Hacienda vs. The People

An initial report on Spain and the Beckham Law

White paper by Robert Amsterdam and Christopher Wales

AMSTERDAM & PARTNERS LLP

SPANISH TAX PICKPOCKETS

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VS
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We dedicate this paper to all the victims of *Agencia Estatal de Administración Tributaria*, the Spanish Tax Authority.

Our focus in the pages that follow is on a particular group of victims - nationals of other Member States of the EU and elsewhere - who thought that the Spanish government wanted them to put their experience and expertise to work in Spain and are now being pursued relentlessly for taxes they were promised would not be levied.

But we are mindful that these are not the only victims of the Spanish tax system. Many Spanish citizens are victims too, they and their businesses trapped in a web that is sticky with a mistaken presumption of *Hacienda*'s veracity, which leaves them completely at the mercy of the tax authority.

For all those in that web, this paper is for you. It is a long read but it is unlikely to be our last word on an organisation that displays values that have no place in the free and democratic society to which Spanish citizens aspire.

Cover art by Rob Dobi

Abbreviations

CHARTER: Charter of Fundamental Rights of the European Union
CJEU: Court of Justice of the European Union
CRS: Common Reporting Standards
ECHR: European Convention on Human Rights
ECTHR: European Court of Human Rights
EU: European Union
GDP: Gross domestic product
GDPR: EU General Data Protection Regulation
IMF: International Monetary Fund
KYC: Know Your Client
OECD: Organisation for Economic Co-operation and Development
STA: Spanish Tax Authority, *Agencia Estatal de Administración Tributaria*
TEU: Treaty on European Union
TFEU: Treaty on the Functioning of the European Union
WCO: World Customs Organisation

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FOREWORD

On 9 April 2025, the leadership of the Spanish Tax Authority (STA) delivered a slap in the face to every taxpayer in Spain and signed a new €125 million incentive scheme for its staff.[1] To get the full bonus, they have to collect yet more personal income tax and VAT by 31 December 2025. Lock your doors and bar the windows!

The same people who agreed the deal have long been in denial about the bonus-driven culture of the organisation. But their protestations of innocence were pure '*simulación*'. The bonus system gives Inspectors a financial motive to invent a case against taxpayers. Like many of Spain's taxpayers, we had already seen it in action well before this latest deal was announced.

This report sounds an alarm. Since we began our work on the *Impatriate* law - the 'Beckham Law', or more formally, Article 93 of Law 35/2006 - we have been made aware, through research and interviews, of systemic, grievous and ongoing violations of the rule of law by the STA that most would consider incompatible with EU norms and values.

Every individual is entitled to be treated pursuant to law and with due process and protection of privacy. Threats of criminalisation should not be used as a battering ram against those taxpayers who simply try to protect their rights against baseless allegations. This is a practice that must cease immediately. Major changes are needed to the administration of the tax system. The Spanish government cannot allow a gang culture to prevail in the STA.

In this White Paper, we examine the conduct of the STA towards a particular group of people whom the Spanish government has deliberately induced to come to Spain: a group of people who are knowledgeable, experienced and have been very successful in their various walks of life. Individually, they have the ability to make a significant difference to the performance of the companies that employ them. Collectively they could make a difference to the decades-long, lacklustre performance of the Spanish economy that has left the public finances in a mess. We have found the STA's conduct towards them to be extraordinary and shameful.

The Spanish government encouraged employers to hire them or send them to Spain, with the promise of a stable, flat-rate tax regime for up to six years - longer than a typical expat's assignment in most parts of the world. So, their whole stay would usually fall within the so-called special regime for transferred employees, affectionately known as the Beckham Law, that the government introduced in 2003 and has kept substantially unchanged ever since.

Most of the *Impatriates*, as they are called, have worked hard and enjoyed their time in Spain as well: the friendly people, the good food, the warm sunshine, the different pace of life, the opportunities for their children. But many have suddenly found out that, like a large scorpion, their stay in Spain has a sting in the tail, with the poison developed and delivered by the STA.

Some had already left when they fell victim to the sting. Some were targeted after settling in Spain for good - or so they thought. Uniformly, they have been persecuted by the STA, caught in what is either a state-orchestrated trap, or more likely an unscrupulous scheme of the STA's own invention.

The STA's hostility towards *Impatriates*, which is so evident today, appears to be a relatively recent manifestation. Few of the victims could have anticipated the extremes to which the STA would go in this new environment.

The organised, malicious and hostile action with which the STA is currently targeting *Impatriates*, has one objective: money. Revenue for the STA and bonuses for the Inspectors. Details of the bonus pot

1 https://www.vozpopuli.com/economia/hacienda-bonus-125-millones-plantilla-cambio-recaudar-irpf-iva.html

have been hidden from public scrutiny for years. The STA has never yet come clean about the subjective methods through which bonuses are calculated. The behaviour of Inspectors alone is enough to overturn the notion that they are anything but a significant part of individual incomes. Bonuses appear to have totalled more than €2.1bn over the last ten years.

Scant regard seems to be paid to whether the Inspectors' actions are entirely lawful or whether there is a genuine tax issue that needs to be addressed and resolved. The STA's tactics involve the interplay of many elements, including:

- **Last-minute audits:** the STA suddenly assails taxpayers who have completed their stay in Spain, who have filed all the required tax returns and who have never had them questioned during their residence there, subjecting them to vindictive investigations. The lateness of the audit appears to be a deliberate strategy to maximise the impact on *Impatriate* taxpayers.
- **A culture of denial:** bereft of rational reasons for their actions, the STA Inspectors claim, without foundation, that their own Certificates and filing instructions have no meaning, that promises in the law can be ignored, that taxpayers' rights can be set aside.
- **Fishing expeditions:** the STA has weaponised requests for information, often launching a massive global trawl for information about the foreign assets and foreign investment income of a taxpayer, which are exempt from tax under the Beckham Law and not disclosable in the tax returns which the STA itself requires the taxpayer to file.
- **Pressure on taxpayers:** the STA demands the taxpayer's presence at repeated meetings in Spain, even though they may have been transferred back to their home country, forcing them to appoint, at considerable cost, representatives to attend in their stead. They investigate the children of taxpayers, interview school staff and rifle through social media accounts, ignoring statutory protections. They demand complex historical information at 10 days' notice while failing to respect even statutory deadlines imposed on them.
- **Reputational damage:** the STA tries, without foundation, to criminalise taxpayers in the eyes of their business contacts, by giving all the global financial institutions with whom they do business, as well as other revenue authorities, the impression that they have been evading tax and may also be involved in money laundering. We are aware of *Impatriates* who have evidence that suggests the STA lied about them when making information requests.
- **Non-responses to requests for clarification**: polite and repeated requests for clarification of the legal basis for the STA's action are never properly answered, so many taxpayers who finally succumb to its bullying, never know whether there was any real case against them, or if so, what it was.
- **Penalties for "obstruction":** if the taxpayer pauses his supply of information to the Inspector, to ask why certain items have been requested, the STA issues penalty notices for "obstruction", often for thousands of euros.
- **Threats of criminal proceedings:** a common threat we see from the playlist of STA inspectors is that the normal civil and administrative process of the tax inquiry will be made a criminal investigation. Unless the taxpayer agrees to do a deal.
- **Pressure on advisers:** lawyers are afraid, apparently threatened with losing their right to practice if they support a client who resists the STA's pressure to do such a deal. We have been told of firms who have been threatened with VAT audits, a tactic favoured by authoritarian regimes elsewhere. We have seen that lawyers are afraid to take on cases involving defensive actions against the STA. This is a serious barrier to justice.
- **'*Simulación*':** When all the STA's inquiries fail to turn up any evidence of wrong-doing, the STA's Inspectors simply say that it must,

by deduction, be a perfect sham. So, they denounce a legally-constituted company, in many cases set up in accordance with EU freedoms, paying taxes in Spain, with clients and local employees also paying taxes, as just a fiction, claiming '*simulación*'. It's a line regularly used by the STA, another standard item on their playlist.

