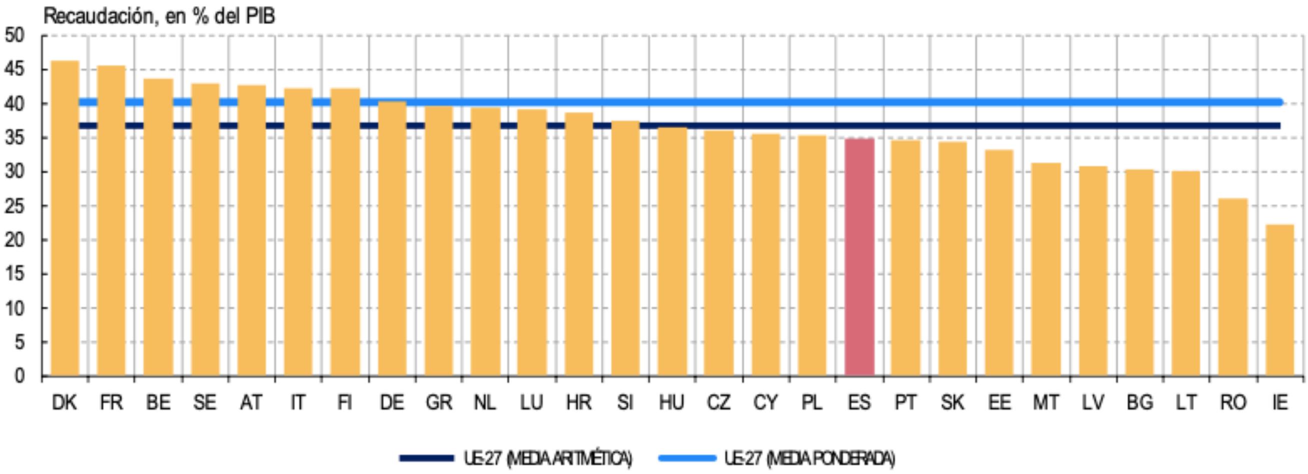
Therefore, the planned tax reforms must be aimed at correcting the imbalances presented by the challenges facing the Spanish economy, goals that, in any case, must be put in relation to the tax and collection structure of our country.

VII.II SPANISH TAX STRUCTURE

According to the data provided by the European Commission in its publication Taxation Trends in the European Union (European Commission, 2021c), tax collection in Spain in 2019 stood at 34.8% of GDP, compared to 36.7%. of the arithmetic average and 40.1% of the weighted average of the EU-27[155].

[155] Social contributions are included as tax income, except for imputed contributions.

Gráfico I.3
Ingresos tributarios en la UE-27 (2019)



Fuente: European Commission (2021c).

Income derived from taxation on labour[156] income represented 50.5% of income in Spain in 2019, remaining the main tax source over time (50.3% of income in the average of the reporting period 2007 to 2019). Taxation on consumption[157] represented 27% of income in 2019, while the collection of taxes on capital accounted for 22.5% of income. The relative weight of taxation of labor income among all tax revenues in Spain was 1.2pp below the weighted average of the EU-27, but 2.8pp above the aritmetic average. In that same year, income derived from consumption taxation is 0.8pp below the weighted average and 6.9pp below the arithmetic mean. Finally, the relative weight of

---

[156] Taxation on labor includes mandatory effective social contributions on employers and employees, taxes on total wages and payroll, as well as the part of the tax on personal or household income that is related to labor income but also includes other sources of income associated with non-employed work such as those of pensions or the unemployed. It should be taken into account that the tax on personal income and self-employed contributions are included not as a tax on work but on capital.

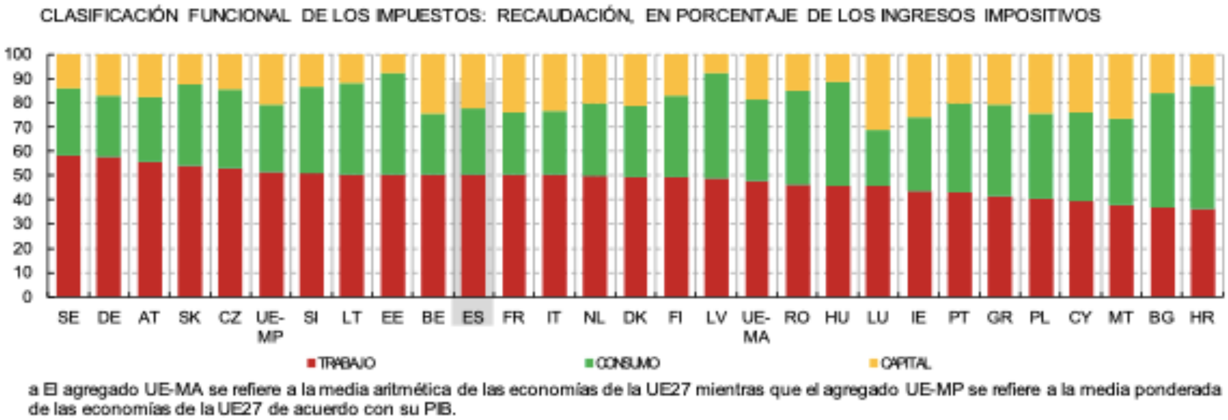
[157] Under the consumption tax heading, value-added taxes are included (in the Spanish case the VAT and the Canary Islands IGIC), taxes and duties on imports excluding VAT, taxes on products, excluding VAT and taxes on imports (in the Spanish case a large set of taxes on the consumption of hydrocarbons, electricity, alcohol and tobacco.

taxation on capital[158] was higher in Spain, both in weighted average (by 2pp) and in arithmetic mean (by 4.1pp)[159].

Gráfico I.4

Estructura impositiva en los países de la UE-27 (2019)

(% sobre ingresos impositivos, por fuentes de imposición)



Fuente: European Commission (2021c).