All these tactics are used as a way of frightening taxpayers into doing a deal *('Acta con Acuerdo'*), one of the criteria used to determine an Inspector's share of the bonus pot.

They undermine the principle of legality and subvert the rule of law in Spain.

The audits are carried out seemingly without regard to any principles of transparency and fairness. They especially affect non-Spanish nationals whom the government had seemed keen to attract to Spain. They tarnish Spain's reputation abroad. Now that the truth is starting to come out, they are already having a negative effect on investment.[2]

Even for those of us who have been hardened by years of experience around the world, the revelations that are coming out of our research are quite shocking. We have spoken and listened to scores of the STA's victims who self-identified when they heard of the work we are doing. Their story deserves to be told, and we start to tell it in this White Paper.

Like the many Spanish nationals who have also been victimised by the STA, the *Impatriates* deserve justice and the 'regularisation' of the activities of the STA's Inspectors.

The Ministry of Finance should be given clear responsibility for making this happen and the government should implement in full, GRECO's anti-corruption recommendations, many of which have been outstanding since 2019.

With this White Paper, we know that we are just taking the first steps down a long road. This will not be the last report on the STA that we publish. Every day, we find out more. Every day we feel more compelled than before to share what we are finding. The STA is a state institution that inspires fear and hatred. It seems to believe it is above the law, untouchable.

We will see whether that is true.

Robert Amsterdam
6 May 2025

2 As noted elsewhere in this paper, investors will already be nervous of Spain. In terms of compliance with Investment Treaty Arbitration Awards, Spain was reported as having the worst record for the number of unpaid awards against it in November 2024. *https://www.internationallawcompliance.com/wp-content/uploads/2022/08/FULL-Report-2024-DEF-1-Nov-2024.pdf* p3

Investors will also have noted the concerns expressed by GRECO, (The Council of Europe Group of States against Corruption) in recent reports. In December 2023, GRECO concluded that Spain had not yet fully implemented any of the recommendations it issued to the country in 2019. It placed Spain under its evaluation non-compliance procedure. The follow-up report will be considered in Strasbourg in June 2025. There are particular concerns about top executive functions of the central government and some appointments in the judiciary. *https://www.coe.int/en/web/portal/-/greco-publishes-two-reports-assessing-spain-s-progress-in-implementing-its-anti-corruption-recommendations*.

The IMF, in its recent Staff Concluding Statement from the Article IV Mission completed in April 2025, highlights concerns arising from "*continued subdued investment*" in Spain. *https://www.imf.org/en/News/Articles/2025/04/10/mcs-041025-spain-staff-concluding-statement-of-the-2025-article-iv-mission*

THE STORY IN BRIEF

This is a story of wrong-doing, of injustice, of a powerful state organisation whose actions can be manipulated by unscrupulous officials, of frightened people powerless to escape from its tenacious grasp. It is a story in which the rule of law has been subverted, access to justice is all but impossible for many, and in which arrogant disdain for people's rights is common currency. It is a story about shocking conduct within the Spanish Tax Authority (*Agencia Estatal de Administración Tributaria*, referred to in this paper as the STA) – an organisation which has much that it would like to keep hidden from public view.

The people of Spain are rightly afraid of the STA. Saints and sinners alike. They are afraid of the knock on the door, of the sudden investigation, of the relentless pursuit. Hunted like animals until exhaustion and terror overwhelm them. They are afraid of the politicisation of the audit process, of its potential use as a punishment for those who don't bend their knee to political will.

There are many stories that can be told about the STA. One of the worst has already been captured by the talented film maker, Alejo Moreno Garcia in *Hechos Probados*[3] ('*Proven Facts*') – a must watch for anyone who wants to understand the true horror that the tax authority can inflict on someone. Everyone you meet in Spain has a story to tell about the STA – not always their own, but reflecting the experiences of family, friends and colleagues. And their stories should be told, in the name of justice, so the tax authority can be held properly to account.

There have been many voices calling for greater accountability for the STA. But successive governments have chosen not to listen. In 2018, 35 Spanish academics, including a former President of the Constitutional Court, signed the *Granada Declaration*[4] which highlighted serious concerns about the behaviour of the STA's officials. The signatories concluded that "*the Spanish Tax Authority doesn't view taxpayers as citizens but as subjects.*" They expressed concern about "*a worrying deterioration in the principle of legal certainty*" and gave voice to the widespread belief among taxpayers that the STA regards them all as guilty until proved innocent.

In this paper, we focus on just one area where the STA's Inspectors are currently rampant, turning lives upside down, destroying the health of their victims, taking money from them without much regard to the niceties of the law. We shine the spotlight on the sustained attack that the STA has launched against a particular group of people: people who are taxed under the *Impatriate Law*, citizens from elsewhere in the EU, Americans, the British and others. People transferred to Spain by employers large and small.

The *Impatriate Law,* currently Article 93 of Law 35/2006, and known colloquially as the Beckham Law, is being rewritten, not by the Spanish parliament, the *Cortes Generales*, as it could be, but on the hoof by Inspectors from the STA. The story we tell here exposes what looks like a well-baited trap that has been carefully laid to catch and tax foreigners, *Impatriates*, and is now being ruthlessly operated by the STA.

The STA's campaign against *Impatriates* brings a sharp twist to a law that was designed specifically to induce foreigners to embrace a move to Spain for the purposes of work and employment, by removing some of the complexity and hassle of an international transfer and reducing the burden of tax that would otherwise have been borne by employers and employees. In its headlong pursuit of revenue and reward, the STA's Inspectors have abused and are abusing State power in breach of the most basic standards of administrative fairness and international law. The conduct of some Inspectors is so aggressive

3 https://spanishtaxpickpockets.com/

4 *https://static.ecestaticos.com/file/3cf/c33/984/3cfc33984f70d13e6eee6552d9b079ad.pdf*

that, irrespective of the detailed rights and wrongs, most of the victims are panicked into paying whatever is demanded, afraid that the STA might not be just a pickpocket but a highwayman.

Recent reports estimate that Spain will need to attract 24 million immigrants to maintain the current ratio of workers to pensioners within the next 30 years. Empowering the STA to harass and attack the best and the brightest of that group represents a complete failure of government policy: misconceived and self-defeating.

The Impatriate Law

The *Impatriate* Law taxes the world-wide employment earnings and Spanish assets of those to whom it applies, but their foreign investment income and assets are not taxed in Spain, thereby reducing the complexity for everyone involved, including the STA, for what is often a relatively short-term transfer. No one needs to reorganise their financial affairs, their pensions and other savings, to adjust to the Spanish environment. That's what the *Impatriate* rules allow. The Law also provides a rate reduction for income tax, although this is capped. For most employers and employees, the simplification is welcome, and the lower costs are important.