At last, we are going to approximate Spanish Tax Structure according to their classification as direct, indirect taxes and social contributions. From this perspective, the total tax revenue collected in Spain in 2019 corresponds 33.7% to indirect taxation (11.7% of GDP), 31.1% to direct taxation (10.8% of GDP) and 35.2% social contributions (12.3% of GDP). Compared to the EU-27 averages, Spain has a greater relative weight among all its tax revenues from social contributions (5.2pp and 2.6pp higher in relation, respectively, to the arithmetic medium and a lower weight of indirect taxation (5pp and 0.6pp in relation, respectively, to the arithmetic and weighted averages of the

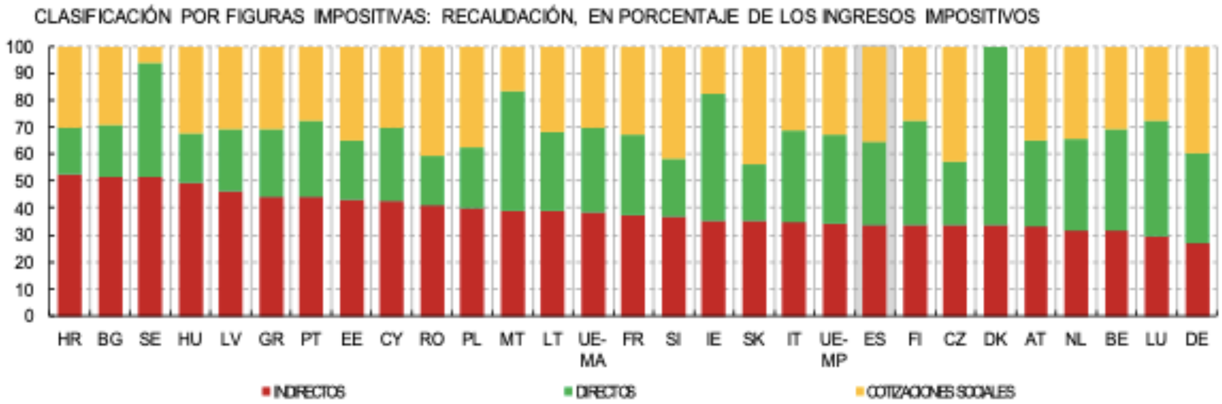
---

158 Capital taxes include two groupings. Firstly, taxes on business income and capital, which include the part of the personal tax paid on dividends, interest and capital gains, the income of the self-employed, the social contributions of the latter, the tax on companies and the component of legal entities corresponding to the income tax of non-residents, as well as taxes on prizes from lotteries or games and bets. The second grouping is called wealth taxation, which includes some of the current taxes on wealth (the wealth tax and the IBI on vacant homes), taxes on capital (including inheritance and gift tax, special contributions, urbanization fees and the Tax on the increase in value of urban land), taxes on the property or use of land, buildings or other constructions (which in Spain include the IBI, the special tax on real estate of non-resident entities, the tax on large commercial establishments and other taxes on the ownership or use of land, buildings and constructions), taxes on the use of fixed assets (in the Spanish case, the tax on mechanical traction vehicles of companies), the taxes paid by companies to obtain business and professional licenses (in particular, in the Spanish case, the tax on economic activities, fees for obtaining business and professional licenses, fees for private use or special use of the public domain and urban planning licenses and the technical inspection fee for vehicles, among others), other taxes on production (which include the tax on deposits from credit institutions, among others), and some of the taxes on products (in the category, in particular, those corresponding to the tax on property transfers and the tax on documented legal acts).

159 WHITE BOOK ON TAX REFORM, INSTITUTE OF FISCAL STUDIES, INSTITUTE OF FISCAL STUDIES, MADRID, 2022, P. 72.

EU-27); as well as direct taxation (0.2pp and 2pp lower in relation, respectively, to the arithmetic and weighted means).

Gráfico I.6
Estructura impositiva en los países de la UE-27 (2019)
(% sobre ingresos impositivos, por figuras impositivas)



a El agregado UE-MA se refiere a la media aritmética de las economías de la UE27 mientras que el agregado UE-MP se refiere a la media ponderada de las economías de la UE27 de acuerdo con su PIB.

Fuente: European Commission (2021c).

VII.III FISCAL REFORM, CONSOLIDATION AND OBJETIVES

The Spanish public sector suffers from a chronic problem of structural deficit. Eurostat estimates for the 2019 financial year placed Spain among the countries with the greatest imbalance in the EU-27, with a figure greater than 3% of GDP. A persistent deficit that led public debt to a level close to 100% of GDP. The pandemic has aggravated both imbalances in public finances. Both the Government and AIReF estimates raise the structural deficit above 4% in 2024 with constant policies: 4.2% according to the former (Ministry of Finance, 2021a, p. 98); and 4.6% according to the second (AIReF, 2021, pp. 115-116). For its part, public debt forecasts are above 115% of GDP in 2022[160].

In Spain, we must aspire to a process of fiscal reforms that guarantees the sustainability of the tax system in the medium and long term, so that we must aspire to a reduction of the current parameters that show a high budget imbalance and begin a process of public deleveraging that mitigate the risks and costs, current and intergenerational, associated with the persistence of a high level of public

160 WHITE BOOK ON TAX REFORM, INSTITUTE OF FISCAL STUDIES, INSTITUTE OF FISCAL STUDIES, MADRID, 2022, p. 80.

debt. To develop this clear and rigorous fiscal consolidation strategy, reforms aimed at adjusting spending and increasing non-financial income must be implemented, so the measures to be considered will be aimed at increasing the collection capacity of the tax system at the same time. at the same time reducing its efficiency costs.
In any case, decisions of this magnitude and these consequences go far beyond the economic and have a great political impact. Therefore, prior to all the tax reforms that must be implemented in the Spanish tax system aimed at achieving a balance between income and expenses, a prior consensus between all the parties involved is required. The important thing is that society assumes and shares the need for global coherence between the level of provision of public services and income programs, on the one hand, and the tax burden, on the other; and that governments at all levels (central, regional and local) have a well-designed and managed tax system that allows them to achieve the preferred collection objectives at all times. Regardless of the combination of public expenditure and revenue ratios over GDP that is chosen for fiscal consolidation and the elimination of the structural public deficit, increasing the efficiency of public spending must also be an important objective in the medium term for all. the levels of public administration in Spain.

Once we have addressed the need to undertake a tax reform, and before entering into the specific reforms that arise around the object of study of this work, it is essential, at least to mention in a schematic way, what the main objectives of these are. reforms:

1. Improving the equity of the tax system: the mobility of tax bases and the globalization of economic activity make it difficult to tax certain capital income, meaning that the weight of the direct tax burden falls on on medium and medium-high income from work obtained from progressive taxation. In this sense, the Committee for tax reform in Spain proposes concrete measures aimed at avoiding abuse in the use of the corporate form to avoid the progressivity of the income tax, the taxation of wealth, as well as combating the avoidance and evasion of indirect taxation implemented through companies that are not fully involved in an economic activity.