Newcomers to Spain have to elect for *Impatriate* status if they want it. It isn't automatic. They file a form and provide their employment contract. There might be some questions from the STA. Some who make the election are rejected - it's not clear how many - but the others are issued with a Certificate by the STA (*Certificado de haber ejercitado la opción por el régimen especial aplicable a los trabajadores desplazados a territorio español*).

Recipients are required to show their Certificate to third parties, including their employer, to confirm that they should withhold tax on the *Impatriate's* income at the lower, flat rate provided by the law. So, it is an important document. The flat tax rate is available to no one except *Impatriates*.

The issuance of the Certificate creates a legitimate and entirely reasonable expectation in the mind of the taxpayer, as well as his employer, that the taxpayer has met the requirements of the *Impatriate* regime and is entitled to benefit from the special status that it provides. Historically, there have been only two fundamental conditions that an individual had to meet, to qualify for *Impatriate* status: a significant period of residence outside Spain before applying and an employment contract that required the move. Both are conditions precedent. So, they can easily be checked in advance.

An absurd act of denial

Yet the STA strenuously denies that the issuance of the Certificate represents acceptance of the taxpayer into the *Impatriate* regime.

To see how absurd this suggestion is, it is only necessary to consider the logic. The outcome of any election is binary: rejection or acceptance. The STA reviews and rejects some elections for *Impatriate* status. Everyone else receives a Certificate: *ergo* acceptance.

Nevertheless, the STA pretends that, unless the election is rejected, the taxpayer simply remains in limbo, neither rejected nor accepted. This is not a tenable position.

Employers and employees understand perfectly well that, if the election is rejected, the employee will not be taxed as an *Impatriate*. They also understand that, if the election is not rejected and that, instead of a rejection, the employee receives a Certificate, the only possible interpretation is that the employee's election has been accepted.

If the matter was not so serious, the STA's position would simply be laughable, but it is very serious indeed. It has cost honest taxpayers many millions of euros. It appears to be a deliberate act of bad faith.[5]

Every employer and every employee believes that the Certificate is confirmation of the STA's acceptance of the employee's election to be taxed as an *Impatriate*, and the subsequent actions of the STA are all consistent with that view. The STA provides no other confirmation of an individual's status. If the STA were right in law this would mean that *Impatriates* never knew, during their working life in Spain,

5 The importance of the Certificate in the 'legitimate expectations' argument is set out more fully in Appendix 3, which also explores the STA's assertion that it is merely an administrative document of no real significance

whether they had qualified or not. They would have to wait – in suspense – possibly for more than eleven years of complete uncertainty, not knowing, until the audit window for their final period under the *Impatriate Law* had closed, whether there might be a life-changing moment for them in prospect.[6] No one would come to work in Spain on that basis. No one would stay. It is either nonsense or a deliberate trap.

The STA campaign

The current, extraordinary, wave of attacks on *Impatriates* seems to be targeted on unsuspecting foreigners who received their Certificate years ago and who were never given any reason to doubt that it confirmed their status. In all of the many cases that we've seen, the *Impatriates* have filed, each year, the special Tax Return form that only those with that status are allowed to file, and they have received no push-back. They will have complied with all the other special features of the law without demur on the part of the STA. In many cases they will have left the country long ago, to take up employment elsewhere, before the unexpected attack has been launched.

Out of the blue and in many cases, arguably out of time, these people have been identified as targets by the revenue-hungry STA. Accused of nothing that the STA is willing to reveal to them, they are subjected to an investigation into their personal life and their worldwide assets that is breathtakingly wide and intrusive. The global assets of *Impatriates* are not taxable so none of the international information is of any relevance at all for those under the *Impatriate Law*.

Their personal and business contacts in Spain are harassed, brought in for questioning ostensibly about their own affairs, only to find that the questions are actually about someone else: the *Impatriate*. Their banks, their former employers and their business associates are pursued for information whose foreseeable relevance the STA has never troubled to demonstrate and would often be hard pressed to do. Relentless pressure is applied, causing (and likely intended to cause) serious reputational damage to the *Impatriate*. The welcome is over. Victimisation has started.

The Victims' families, including the children, are also dragged into the investigation. We've seen the documentation. Inspectors name the children in their final report. They have identified and questioned the children's school. "*How good are they at Spanish?*", "*Did their parents monitor the children's achievements?*", "*Were the parents and children properly integrated into school life*?" These are shocking and unjustifiable intrusions into the private life of individuals. They have nothing to do with any tax assessment. The STA's disregard for the family's rights to privacy and for the limitations imposed by the GDPR, reveals the STA as it truly is: an organisation whose officers consider themselves to be above all laws.

Polite requests for an explanation for the investigations are met with a blank and contemptuous response. Resistance to providing information without any adequate explanation from the STA, is met with the threat of a substantial fine. In many cases, the threat is real, and a Penalty Notice soon follows, likely for many thousands of euros. We've seen it all.

The emerging patterns

There is a striking similarity in many of the cases that we have seen brought by the STA against *Impatriates*. Key features in the pattern are:

- Timing: The audit is launched many years after the *Impatriate* has started to work in Spain. This enables the STA to maximise revenues from an adjustment. It prevents early action by the employer to move the employee elsewhere if there is a risk that the tax costs of the relocation will be significantly higher. The only exceptions to this timing that we have seen are where there appears to have been a political motivation for starting an audit.
- Simulación: The *Impatriate* is told that his employer is a sham, a fake business set up to deceive the tax authorities, even when it has local employees paying Spanish tax and making social security contributions, clients or customers in Spain or elsewhere, and profits

6 The duration of the regime for an individual (five years in addition to the year of arrival) plus the four-year audit window which runs from the date the return is submitted (no later than 30 June following the tax year). In Appendix 7, we show just how significant it can be, financially, for an individual if their *Impatriate* status is denied by the STA.

on which it pays corporate income tax. The STA calls it '*simulación*' – a relatively new concept, but one that the Spanish courts have often been willing to accept, placing perhaps an unfounded trust in the veracity of the STA's Inspectors. The STA uses '*simulación*' in an attempt to shift the burden of proof to the taxpayer when the Inspector has failed to make a fact-based case in the normal way.

- Threats of criminalisation: The *Impatriate* is warned or threatened that criminal proceedings are likely to be brought against him – a threat usually dropped if the *Impatriate* agrees to "do a deal" ('*Acta con Acuerdo*') We have seen this widely used when there is no evidence of criminal intent.

We have seen how evidence and documentation can be set aside by the Inspectors. Good documentation which the *Impatriate* provides is simply regarded as a sign of a very professional deception. We have seen cases where there is no evidence that a company is anything other than a genuine business and it is the Inspector's case that stretches credulity. It seems to be enough for an Inspector to say that he suspects a scam for one to be conjured into existence. Malfeasance in public office comes to mind. On which side does criminal intent lie? Spanish taxpayers already know all about this.

The similarities in the *Impatriate* cases we have seen are so strong as to suggest they are standard practice. The threats are clearly made for impact.

The subversion of independence and objectivity

We believe that the principle of legality and the rule of law have been subverted by the STA and that the bonus scheme for Tax Inspectors has played a role in that. The STA refused to provide information about their scheme until a Spanish court required disclosure in 2022[7]. Its full details remain a state secret, but the summary that has now been published shows what everyone had long suspected: the STA incentivises Inspectors, not to identify the right amount of tax to be assessed and the correct basis in law, but to do a deal instead – a deal that does not have to be grounded in the law.[8] They achieve this through fear: fear of something much worse. Often, it is the threat of a criminal prosecution.

The effect of this type of bonus scheme is to remove objectivity and independence completely from the audit process by giving the Inspectors a stake in the outcome. Objectivity knows no shades of grey. In discussion, it's clear that the Spanish government does not understand this. But it's black and white. A financial interest eliminates objectivity. Would you trust a judge who earns a bonus based on the convictions that he and his colleagues achieve?

The Inspectors' bonuses are not clawed back even when an assessment is overturned on appeal, so there is inevitably a greater temptation for them to fabricate a case against a taxpayer.

As if the existing situation was not troubling enough, on 9 April 2025, the STA's leadership signed up to a new bonus scheme[9], offering staff €125 million if specified 2025 collection targets are achieved, providing a further incentive to Inspectors to dig for gold. If every member of staff had an equal entitlement, that would be around €5,000 per STA employee for 2025 alone. Of course, some Inspectors will receive even more than this.

The STA bonus system rewards the Inspectors who most effectively bully taxpayers into submission – the quicker the taxpayers give up, the greater the Inspectors' reward. The result is inevitable. Entitled self-interest rules within the STA. Its weak Code of Ethics[10] is cast aside in the face of naked greed. Taxpayers are harassed and threatened into paying huge sums that are not due. Lawyers estimate that more than 80% of *Impatriate* cases are settled in this way: through a deal ('*Acta con Acuerdo*') brought about by pressure, reputational damage and fear.

The opaque mechanism of the negotiations, and the nature of the deal itself, often leave considerable

7 See Appendix 2

8 The refusal to provide detailed information – "justified" on the basis that it would involve some administrative effort – continues, in the face of demands for greater transparency: *https://theobjective.com/economia/2025-04-19/hacienda-calculo-bonus-productividad-inspectores/*

9 *https://www.vozpopuli.com/economia/hacienda-bonus-125-millones-plantilla-cambio-recaudar-irpf-iva.html*

10 *https://sede.agenciatributaria.gob.es/static_files/Sede/Tema/Agencia_tributaria/Codigo_etico_AEAT.pdf*

doubt about the full legal basis for the "tax liability". Inspectors seem to play with a combination of opportunistic tax calculations, penalties and "discounts" on the penalties. Deductions will be allowed against income and gains if Victims agree to a deal, disallowed if they resist, creating what seems to be a deliberately confusing range of possible liabilities. The penalty itself can vary within a huge range, with no obvious consistency between cases. The statutory rules for penalties play into this confusion, apparently manipulated by unscrupulous Inspectors. Victims are typically offered four options, involving tax, interest and a penalty calculated by reference to the tax which the STA claims is due.

- For a clean deal with a "negotiated" tax base, no formal assessment and no chance to appeal (the so-called '*Acta con acuerdo*'), according to Article 188.1.a GTA the taxpayer can have a discount of 65% of the penalty. This means that in some cases, only 35% of the penalty will be payable.
- For a deal with a formal assessment (the so-called '*Acta de Conformidad*'), the taxpayer can have a double discount
  (i) 30% for signing in agreement ('*conformidad*') and not appealing against the 'regularisation' (the tax adjustment); and
  (ii) 40% for making payment during the voluntary period ('*pronto pago*') and not appealing against the penalty or the 'regularisation'.
- For the same deal with an assessment but the right to appeal the penalties, the discount will be just 30%.
- If the Victim wants the right to appeal against the whole thing, it's back to the original "offer" of tax, interest and quite possibly a 125% penalty.

The discounts may be provided in the law, but we have seen how Inspectors can play games with the numbers. There seems to be an almost infinite range of possibilities. Sometimes, the penalty itself is unfathomable, sometimes it is discounted outside the normal, statutory range. Sometimes, the underlying tax is adjusted. There seems no limit, in practice, to the Inspectors' discretion to "fix the price" of the deal, giving them enormous power.

We have also heard that Inspectors have been known simply to ignore *Impatriate* claims for relief from double taxation, levying tax without recognition of taxpayer rights and the requirements of a tax treaty which the Government of Spain has signed and had ratified. This is in marked contrast to the STA's behaviour when it is using the same tax treaty rights for its own advantage, sometimes questionably, to obtain information about the same individual.

Pressure, fear and money are powerful influences. If the taxpayer is unwilling to cave in under the pressure, and does appeal, he has to pay all the tax up front or find a guarantor for it. An appeal can take several years. Guarantors of sufficient standing are, in practice, very difficult to find and far from cheap. It's not a realistic option for most people.[11] So, access to justice is effectively denied. It puts yet more pressure on taxpayers to accept a deal, even when they know they have done nothing wrong.

In correspondence which the Director General of the STA herself initiated with us, we have asked her about the number of *deals* made in *Impatriate* cases so we can compare it with the numbers where normal assessments have been issued. She will have that information, but she has not provided it. More secrets! It is easy to imagine why.

¡Bienvenido a España! Adios rule of law.

It's important to pause for a moment and consider what is happening when a 'deal' is offered to a taxpayer. Let's imagine that an *Impatriate* is suddenly faced with an unexpected bill for additional tax of €1.1 million and the threat of penalties equal to 125% of the tax. The Inspector offers to allow additional deductions if the taxpayer agrees to a deal, cutting

11 In credit terms, a guarantee is broadly equivalent to a loan. Assets must be pledged and substantial guarantee fees paid. This can have a material impact on a taxpayer's financial position, especially when legal processes in Spain invariably take several years to reach a conclusion. While other governments have recognised that this significantly restricts access to justice for many taxpayers – especially those with limited assets that can be pledged – and taken action to improve the fairness of the system, the Spanish government has not.

the tax bill by €100,000, and also offers to reduce the threatened penalty to 25% of what was originally threatened. Without the deal, the tax and penalties would be €2,475,000. (There will be interest to pay as well). With the deal that the Inspector offers, the liability becomes €1,312,500 which represents a reduction of €1,162,500.

Why is the STA apparently willing to give up such a large amount of revenue? They would, of course say that there is a statutory reduction for meek acquiescence and early settlement. And there is. But the question is deeper, and the answer is generally hidden. For the Inspector, the numbers are just part of a game that he can play. Everything is part of the negotiations. He threatens to disallow deductions, but then apparently offers concessions. He threatens a large penalty – was 125% ever really at issue? – and then "backs off". This type of deal-making is not an act of kindness to the taxpayer. None has been shown. It is not recognition by the STA that the taxpayer has not been so much at fault. It will still try to impose the full penalty unless he does a 'deal'. It's not driven by cash flow considerations. The STA will get the money even if the taxpayer requests a formal assessment and appeals. The discount bears no relationship whatsoever to the administrative effort in issuing a formal assessment. It's more than 19 years' pay for an average Inspector. So, what is going on?

There seem to be a number of possible explanations, including the following:

- There is a risk that the full penalty will be seen as excessive, which it clearly is by any objective standard, even though the Inspector has legal cover for threatening it, and over-use will likely result in pressure for reform. Reductions mitigate that impact while leaving the high penalty as a viable and useful threat; and/or
- It is more important to the Inspector and his team to get the taxpayer to do a deal quickly – because it will boost their bonus and let them get onto the next Victim – than to generate the additional revenue for the government. *Cui bono*?