2. Resilience of the tax system and its collection capacity: design of a tax policy that guarantees collection sufficiency over time and that does not depend on transitory income that emerges during expansionary cycles, or that are the result of other policies with objectives extra-fiscal measures such as environmental taxation.

3. Economic growth and innovation: it is considered essential that the reforms of our tax system increase the collection capacity by improving the design of taxation on consumption and wealth; at the same time that it raises its preference for expansions in the bases subject to taxation in the taxation of personal and corporate income, compared to more distorting alternatives that involve increases in tax rates. Furthermore, it is vitally important to eliminate the barriers that currently impede business growth and innovation through an improvement in the design of existing tax incentives, both to stimulate investment in certain assets (e.g. intangibles) and for an adequate internalization of the external effects linked to innovative activities.

4. Improvement of the regulatory technique and adaptability of the tax system: in its objective of covering the greatest number of possible situations and adapting in the best possible way to new tax realities, the Spanish tax system suffers from an evident lack of regulatory technique that It is manifested, among other actions, in the large number of modifications that the rules that regulate the Personal Income Tax, the Corporation Tax or the Value Added Tax have undergone[161]. It is therefore very necessary that in the tax reforms to be implemented a deep reflection is made about an improvement in the drafting technique and the system of application of tax regulations, since ultimately this is also a constitutional mandate since there is a evident link between legal security and technical regulations, as our Constitutional Court has stated on many occasions[162].

VII.IV REFORM PROPOSALS IN THE FIELD OF THE PERSONAL INCOME TAX

VIII.IV.I INTRODUCTION

Personal income tax is the central axis of taxation in Spain, both for legal and economic reasons. It is the tax with the highest collection and the one that allows compliance with the constitutional mandate of progressiveness of the tax system (art. 31.1 CE). The progressivity of the tax also makes it a useful instrument of economic stabilization throughout the cycle and its versatility also allows the introduction of incentives in favor of those activities or income that at any given time are a

[161] The IRPF has been modified at least 47 times since the approval of its regulatory law (2006), the VAT, at least 65 times since the current law (1992), and the Corporate Tax, on 15 occasions since the current law (2014).

[162] Among others, the Sentence of our Constitutional Court 150/1990, of October 4, 1990, in its Legal Basis 8 when stating that *"the principles of legal certainty and prohibition of the arbitrariness of public powers require that the norm be clear so that citizens know what to expect when faced with it. In this order of requirements, it is not possible to underestimate the importance that the use of a refined legal technique in the process of drafting regulations has for the certainty of the Law and legal security, especially in a sector such as the tax sector which, in addition to regulating acts and mass legal relations that affect and condition the global economic activity of all citizens, attributes to them a growing participation and role in the management and application of taxes. In this context, the effort of the legislator, both state and regional, to provide a tax regulation that is comprehensive and understandable for the majority of the citizens to whom it is directed is inexcusable; since confusing, obscure and incomplete legislation makes its application difficult and, in addition to undermining the certainty of the Law and citizens' confidence in it, it can end up tarnishing the value of justice."*

priority for the guiding principles of economic policy. In terms of collection importance, the following table shows how the income tax figures prominently at the head of our tax system in terms of collection, so that the forecast for 2022 is equivalent to the joint collection of the two taxes that They continue in collection weight (VAT and Corporate Tax).

Tabla I.1
Ingresos tributarios (2020-2022)

Capítulos	Recaudación 2020		Avance de Liquidación 2021		Presupuesto 2022	
	Estado (1)	Total (2)	Estado (3)	Total (4)	Estado (5)	Total (6)
Impuesto sobre la Renta de las Personas Físicas	36.700	87.972	43.267	93.803	48.607	100.132
Impuesto sobre Sociedades	15.858	15.858	21.889	21.889	24.477	24.477
Impuesto sobre la Renta de no Residentes	1.511	1.511	1.713	1.713	1.230	1.230
Fiscalidad medioambiental	1.441	1.441	1.300	1.300	1.440	1.440
Otros	119	119	136	136	148	148
I. Impuestos directos	55.629	106.901	68.306	118.841	75.902	127.426
Impuesto sobre el Valor Añadido	25.765	63.337	32.913	69.099	42.934	75.651
Impuesto Especiales	4.984	18.790	6.567	20.183	9.672	21.843
Alcohol y bebidas derivadas	*175*	*614*	*246*	*664*	*411*	*717*
Cerveza	*109*	*307*	*136*	*322*	*163*	*346*
Productos intermedios	*9*	*20*	*10*	*22*	*11*	*23*
Hidrocarburos	*2.049*	*10.326*	*3.903*	*11.603*	*5.908*	*12.418*
Labores del tabaco	*2.687*	*6.245*	*2.620*	*6.521*	*2.986*	*6.880*
Electricidad	*-87*	*1.237*	*-371*	*1.029*	*172*	*1.437*
Carbón	*41*	*41*	*23*	*23*	*23*	*23*
Otros	3.318	3.318	4.986	4.986	5.273	5.273
II. Impuestos indirectos	34.067	85.445	44.467	94.269	57.880	102.767
III. Tasas y otros ingresos	1.705	1.705	1.885	1.885	2.158	2.158
INGRESOS TRIBUTARIOS	**91.401**	**194.051**	**114.657**	**214.995**	**135.939**	**232.352**

Fuente: Ministerio de Hacienda (2021b: 232).

Regarding the structure of taxpayers and income that constitute the base of the tax, it should be noted that the majority of income comes from work income whose annual returns are between 20 and 60 thousand euros per year.

With the objective of enhancing the two primary purposes of the Tax, that is, the collection purpose and the redistributive purpose, the Committee of Tax Experts in its White Paper on tax reform, supported by numerous doctrinal pronouncements and important international organizations such as the Commission European Union or the OECD, which we will also mention, has positioned itself favorably to introduce reforms in our Income Tax mainly in two specific areas:

1. Broadening of the tax base, eliminating those exemptions, reductions, deductions or special regimes whose maintenance is not justified.

2. Ensuring personal income tax as an instrument that guarantees the progressivity of the tax system and its adequate relationship between this tax and public benefits.

VIII.IV.II BROADENING OF THE TAX BASE

VIII.IV.II.I Exemptions

The tax exemptions contemplated fundamentally in article 7 of the Personal Income Tax Law, lacking in any case a systematic minimum in their enumeration, can be distinguished between tax exemptions established for reasons of taxable capacity and those exemptions that respond for extra-fiscal purposes or beyond pure tax reasons.

In its primary purpose of making the distribution of income more fair and equitable, within the scope of Personal Income Tax, we find its exemption positions that respond to personal and family circumstances of the taxpayer that affect their economic capacity; and others in which, even if sufficient economic capacity to support the tax burden is evident, it is not considered appropriate to tax it, to safeguard certain constitutionally protected economic and social policy objectives. The importance of exemptions in the Spanish income tax system is shown in the following table, which lists each of the exemptions in force in article 7 of the Tax Law (not counting other benefits that are dispersed throughout other articles of the Law) and that, in any case, it only takes into account the cost foreseen for each of the exemptions at the state level and the collection of the tax is joint at 50 percent between the State and the Autonomous Communities.

In order to eliminate and reduce the weight that exemptions have in the reduction of tax collection from Income Tax, the Committee of Experts proposes the following considerations to the Government of Spain:

1. Evaluation of the justification and persistence of the reasons that, at the time, led the legislator to introduce each of the specific exemption cases that appear in the standard.

2. Concurrence of due proportionality of the exemption measure for the achievement of the extra-fiscal purpose pursued in each case, which could lead, for example, to conditioning the exemption of capital gains obtained from the transfer of habitual residence by elderly people. 65 years old at a certain level of income and assets of the taxpayer.

3. Suppression of the privileged treatment of the total exemption from per diems and allowances for travel expenses paid to Spanish deputies in the European Parliament, deputies and senators of the Cortes Generales, members of the autonomous legislative assemblies, city councilors and members of provincial councils, island councils or other local entities.

Importe de beneficios fiscales derivados de exenciones en el IRPF (2022)

Concepto	Número beneficiarios	Importe (millones euros)	Estructura (%)
D. Exenciones:	**—**	**3.086,19**	**27,50**
D.1. Ganancias patrimoniales por reinversión en vivienda habitual	53.244	112,30	1,00
D.2. Ganancias patrimoniales por mayores de 65 años	1.768	7,87	0,07
D.3. Ganancias patrimoniales por inmuebles urbanos adquiridos de 12 mayo a 31 de diciembre de 2012	633	0,82	0,01
D.4. Gravamen especial sobre los premios de determinadas loterías y apuestas	—	446,17	3,98
D.5. Premios literarios, artísticos y científicos	468	0,98	0,01
D.6. Pensiones de invalidez	840.000	1.197,71	10,67
D.7. Prestaciones por actos de terrorismo	8.400	12,46	0,11
D.8. Ayudas SIDA y hepatitis C	870	0,79	0,01
D.9. Indemnizaciones por despido	800.000	540,94	4,82
D.10. Prestaciones familiares por hijo a cargo, orfandad, maternidad y paternidad	1.650.000	491,96	4,38
D.11. Pensiones de la Guerra Civil	1.600	1,23	0,01
D.12. Gratificaciones por misiones internacionales	10.000	16,72	0,15
D.13. Prestaciones por desempleo de pago único	40.000	20,34	0,18
D.14. Ayudas económicas a deportistas	1.700	1,77	0,02
D.15. Trabajos realizados en el extranjero	60.000	96,95	0,86
D.16. Acogimiento de discapacitados, mayores de 65 años o menores	5.100	2,44	0,02
D.17. Becas públicas	1.100.000	17,98	0,16
D.18. Prestaciones por entierro o sepelio	120.000	1,22	0,01
D.19. Prestaciones de sistemas de previsión social a favor de discapacitados	6.500	1,36	0,01
D.20. Prestaciones económicas de dependencia	480.000	86,58	0,77
D.21. Prestaciones por nacimiento, adopción, acogimiento o cuidado de hijos	75.000	7,44	0,07
D.22. Rendimientos derivados de patrimonios protegidos	20.000	1,65	0,01
D.23. Ayudas económicas de CCAA y EELL, excepto rentas mínimas de inserción	550.000	10,31	0,09
D.24. Ayudas a víctimas de delitos violentos	1.250	0,63	0,01
D.25. Determinadas ayudas e indemnizaciones públicas	—	1,81	0,02
D.26. Rendimientos de Planes de Ahorro a Largo Plazo	238.169	3,94	0,04
D.27. Rendimientos de tripulantes de determinados buques de pesca	923	1,82	0,02

Fuente: Ministerio de Hacienda (2021c).

VIII.IV.II.II Reconsideration of the Labour Incomes reduction

The Committee suggests the convenience of reconsidering the current design of reductions related to expenses that, originally, were called “difficult to justify”; reductions currently contemplated in articles 19.2. f) and 20 of the Personal Income Tax Law[163].

Specifically, the proposed reform would maintain the first of the fixed reductions of 2,000 euros to compensate for difficult-to-justify expenses that the worker incurs to obtain his income, although with respect to the variable reduction referred to in article 20 of the The law considers it appropriate that this reduction be reviewed and transformed into a refundable deduction in the tax, similar to the Earned Income Tax Credit (EITC) applied, among other countries, in the United States.

VIII.IV.II.III Reduction in the net return on real estate capital for leasing homes

Given the shortage of rental housing in Spain, especially in certain geographic areas that are more retired and in which the supply of housing is much lower than the demand, and the current price of properties that makes it unviable for young people to afford to buy a home. property to be able to live until 35 or 40 years old, all public administrations have carried out policies of all kinds from some time ago to the present day aimed at promoting rental housing both through direct benefits to citizens as well as the introduction of tax benefits in some taxes, such as personal income tax or the Tax on Property Transfers and Documented Legal Acts.