In other countries, a Minister of Finance would face serious questions if the government was apparently giving 'tax dodgers' a much better deal than is required by the law.

So, there is a third possible explanation, which might be combined with one or both of the others. That explanation is that the STA knows that the case against *Impatriates* is actually rather weak and may not stand up to repeated scrutiny in the courts, requiring the organisation to use up political capital if it wants to get a result it likes. So, it prefers to do a deal that can't be challenged and it's willing to sacrifice significant revenue to achieve that.

Perhaps there is a fourth explanation, but it is difficult to imagine what it could be.

Ultimately, the STA's campaign against *Impatriates* is self-defeating for the Spanish government. It is an approach fuelled by short-term need and greed, and completely misaligned with the government's broader policy objective of bringing talent to Spain to improve the performance of the economy. No business or individual taxpayer can plan or invest if random abuses of the law are permitted. So, they will simply not come to Spain in the future. We've heard from many who are already cancelling their plans. Relocation and investment are too risky in a country where the rule of law is not consistently upheld.[12]

The quick remedy: government action

To remedy the situation, the government itself should take action now to stop the abuse by the STA.

In relation to *Impatriates*, it should start by requiring the STA to:

- abandon its attack on the *Impatriate* status of everyone to whom it has issued a Certificate in the past,
- formally accept that existing Certificates are proof of entitlement under the *Impatriate Law.*

If it does not, Victims will have no choice but to look to the Spanish courts, European courts and

12 The Government of India has recently levied unusually high tax demands on multinationals operating in India, causing serious concern to investors. "*Tax tyranny risks Modi's growth agenda*" Financial Times, 23 April 2025

international tribunals for relief, causing further reputational damage that will have a significant impact on Foreign Direct Investment.

The Government, through the Ministry of Finance, must ensure that the rule of law is upheld by the STA. The Ministry should establish an independent, systemic review of the STA, recognising the importance of the rule of law issues, with a full commitment to implementing its recommendations. This will be a necessary first step in what will be a long process of restoring public confidence in this important institution. Alternatively, such a review could be carried out under the auspices of the European Commission, referencing its Rule of Law framework.

The other remedy: the courts

The courts in Spain are overworked and justice is often slow, as a result, as well as difficult for Victims to access. The courts may work in the end, but the scales of justice are weighted heavily towards the STA, with its army of lawyers and much better access to case law than taxpayers and their advisers.[13] To use the court system, taxpayers need deep pockets and nerves of steel. They have to be ready and able to resist for eight or nine years, sometimes more than 20. The risks and the financial chaos that the STA can unleash, draws in not just the taxpayer and his wider family, but business associates and many others. They are usually just too great for most Victims. The *Impatriates* caught up in this, are often cowed into paying. They leave Spain, bitter and angry. We have seen it happening. Fairness is a concept seemingly missing from Spain's tax system. It is lacking in the STA's actions, and absent from its weak Code of Ethics.

When the Spanish court system fails the Victim, the European courts potentially provide a remedy. The rule of law is a fundamental principle to which every Member State of the EU must adhere. The EU provides protection for all its citizens against the actions of Member States that infringe the rights they are expected to uphold, including the benefit of the rule of law, the Fundamental Rights in the Charter and the rights enshrined in the EU data protection rules. The European Convention on Human Rights provides additional protection.

It seems that Spain does not have a good history of compliance with European or international law and concerns have been expressed about its commitment to the fight against corruption at senior levels in government.[14] In some key areas it is an obvious outlier. Within the EU, on taxation issues, in the latest episode of what looks like a long-running saga, the European Commission decided, as recently as 12 March 2025, to take action against Spain for discriminatory treatment of non-resident taxpayers, demonstrating its ability to intervene and rectify infringements.[15] There is already a list of other likely actions to rectify infringements by the Spanish government in the tax sphere. This must be a source of constant embarrassment to the Spanish Chair of the EU Code of Conduct Group (Business taxation).[16]

The European Courts can provide justice, at least for patient, determined and well-resourced Victims, but they must still pay the full tax claim in the meantime, however imaginary and inflated it is, or be prepared to see their global assets plundered by the STA. There should be significant concern in the EU that citizens who were induced to cross the Spanish border, thinking they were welcome, have had their rights infringed and been pressured into making substantial payments to the STA out of fear.

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The pages that follow set out our findings and concerns in greater detail.

We have drawn together our thoughts for this White Paper at the end of April 2025, but our work

13 This is particularly true of the many first level tax tribunals, where typically only the STA will have full access to the argumentation and judgement. This asymmetrical access gives it a significant advantage over taxpayers and their advisers.

14 *https://www.coe.int/en/web/portal/-/greco-publishes-two-reports-assessing-spain-s-progress-in-implementing-its-anti-corruption-recommendations*

15 *https://ec.europa.eu/commission/presscorner/detail/en/ip_25_667*

16 The Director General of Taxation at the Spanish Ministry of Finance was re-elected to this position for a two-year term beginning on 5 February 2025.

is far from complete. We will continue to investigate and to document our findings. We have already found evidence that suggests abuse by the STA is widespread, running well beyond the Impatriate community, and we will have more to say.

In the meantime, we look forward to hearing from the Director General of the STA and the Minister of Finance. We are sure they will have something to say now.

THE VICTIMS

The Victims are real people. They have come to Spain from other parts of the EU, from the US, the UK and elsewhere in the world. Most of them seem to be established professionals, successful business people and experienced entrepreneurs. Many brought young families with them. The number of Victims is unknown to anyone outside the STA, hidden behind a veil of state secrecy. The STA has not released any data, perhaps fearing that knowledge of the scale of the attack on *Impatriates* would lead to broader action, brought by those who are recovering from fear, through anger, to seeking redress. But many have now self-identified.

Within just a few weeks of starting to make enquiries, the authors had been contacted by scores of Victims, many with harrowing stories to tell about how they have been treated by the STA, the impact it had on them and their families, how their lives have been turned upside down, how their health has suffered, how their advisers had been afraid to challenge the actions of the STA because of threats to their professional practices, how they had been coerced into settling without ever knowing, through the whole, brutal "settlement" process, what the full legal basis was for the STA's tax demand. It is clear, however, that they have all trusted the Government of Spain to act in good faith towards them. Their trust has been betrayed and many have already suffered substantial financial detriment as a result.