At a fiscal level, the most important incentive from the point of view of the recipient of the income is the reduction that the lessor can make with respect to the positive net return derived from the lease of real estate intended to be the habitual residence of the people who occupy it, reduction

---

[163] **Art. 19.2:** *“Exclusively the following will be considered deductible expenses: [...] f) For other expenses other than the above, 2,000 euros per year.”*

Art. 20: *“Taxpayers with net income from work less than 19,747.5 euros, as long as they do not have income, excluding exempt income, other than income from work greater than 6,500 euros, will reduce the net income from work by the following amounts:*
a) Taxpayers with net income from work equal to or less than 14,047.5 euros: 6,498 euros annually.
b) Taxpayers with net income from work between 14,047.5 and 19,747.5 euros: 6,498 euros less the result of multiplying by 1.14 the difference between the income from work and 14,047.5 euros per year.
For these purposes, the net income of the work will be the result of reducing the full income in the expenses provided for in letters a), b), c), d) and e) of article 19.2 of this law.
As a consequence of the application of the reduction provided for in this article, the resulting balance may not be negative.

which in any case has been the subject of very recent modifications in terms of its relationship and applicable percentages in relation to the specific circumstances of the lease[164].

In relation to this reduction, the Committee of Fiscal Experts considers that there are no reasons to maintain the tax incentives for home lessors, essentially due to the lack of causal link between the benefit granted and stimulating the supply of rental housing in an amount that justifies the costs of this tax benefit, in terms of the lack of neutrality of the treatment of savings destined for real estate investment or the effects on vertical equity that the incentive generates. Furthermore, the evidence shown by AIReF (2020) indicates that the beneficiary taxpayers belong to the highest-income group, which questions its justification from the perspective of vertical equity in the absence of significant empirical effects of the tax incentive on the rental supply of living place.

Therefore, and as a conclusion, it is recommended to reduce or even eliminate the state reduction of the net income from the rental of real estate intended for housing.

---

[164] **Art. 23.2 of Personal Income Tax Lax:** *"In the case of leasing real estate for housing, the positive net return calculated in accordance with the provisions of the previous section will be reduced:*
a) ***By 90 percent*** *when a new lease contract for a home located in a stressed residential market area had been formalized by the same landlord, in which the initial rent had been reduced by more than 5 percent in relation to with the last rent from the previous lease contract for the same home, once the annual update clause of the previous contract has been applied, if applicable.*
b) ***At 70 percent*** *when the requirements indicated in letter a) above are not met, one of the following circumstances occurs:*
1. That the taxpayer had rented the home for the first time, provided that it is located in an area with a stressed residential market and the tenant is between 18 and 35 years old. When there are several tenants of the same home, this reduction will be applied to the part of the net income that proportionally corresponds to the tenants who meet the requirements set forth in this letter.
2. When the lessee is a Public Administration or non-profit entity to which the special regime regulated in title II of Law 49/2002, of December 23, on the tax regime of non-profit entities, applies. and tax incentives for patronage, which allocates housing to social rental with a monthly income lower than that established in the rental aid program of the state housing plan, or to the accommodation of people in a situation of economic vulnerability referred to. Law 19/2021, of December 20, which establishes the minimum vital income, or when the home is covered by any public housing or qualification program by virtue of which the competent Administration establishes a limitation on the rental income .
c) ***By 60 percent*** *when, the requirements of the previous letters were not met, the home had been the subject of a rehabilitation action in the terms provided for in section 1 of article 41 of the Tax Regulations that had been completed within two years. prior to the date of execution of the lease contract.*
d) ***By 50 percent,*** *in any other case.*
The indicated requirements must be met at the time of entering into the lease contract, with the reduction applicable as long as they continue to be met.
These reductions will only be applicable to positive net income that has been calculated by the taxpayer in a self-assessment submitted before a data verification, limited verification or inspection procedure that includes the verification of such income has been initiated. .
In no case will reductions be applicable with respect to the part of the positive net income derived from income not included or expenses improperly deducted in the taxpayer's self-assessment and that are regularized in any of the procedures mentioned in the previous paragraph, even when those circumstances have been declared or accepted by the taxpayer during the processing of the procedure. Nor will the reductions be applicable in relation to those lease contracts that fail to comply with the provisions of section 6 of article 17 of the Urban Leasing Law.
The stressed residential market areas to which the provisions of this section may apply will be those included in the resolution that, in accordance with the provisions of the state legislation on housing, approves the Ministry of Transport, Mobility and Urban Agenda".

VIII.IV.II.III Reduction for joint taxation and minimum for descendants

In Spain there is a reduction for joint taxation that consists of a reduction in the base of 3,400 for two-parent family units, and 2,150 for single-parent family units. The purpose of this reduction, in the case of family units formed by two spouses, is to avoid the losses that its elimination would cause to certain couples with a single recipient of income (in particular, pensioners with reduced income) and also to correct the excess of taxation caused by the accumulation of income in the family unit. In the opinion of the Committee of Experts, these purposes of the reduction are foreign to an individual tax, as the IRPF intends to be and, for this reason, it is in favor of studying the possible replacement of the reduction by joint taxation for a minimum (or the modulation of the existing ones) that allows the tax to be adapted to the personal and family circumstances of these family units.

In the case of the minimum for descendants, both the Committee of Experts and organizations protecting the rights of Children - Save the Children or UNICEF, among others - propose replacing the minimum for descendants, for those under 18 years of age, with a refundable deduction, if the objective of the Spanish legislator is for this element of personal income tax to contribute to the reduction of child poverty.

VIII.IV.II.IV Objective estimation regime for Personal Income Tax

For certain entrepreneurs who meet certain requirements, it is possible, if they so state, that the performance of their activity be determined objectively in accordance with rules for the allocation of income and expenses, thus saving the general rule for estimating income in accordance with the activity income-deductible expenses calculation rule.

For non-agricultural activities, the net return is calculated by applying to each activity a series of signs and modules that are not subject to updating since Order EHA/804/2007, of March 30, by which they are developed for the year 2007, the objective estimation method of the Personal Income Tax and the special simplified regime of the Value Added Tax, deducting the amount of employment and investment incentives (amortizations) and making some additional corrections in depending on elements such as the activity carried out, the size of the company or the amount of income itself.

The Committee of Experts considers that there are well-founded reasons that justify eliminating this objective estimation regime:

Firstly, the EO regime generates tax revenue for the companies that benefit from its application and, correspondingly, a loss of revenue for the State.

Secondly, the existence of these tax revenues implies unequal treatment with respect to taxpayers with the same economic capacity who cannot enjoy this benefit.

Third, the EO regime still contains some incentives for tax fraud. This is because the businessman covered by the Objective Estimation system determines his returns according to objective rules, so that businessmen may have an incentive to conceal the elements according to which the thresholds for the exclusion of business are determined. this regime (income, purchases, workers, vehicles, etc.); as well as, where appropriate, to manipulate the signs and modules from which the net performance of its economic activity is quantified. In addition to this, as long as it does not exceed the threshold to remain in the objective estimation regime, the issuance of invoices has no fiscal effect for the taxpayer covered by the EO regime in non-agricultural activities. However, these invoices may constitute a deductible expense in the direct taxes of the people who receive them, as well as a higher input VAT in their declarations, a circumstance that may encourage the issuance of invoices for operations that have not existed in reality. This same argument can be applied in reverse, and that is that some businessmen who pay taxes on an objective estimate could have an incentive to hide part of their purchases, which would have no effect on the income declared by them in the income tax, but However, in some cases (if they were taxed with VAT in the equivalence surcharge regime or in the special regime for agriculture, livestock or fishing), it could benefit them, by not having to bear in these operations a VAT that they could not deduct. (or compensate); in addition to favoring its suppliers, since they could declare lower sales than those actually made.

Finally, the Committee recalls that, with respect to the argument of simplifying the procedures and tax obligations of businessmen, which is used as one of the reasons for maintaining this regime, it is hardly credible since small self-employed people who carry out professional or artistic activities, included in all cases in the direct, simplified or normal estimation regime, may keep such records.

For all these reasons, the Committee of Experts defends the gradual, but rapid, elimination of the EO regime, allowing, where appropriate, the affected subjects to apply the simplified modality of Direct Estimation. In this process, as mentioned above, it is likely that certain activities, such as some agricultural activities, require a slightly longer adaptation period than the rest, due to their own characteristics. Of course, these measures should be accompanied by a continuation of the Tax

Administration's efforts to provide information and assistance to small business owners and to simplify their formal obligations.

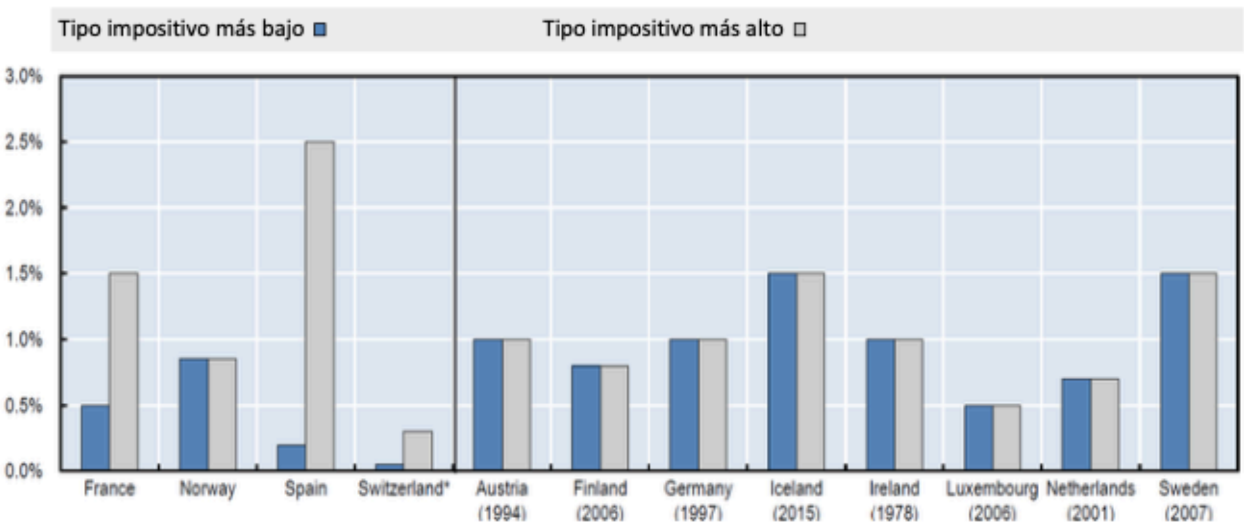
VII.IV REFORM PROPOSALS IN THE FIELD OF THE WEALTH TAX

VII.IV.I INTRODUCTION

As we have already had the opportunity to analyze, the Wealth Tax and its complement, the Temporary Solidarity Tax on Large Fortunes, are taxes that tax the net worth of individuals above a certain value. The exempt minimum, in general, is 700,000 euros, but, as with the rate, some Autonomous Communities have modified it. Aragon sets it at 400,000 euros, while in Catalonia and Extremadura it amounts to 500,000 euros; in Navarra at 550,000 euros and in the Valencian Community at 500,000 euros. On the contrary, Extremadura establishes a variable amount applicable to physically, mentally or sensory disabled, which ranges between 800,000 and 1,000,000 euros.

The determination of the tax rates of the Wealth Tax, as we have analyzed, corresponds to each Autonomous community. However, taking into account the rates applied in all of them, we can draw the conclusion (in a comparative analysis with respect to other countries that apply the same or similar tax) that the difference between the lowest tax rate and the highest tax rate between all of them, as shown below:

Tipos impositivos en Europa. IP (Varios años)



* En España el tipo máximo en 2021 ha subido al 3,5%, aunque hay diferencias entre Comunidades Autónomas

Fuente: The Role and Design of Net Wealth Taxes in the OECD (2018c).

However, the Wealth Tax as it is currently configured in Spain presents some deficiencies that justify the reform of the tax. That is why the following sections identify the main problems that its current regulation presents, accompanied by proposals aimed at improving its configuration and effectiveness in its application.

VII.IV.II TAX AVOIDANCE AND TAX ELUSION ON THE NET WEALTH TAX

In the Wealth Tax, large revenues are no longer obtained as a result of the existence of tax benefits contemplated in the tax regulations. In the case of the IP, these, and in particular, the tax caps and the family business exemption, produce very high tax collection losses and have a great capacity to erode the tax collection potential. The tax doctrine finds, in relation to this tax, three main sources of risk that can lead to a large decrease in the collection capacity, sources that we will name and analyze below:

VII.IV.II.I Internal and international relocation

Because the Wealth Tax is a regional tax, there is a great risk of internal relocation caused by the change of residence of natural persons subject to the IP to territories with a more favorable tax environment that can even reach non-effective application of this tax (Community of Madrid, for example).