The secret statistics

The Director General of the STA started a dialogue with us about *Impatriate* taxation and about the bonuses paid to their Inspectors, so we asked her for some facts and figures about *Impatriate* cases. Our requests were straightforward:

a. What proportion of those who elected for the special regime were refused a Certificate[17] confirming their election?
b. What proportion of those who elected for the special regime were asked questions about their qualification for the status by the STA before being issued with a Certificate?
c. What proportion of those who were not asked any questions, subsequently had their qualification for the special status challenged on audit?
d. What proportion of the individuals subjected to audit had already left Spain before notification was given of the start of an audit?
e. What proportion of those selected for audit are not Spanish nationals?
f. What proportion of those audited were audited on filing their first tax return under the special status?
g. On average, in relation to cases where an audit has been started, how many years have elapsed between the issue to the taxpayer of the Certificate and the notification of the start of an audit process?
h. How many cases have been settled by each of:
   - Preliminary Assessment with Agreement (*Acta con Acuerdo*)
   - Preliminary Assessment in Conformity (*Acta de Conformidad*)
   - Preliminary Assessment in Disagreement (*Acta de Disconformidad*)
i. How many disputes or legal challenges related to the Beckham Law have arisen?
j. In how many tax audits conducted by the authorities is the possibility of referring the case to criminal proceedings explicitly raised as a potential outcome? Additionally, under what circumstances is this threat typically made?
k. How many of the aforementioned tax audits (see above at question j) actually result in a referral to criminal proceedings, either by direct

17 *Certificado de haber ejercitado la opción por el régimen especial aplicable a los trabajadores desplazados a territorio español*

decision of the tax administration or through collaboration with the prosecuting authorities?

l. Is the warning or threat of a possible switch to criminal proceedings formally documented within the audit file? If so, in what manner is it recorded, and what level of detail is included in the documentation?

In a democratic society, none of this should, of course, be kept a secret. But at the time of writing, no statistics have been provided. In fact, there has been no reply whatsoever from the Director General.

The STA requires taxpayers to answer questions and provide information very quickly, setting short deadlines to produce volumes of complex data and explanations. But when the questions are to, not from, the STA, everyone is expected to wait upon the Director General's convenience. It is symptomatic of an organisation that considers itself answerable to no one, above all laws.

The statistics are important. The answers to our questions must be readily available from the STA files. There must be very good reasons why the Director General, having opened the dialogue, has suddenly gone rather quiet.

Beyond the statistics

Of course, the Victims are not just statistics. They have names and faces. They have families and aspirations for the future. They came to Spain to work. They tend to have been successful people, often leaders in the business community. They have done valuable jobs and made a contribution. We've spoken to many of them.

We've learned how the STA has treated them. They've told us what happened to them. We've listened. And we've read the documents they've shared with us. Sometimes, the documents from the STA are even more shocking than the oral accounts.

The allegations of fraud

We've interviewed individuals who planned a move to Spain before either the employer or the employee knew that the Beckham Law existed, so it was never part of the reasons for their move. Yet we've seen documentation from the STA relating to the same people, in which it states, unequivocally, "*the taxpayer has made every effort to deceive the public treasury*" and claim tax benefits.

Investigations of young children

We've seen the STA flout data protection and privacy rules, dragging Victims' children into their investigation to frighten the taxpayer into submission. We've seen one report that reads like this:

The children of the taxpayers are as follows: Mary, George, Alan and Fred Smith. [The names have been changed in this paper to protect them.] *In Proceeding No. XX dated XXX, 20XX, it was asked where the children of the taxpayer live…*

The Operations Manager of THE SCHOOL [name omitted here] *with code XXXXXXXX and located at XYZ Street certifies that Mary, George, Alan and Fred Smith have been students during the academic years [20XX] until [20YY].*

- *The students have an age-appropriate knowledge of the Spanish language.*
- *The parents or legal representatives participate in school life and fulfil their duties in monitoring their children's schooling.*
- *Based on the available information, it is considered that the minors and their legal representatives are integrated into the activities of the school.*

None of this has any place in the tax case in question. It is not justifiably relevant to the inquiries that the STA has been making. There is no dispute about residency. The interview, the questions, the recording of the information are purely to intimidate the taxpayer.

Accusations that businesses are fictitious: 'simulación'

We've heard of many cases where the taxpayer has been accused of working for a company that is a sham, a '*simulación*'. It's a line regularly used by the STA in both domestic and *Impatriate* cases. It's a standard part of their playlist. When all else fails, they

say that a legally-constituted company, paying taxes in Spain, with clients and local employees who also pay Spanish taxes and social security, is just a fiction.

In one report we've seen, of just such a situation, the STA uses one of its favourite lines, that *Company X and the taxpayer have simulated a commercial relationship with the purpose of making it appear that the taxpayer complies with the requirements set forth in Article 93 of the LIRPF to apply the special regime for displaced workers. Simulation is a type of concealment that occurs by generating the appearance of a fictitious business that serves as a screen to cover the one actually carried out in violation of the law. What characterises simulation is the shared will of those involved to conceal a certain reality.*

The STA provided no evidence of this "shared will".

Elsewhere, we've seen the STA assert that the parties *have simulated the commercial relationship so that the taxpayer could fraudulently benefit from the special regime for displaced workers to Spanish territory.*

The STA appears to believe that making an accusation of '*simulación*' gives them an advantage – and maybe it does. They use it as part of an attempt to reverse the burden of proof. The objective is to put the taxpayer in the position of having to prove that there is no '*simulación*'. We have seen, in the documentation, how this is done. We have heard from professionals how widespread its use has become in the last few years.

The Inspectors put the file together with a view to this end-game. They go through the diaries of the Victims and ask how much time they spent in the office, what meetings they had, whom they met, how it related to the business, what events they attended. They ask junior employees to say what they know about their boss, whether he came to work by car or used the train, whether he worked hard. They try to compare lists of exploratory meetings with subsequent clients of the business, to establish whether the meeting was successful or not, whether apparent failure can be used as evidence that the business was always a sham. They ask for proof from emails of what the taxpayer has said. They go minutely through company accounts and personal expenses. They ask why one individual has been paid more than another. And then, whatever the answers, they say the business is a sham. Even when the accusation of '*simulación*' flies in the face of the evidence, as it often does, the Inspector puts it forward. When you are shown a file, the documentation includes only the evidence that they believe supports their argument, not the full facts: extracts from interviews, one-liners, invariably taken out of context. The STA paints a picture that no one recognises. There is a well-established belief that if you want to tell a lie, you must tell a BIG LIE.

Do the courts buy anything that could be described as a BIG LIE? STA Inspectors seem to like this passage from a court ruling which we've seen quoted more than once, but without full context:

> *Given that simulation constitutes the artificial creation of an appearance intended to cover the reality that contradicts it, it is obvious that proving simulation entails great difficulty, as the simulated business usually meets all the external requirements that constitute the legal appearance and, therefore, the proof must be based on presumptions that support the conviction of the existence of the simulated business.* (Emphasis added)

This a shocking admission: that the tax system, and maybe even the justice system, can allow the STA to make things up, in the face of the evidence, in the face of the facts. If their Inspectors don't like the facts that they find, they are simply able to replace them with their own "presumptions" to support a falsehood that they want to proclaim as truth. We will return to this issue in another paper.

Interrogations of the Victims by the STA seem to involve Kafkaesque logic, where the Victim's strengths are viewed as suspicious indicators, where the burden of proof is asymmetrically placed on taxpayers, and where the appearance of innocence itself can raise red flags in the STA's imagination.

The STA currently benefits from a 'presumption of veracity' that does not seem to be tested adequately by the Spanish courts in a context in which there

are both institutional and individual motivations to fabricate a case against taxpayers – for example the Inspectors' various bonus schemes. Imagine if the judge was entitled to a bonus based on finding taxpayers guilty! The concern about Inspectors arises particularly in relation to cases of so-called '*simulación*'. Respect for the rule of law requires the veracity and motivations of all parties to be tested on an equal footing and without prejudice.

Criminal law normally provides protection against false accusations. Article 456 of the Spanish Penal Code may be in point here. It is an offence punishable by fines or imprisonment for someone to make a false case, to fabricate evidence against another person. Are STA officials exempt? There may also be a case for defamation, potentially including a criminal case for Malicious Harm ('*Calumnia o Injuria*') under Article 205 and 206 of the Spanish Penal Code. If the Spanish courts fail to recognise this as a concern, it can potentially be taken as a civil matter to the CJEU or the ECtHR.

Most of the taxpayers we've interviewed don't have the time, resources or legal expertise required to rebut the STA's accusation of '*simulación*'. The STA takes remorseless advantage of the fact that *Impatriates* are mostly foreigners, that they are disadvantaged by their much shallower understanding of the Spanish legal system, that many of them lack professional-level Spanish language skills and have advisers who have been cowed by intimidation.

The invention of a motive test

In addition to its dubious use of the concept of '*simulación*' we have seen the STA try to impose tests for *Impatriate* status that are simply not in the law: an invented motive test for the Victim's move to Spain is a favourite. There is no motive test in the law. What is required is an employment contract or an appointment as a Director and the move should be in consequence of that employment contract or appointment. Nothing more. But we've heard the invented motive test used time and again.

We have heard from the Victims that the STA Inspectors will assert that the individual moved to Spain, not for work, but because the weather is nicer than back home, not for work, but to play golf. They came because they liked the food.

They may well have liked the food and the weather, but the law doesn't disqualify an individual from *Impatriate* status because of it. The test in the law is that the relocation was a consequence of an employment contract or appointment as a Director. The motive test, invented by STA Inspectors, is pure fiction: '*simulación*'. It is what they would like the law to say, not what it says.

The lie that there was no time to check the taxpayer's election

Victims are often told that the Certificate they were given by the STA is no proof of their acceptance within the *Impatriate* regime because there was no time for the STA to check the election before it had to issue the Certificate. This seems to be a straightforward lie. The law provides for the Certificate to be issued within 10 days, but, in practice, the STA simply ignores this deadline (and there appear to be no sanctions for this behaviour). We have reviewed available data for elections and Certificates. The data show that a six-week gap between the submission of the election and the issuance of the Certificate would not be in any way unusual. In one dataset, there was no Certificate issued earlier than 37 days after the election was submitted. We have seen cases where no challenge to the election was made by the STA, but the elapsed time between the submission of the election and the issue of the Certificate was more than 140 days.

There is plenty of evidence that, before issuing Certificates, the STA does make inquiries that are intended to check whether the taxpayer qualifies or not. In the samples we have seen, there were often questions raised. Sometimes there was even an initial rejection followed by an appeal and the later issue of a Certificate, once additional documentation had been provided. In the face of this evidence, it is clear that assertions by the STA that (i) they didn't have time to check whether the taxpayer qualified; (ii) they couldn't check; and (iii) the Certificate did not evidence acceptance of *Impatriate* status are false pleading. This is a serious offence of which both the

individual Inspector and the STA as an organisation are evidently guilty. Again, there is an issue about '*simulación*' by those in the STA.

The fishing expeditions

Most Victims are asked for vast amounts of information. The inquiries are intrusive, but Victims still tend to provide the information requested. They comply because they are good citizens, and they feel they have nothing to hide. If you read the STA's documents, you can sense the Inspector's disappointment when everything checks out, invoices match, there are employment contracts, formal agreements between client and supplier. The STA makes it clear it has the power to require any information and evidence it wants. But evidence that threatens or disproves their case can either be ignored or twisted against the taxpayer. There is no balance, nothing that shows the hallmark of justice.

In the international sphere, we have heard that the STA has actually been caught out, lying about a taxpayer when submitting information requests and that Inspectors will, contemptuously, ignore tax treaty claims that would reduce or eliminate a Spanish tax liability. There are serious questions to answer, not least within the EU and the OECD.

The threat of criminal proceedings

Then there is the assertion of criminality. Almost every *Impatriate* to whom we've spoken has been told that their case is likely to be handed over for criminal prosecution. Unless they do a deal. Most taxpayers are shocked by the suggestion that they might be accused of a crime. That is the STA's intention. We have seen Inspectors use it in cases in which there is not the slightest evidence of criminal intent. It's a threat, a negotiating stance. A no-cost strategy (so far) for the STA Inspectors. It usually brings in the money more quickly. A route to bigger bonuses.

The threat of criminal proceedings has generally got nothing to do with the intentions of the taxpayer. It has everything to do with the culture of the STA. Legally, the shift from civil to criminal proceedings might not even make sense for the STA. They seem to plan on the basis that the threat will be enough to get them what they want. We have sought, pretty-much in vain, for *Impatriate* cases that have actually gone through the criminal court.

The STA's weaponisation of reputational damage

The international trawl for information, which characterises many STA investigations of *Impatriates*, is not just a fishing expedition. It is part of a strategy aimed at undermining the taxpayer's reputation in such a way as to make him more likely to agree quickly to doing a deal that will bring the investigation to an end, without regard to the existence of a legal basis. The STA Inspectors 'groom' Victims in this way, to 'soften them up' and make them susceptible to an offer.

The STA's history of weaponising reputational damage against taxpayers, without due regard to the law, is well-documented. In a ruling of the National Court reported as recently as 18 April 2025, it became clear that the STA had wrongfully caused reputational damage to Marillion, an Andalusian company, by including its name in a list of tax debtors in relation to issues that had not been finalised. This appears to be part of an on-going pattern despite a number of similar Supreme Court judgements.[18]

In the pages that follow, we move from the general to the specific. We tell the stories of three of the Victims from whom we have heard, Anna, Lars and Mike. These are not their real names, and some inconsequential facts have been changed to protect them. They are afraid of further victimisation. But their stories are no less compelling for that.

18 *https://www.elconfidencial.com/juridico/2025-04-18/justicia-hacienda-empresas-lista-negra-deudas_4109866/*

Anna's story

***In brief*:** Anna is a Victim. Her experience, which we summarise here, has been repeated time and time again in the accounts we have received from others. She thought she was settled in Spain. She'd had a Certificate confirming her status under the Beckham Law. But the STA got a sniff of money. They opened an audit at the last possible moment. They put relentless pressure on her for more than a year. They demanded documentation and information to which they had no right. She nevertheless provided it. She had nothing to hide. They told her that the Spanish company that employed her was a sham. A familiar line from their playlist. It was not. She demonstrated that. The STA said that she never qualified under the Beckham Law, in spite of the Certificate she'd received. So, her salary was taxable at 45%, not 24%, and any capital gains she made outside Spain were fully taxable. They ignored the facts. They threatened to make it a criminal case. When she panicked, they offered her one of their deals. The deal was clearly extortion. Anna was hospitalised by the stress. She gave in and paid the extortioner. Job done as far as the STA was concerned. On to the next Victim.

Anna came to Spain in 2013. She came to build a Spanish business for the EU-based group for which she worked. She had done it before in other countries. Her husband, Bill, was older than her and had recently retired.

Anna is a financial services professional with some experience in communication and knowledge management. She is an EU citizen but has spent much of her career outside her home country, focused, of late, on bringing in international clients for the knowledge business that she founded many years before, and in which she and her husband still had a minority stake until recently. It was a company registered in the EU. Anna herself owned 12%.