In addition to the risks of internal relocation, caused by interterritorial imbalances, the IP faces a risk of international relocation, through the transfer of residence of the taxable person outside of Spain. This is a foreseeable risk, taking into account that there are few countries that apply a personal wealth tax, so a change of residence means, in the majority of cases, placing yourself outside the orbit of the IP, whose application would be limited, In any case, to the taxation of this tax as a non-resident (real obligation) if the ownership of assets and rights linked to Spanish territory is maintained; but even in this case, the validity of a double taxation agreement between Spain and the new State of residence, which included assets and followed the OECD MC (article

22) – would limit the tax in Spain to real estate[165] located in Spanish territory or to movable property assigned to a permanent establishment in this territory[166].

The risk of relocation of income is not only found in the escape of sources towards countries or territories considered tax havens or non-cooperative jurisdictions, but also towards European countries that establish incentives for new residents in these countries such as the " non-habitual residents" in Portugal, "new residents" in Italy or the new regime for investors and pensioners in Greece. Now, this same regime or a similar one is the one that exists, although with greater limitations, in article 93 of our Personal Income Tax law. A Report from the EUTAX Observatory (Flamant et al., 2021) warns that European authorities are already aware of tax competition in relation to natural persons, having even considered extending the Code of Conduct to this area. The Report, which cites among different regulations adopted by some States, the "tax quarantine" provided for in article 8 of the Personal Income Tax Law, recommends the extension of the Code to these cases, as well as exploring other possible subjection criteria (including nationality). , with a criterion of extension of residence. The Report concludes that if the EU cannot regulate tax competition in taxation of individuals, it may induce States to adopt unilateral measures in this regard.

VII.IV.II.II The use of interposed companies

One of the main problems presented by the Wealth Tax is the ease with which it can transfer the ownership of the assets that a subject has to companies that act as a "refuge of ownership" of these assets.

---

165 Within the taxation of real estate located in Spanish territory and for the purposes of calculating the minimum tax exemption, in the case of taxpayers who own real estate in several Autonomous Communities within Spanish territory, the General Directorate of Taxes has positioned itself as follows: The application to non-residents who are residents of a Member State of the European Union or the European Economic Area of the regulations of an Autonomous Community constitutes a right and not an obligation, and, as such, constitutes an option for the taxable person, that you can use or not. That is, this non-resident taxpayer may, at his option, self-assess the tax exclusively in accordance with state regulations – that is, the LIP and its implementing regulations – or, if he considers it more convenient, also apply the regulations approved by a Autonomous Community, which will necessarily be the one where the greatest value of the assets and rights of which it is the owner lies and for which the tax is required, which, being subject to the real obligation to contribute, will be those assets and rights that are located, can be exercised or must be fulfilled in Spanish territory.
Now, it is worth specifying that in the case of opting for the application of the regulations of an Autonomous Community, all the regulations approved by said Autonomous Community in this regard will be applicable. That is, it is not possible to apply only the most favorable provisions of said regulations and not apply the unfavorable ones (Consultation DGT V3054-16 of July 1)

166 WHITE BOOK ON TAX REFORM, INSTITUTE OF FISCAL STUDIES, INSTITUTE OF FISCAL STUDIES, MADRID, 2022, p. 673.

The fact that the shares or participations representing the capital in these companies are part of the assets of the natural person partners and, as such, are included in the taxable event of the IP, can be considered an obstacle to solutions that, for example, advocate subjection to the tax of said companies, since it would reproduce, at the equity level, a problem analogous to the economic double taxation of dividends in income taxation, producing in the IP an economic double taxation on the company's assets (in the part corresponding to the value of the corporate participation).

Some of the alternatives that the Committee of Experts proposes to solve this problem focus on the following:

a) Declare legal entities liable to pay the tax.

b) Limit the subjection of legal entities to certain cases, either in cases of avoidance (such as the Special Lien on real estate of non-resident entities), when the identity of the partners is hidden, or in companies whose assets consist of property not affected by economic activities (the latter is the approach of the Catalan tax on non-productive assets of legal entities).

c) Maintain the current regulation, so that the taxpayers would be only natural persons, but establishing a system of imputation or property tax transparency, which would directly integrate certain assets (or even, eventually, all the assets) into the partner's assets. of the entity) whose formal ownership is held by the legal entity, but whose holder and beneficial owner is the partner. In short, it would be about bringing to the scope of IP concepts already used in the field of income taxation and international taxation, such as economic ownership or beneficial ownership. It should be noted that this imputation system would imply not taxing the shares or corporate participations (or, where appropriate, not doing so in the proportion corresponding to the assets of the entity directly attributed to the partners or participants).

d) Act at the tax base level, establishing special valuation rules for shares and interests in this type of entities, as we will see later.

On the other hand, the most common strategy to avoid tax with respect to assets that can be taxed in Spain (mainly real estate, in the case of an Agreement), is to place their ownership in non-resident legal entities. A successful strategy since neither the regulations of this tax nor the OECD CM contain a specific anti-abuse rule to neutralize this assumption. Something that is provided for, however, in relation to capital gains obtained from the alienation of shares or participations in the capital of a company, when the real estate located in the territory of the State of source (Spain in the case of IP by real obligation), constitute the majority of the assets of said entity (article 13.1.i) of the IRNR Law, article 13.4 of the OECD CM and article 13.4 of the OECD CM).

VII.IV.II.III The taxation of the new forms of heritage: crypto assets

A focus of risk of tax immunity is also found in crypto assets and their form of taxation, since tax regulations are, for the moment, far behind the advance of these new forms of manifestation of wealth.

In relation to the taxation of this type of assets, the General Directorate of Taxes in some of its resolutions has been clear in establishing, in this case in relation to *bitcoins*, it understood that cryptocurrencies constitute a means of payment so, for the purposes of the IP, they must be declared together with the rest of the assets, valued in accordance with the rule of article 24 of the Tax Law, at market price (consultations V0250-18 of February 1 and V0590-18 of March 1). It has been more ambiguous in the case of the taxation of the so-called *Security Tokens* (they grant their holders the right to participate in future profits, in the revaluation of the issuing entity or of a certain business) the DGT opts for a substantial and non-formal, the understanding that the classification of virtual assets must be sought independently of the name, in the powers or rights granted to their owner, without their atypical form of representation through computer technology affecting said classification.[167]

VII.IV.III The difficulty of the Tax Imponible Base determination

Regarding the valuation of the assets and rights that are integrated into the base for computing the Wealth Tax, the OECD proposal on the matter is to align the tax base with the market value of the assets. , as well as maintaining the value of assets that are difficult to value for a few years, or keeping the value of the taxpayer's total net assets constant at the same time to avoid annual verifications[168].

[167] General Directorate of Taxes, Binding Consultation V0766-21 of March 31.

[168] OEDC, 2018c

With regard to the deductibility of debts, it seems clear that a tax that seeks to tax the net wealth of the taxpayer must establish, for its calculation, the possibility of reducing the value of his assets by the amount that corresponds to the debts that he owes. are duly justified[169].

However, the limitations do not neutralize other possible cases of using debts as an opportunity to artificially reduce the tax burden. In this sense, the fact that a wealth tax is not applied in many countries increases the risk of fictitious debts contracted with non-resident creditors, whose credit rights would not be subject to their State of residence, nor to Spain. in case of applicable Convention. But this is a problem that must be resolved in the field of application of the IP, with the appropriate instruments of control, exchange of information and prevention and fight against fraud.

In relation with this problem, the Committee proposes the following rules:

- Maintain the current limitation regarding the non-deductibility of debts related to exempt assets.
- It is not advisable to establish other quantitative limitations since, if they are real debts, they would negatively affect the economic capacity and the configuration of the tax itself, whose adaptation to this principle requires taxing the net assets. However, a special anti-abuse rule could be included, establishing a limitation on the deductibility of debts incurred without a valid economic reason in cases of corporate or family ties.
- In the field of tax application, it is important to strengthen control over the effectiveness of debts, enhancing information regarding creditors and especially when they are not residents in Spain, using the information mechanisms provided for in the regulations of the European Union and in the double taxation conventions.

---

[169] Article 25 of Net Wealth Tax Valuation of debts.

One. Debts will be valued at their face value on the date of tax accrual and will only be deductible as long as they are duly justified.

Two. The following will not be subject to deduction:

a) The guaranteed amounts, until the guarantor is obliged to pay the debt, because the right has been exercised against the main debtor and the debtor has failed. In the case of joint obligation, the guaranteed amounts cannot be deducted until the right is exercised against the guarantor.

b) The mortgage that guarantees the deferred price in the acquisition of an asset, without prejudice to whether the deferred price or guaranteed debt is.

Three. In no case will debts incurred for the acquisition of exempt goods or rights be subject to deduction. When the exemption is partial, the proportional part of the debts will be deductible, if applicable.

VII.IV.IV TAX LIMITS AND MINIMUM EXEMPTION

To conclude our presentation, it is also very important to focus on the idea that the tax cannot represent an excessive fiscal burden nor have the confiscatory scope referred to in article 31 of the Spanish Constitution.

In relation to the ceilings on the full quota, the Committee of Experts proposes maintaining the rule that establishes these ceilings for reasons of liquidity, since the IP is an annual tax and therefore recurring (its regulations do not provide for rules for making payment more flexible. of the tax) and also because these limits want to avoid incurring an “excessive tax burden.”

Consideration should be given to including in the calculation of the base both unjustified capital gains and profits with a generation period greater than one year, because their current exclusion may lead to taxpayer decisions aimed at avoiding the application of the joint limit. . However, it must be taken into account that such inclusion could in turn encourage the non-making of investments for the same purpose.

Finally, the legislator should consider the possibility of revising upward the joint personal income tax-IP limit, currently located at 60% of the personal income tax base, with a minimum quota of 20 percent. Originally, article 31 of the IP Law established a joint personal income tax-IP limit of 70 percent with a minimum quota of 30, which was in force from the entry into force of the IP Law until 2003. In particular, the Committee I would be in favor of raising the minimum IP quota to a maximum of 30 percent in order to increase the redistributive potential of the tax.

Regarding the exempt minimum, which in the majority of Autonomous Communities is around 700,000 euros, it is proposed that this increase rise to one million euros. This increase is justified by the application of new assessment criteria and, in particular, the reference values. Likewise, the Committee hopes that as a result of the proposed review of the exemptions for family businesses and habitual residences, the Tax base will be broader.

VII.IV.IV.I Exemption for transfer of the family business

The absence of a clear definition and delimitation of the concept of family business in the initial regulation of the Wealth Tax, the regulatory evolution (relaxing the requirements in general to qualify for the exemption from participation in the Company) have favored the use of the exemption[170].

The regulatory evolution of this exemption, after its application to participation in listed entities on organized markets and the progressive flexibility of the participation and management requirements including family calculation criteria, shows a drift that not only distorts the initial purpose of this exemption but also that, furthermore, by concentrating this type of investment on taxpayers with a higher economic level, it clearly affects the principles of tax justice, especially those of equality and economic capacity, which "involves clearly transforming the wealth index taxed by the tax"[171]

For this reason, and following the recommendation of various international organizations, its maintenance is recommended but at the same time a periodic evaluation of the effectiveness of this measure. Furthermore, the Committee recommends reviewing its regulation in order to avoid its denaturalization, increase legal certainty and reduce litigation; as well as very substantially intensify control by the tax administration to avoid its abuses. This exemption is designed for the case of companies with real productive activity and cannot provide protection for artificial structures created ad hoc and tax avoidance operations.

---

[170]This same exemption applies in the case of the Donation Tax for the transmission of family businesses from generation to generation.
Article 20.6 of the Donations Law: In cases of transfer of "inter vivos" participations, in favor of the spouse, descendants or adopted, of an individual company, a professional business or of participations in entities of the donor to which it is applicable the exemption regulated in the eighth section of article 4 of Law 19/1991, of June 6, on Wealth Tax, a reduction in the tax base will be applied to determine the taxable amount of 95 percent of the acquisition value, always that the following conditions occur:
a) That the donor was sixty-five years old or older or was in a situation of permanent disability, in a degree of absolute or great disability.
b) That, if the donor was exercising management functions, he would cease to exercise and receive remuneration for the exercise of said functions from the moment of the transfer.
For these purposes, mere membership of the Board of Directors of the company will not be understood to be included among the management functions.
c) As for the donee, he must maintain what was acquired and have the right to exemption from the Wealth Tax for the ten years following the date of the public deed of donation, unless he dies within this period.

[171] CENCERRADO MILLÁN, E., *"Incentivos fiscales y justicia tributaria. Análisis de la exención de bienes afectos a actividades económica y determinadas participaciones en entidades contenidas en el Im puesto sobre el Patrimonio*", Navarro Faure, A.,2021, pp. 49-97.