In 2013, the Board became interested in the emerging Spanish market which seemed to offer good prospects for their services. The Directors felt that there was a great opportunity to do business there with the right people in place. Anna was identified as "the right person" because of her experience and language skills, and the Board made a decision to relocate her and her family to Spain. They arranged for a Spanish company to be set up - the normal first step for an international group planning to operate in a new market - to provide research and marketing services to the EU parent and to introduce Spanish clients to its global business. It would employ Anna. Her role in Spain was to be much as it had been elsewhere, a combination of research, product design and market development.

The parent company had appointed an experienced Spanish agent to set up a local subsidiary and manage her transfer. Once the Spanish subsidiary had been put in place and the family had established themselves in Spain, Anna followed the agent's advice and elected for *Impatriate* status. The election was made within six months of her arrival, as required, and Anna was quickly given a Certificate by the STA which she believed confirmed that her election had been accepted. Thereafter, the Spanish company withheld tax from Anna's monthly salary at the 24% flat rate required under the Beckham Law. Year after year, Anna filed the tax returns that only *Impatriates* are entitled to file. She never received any questions about her returns or her status. There was no suggestion from the STA that she had any other filing obligations. Bill was not employed and did not, therefore, elect or qualify for Beckham Law status. He had modest savings income, and he filed the regular Spanish tax returns as a resident taxpayer.

Everything went well. The business was a success both in Spain and in its global markets. The Board was happy. People began to take notice. In mid-2018, an offer was made for the parent company which the Board ultimately accepted. Anna and Bill sold their shares for cash, equity and loan notes issued by the acquirer – nothing unusual for this type of business disposal. Bill reported his gain on the shares and paid Spanish tax on it. Anna's gain was excluded from tax under the Beckham Law rules.

Anna's employment came to an end at the point when the company was sold, but she and Bill decided to stay on in Spain. They had put down roots. Their

family was doing well. Anna was content to become a regular Spanish taxpayer, like Bill, from the beginning of 2019, paying the wealth tax as well as full Spanish income tax.

Three years after the original sale, in 2021, the acquirer itself was sold. Anna and Bill were obliged to sell their shares, for which they received cash. They both declared their gain as Spanish residents and, between them, paid Spanish tax of well over €1 million on their gains in June 2022. That seems to have been the trigger. The smell of money. The STA sat up and took notice.

In the first week of December 2022, just days away from being time barred from carrying out an audit of 2018, which was Anna's last year of Beckham Law status, the STA notified her that they were launching an investigation.

It started immediately. Week after week, a torrent of requests for information rained down on Anna. Everything was turned over: all of their bank accounts in Spain and elsewhere, all of their assets. They demanded the tax returns related to her previous non-Spanish employment. She attended all the meetings with the STA. She was asked to explain the purpose of the business, to go line by line through the expenses, her personal accounts, her transfers; to explain the sale of the company, to provide her diaries showing details of her meetings, the contacts she made, the work that she brought in. It lasted over a year. Anna and Bill asked repeatedly for an explanation for the audit, and for details of what they were investigating, but to no avail. Finally, after more than a year the STA simply said that, in its view, the Spanish company was a sham, that they'd moved to Spain to avoid paying tax on the gain from selling their shares; and that Anna never qualified for Beckham Law status. The Inspector ignored the obvious substance in the Spanish business, the fact that no sale of the company had been in prospect when Anna was offered the role in Spain, that tax on the gain back home would have been substantially lower than the total tax actually paid in Spain and that they were minority shareholders, unable to force through or prevent a sale.

The STA continued to evade the requirement to explain the legal basis for their assertions. They threatened to make it a criminal case. She asked her professional advisers how it could possibly become a criminal case. Meekly, they said it was at the discretion of the STA if a significant amount of tax was at issue. Anna and Bill wrote to the STA setting out all the many reasons why it could not possibly be a criminal matter. But the STA was relentless. The Inspector offered to do a deal with Anna. It looked like the only way to avoid criminalisation.

He said she owed tax at regular Spanish rates on her 2018 income and gains, interest on the "late payment", plus a penalty of 125% of the tax. The STA gave her the familiar four options.

- The cheapest was to do a quick deal ("*Acta con Acuerdo*") – pay the full tax demand, interest and 35% of the penalty.
- If Anna wanted a formal assessment to be issued, specifying the legal basis, ("*Acta de Conformidad*"), it would cost her €100,000 more, provided she gave up her right to appeal against the penalty.
- If she wanted a formal assessment and the right to appeal against the penalty, it would cost her another €100,000 on top of that.
- If she wanted a formal assessment that she could appeal in its entirety ("*Acta de Disconformidad*"), it would cost her €350,000 more than their "best deal".

Anna and Bill buckled and agreed to do the "best deal", their nerves in shreds. Anna ended up in hospital. Having previously decided to settle in Spain as full taxpayers contributing to the Spanish economy, their lives have been shattered. They have changed their minds and now left Spain, never to return.

Lars's story

***In brief*:** Lars is another Victim of the STA. He and his partners had built a successful and highly specialised business in Germany from the ground up. He was aware that there was potential in the Spanish market and when a good friend, Karl, who had similar interests, suggested they join forces to tackle it, Lars was convinced it was a good idea. Karl had already set up a Spanish company and he now invited Lars to come in as a Director. The company's lawyer suggested that he should elect for *Impatriate* status when he arrived. He followed that advice. He received a Certificate that confirmed his status. Or that's what he thought. He worked hard but the market was tough, and progress was slower than they had hoped. COVID made things even more difficult. But Lars was committed to Spain. The company diversified. Two years after he came to Spain, there was an unexpected offer for the German company. Lars was willing to sell his shares and did so in July 2020. Everything was fine. Until it wasn't. Or rather, until the STA said it wasn't. He'd filed all the Beckham Law tax returns, declared all his income, paid all the tax. But the sale of his German company triggered something. The STA saw an opportunity. It upended his life. Tore open his personal affairs with a deluge of questions. He gave them everything they asked for. He had nothing to hide. The Inspector said that the company was a sham - a *'simulación'.* It wasn't. But that didn't seem to matter. They told him there'd be a criminal prosecution. He doesn't know how to handle that. There is no crime to answer for. They told him he'd have to pay. Tax, penalties, interest. There is no end in sight. The nightmare continues. Traumatised, Lars has left the country with his family to help build a new business somewhere else. But there seems to be no hope of escaping from the STA unless he gives in to their extortion.

Lars is Swedish. He came to Spain at the very end of 2017. He had previously worked in Germany for 12 years. From 2013, he and his partners had their own company there, with more than a dozen local employees and an international network providing advisory services to shipping companies in 20 countries.

Spain was a market that he wanted to get into. Karl, a German national, and a friend of Lars, had a similar idea. Karl set up a company in Spain with a view to building a new business there. He invited Lars to buy shares in the newly-formed company and become a Director. Lars took a 20% stake. He moved to Spain to take up the challenge of breaking into the Spanish market. His wife, Birgitta, and their children moved with him.

A local Spanish lawyer had set up the company for Karl. He recommended that Lars should elect for Beckham Law status. He made the election, provided the necessary documentation and soon received a Certificate from the STA, which he believed confirmed that his election had been accepted. He filed the special tax returns, Form 151, which only people under the Beckham Law are entitled to file, every year from the date of his arrival. No one from the STA challenged his status as an *Impatriate* and there was no push back about his filings - no suggestion that he should be filing Form 100 which Spanish residents, other than *Impatriates*, are required to file. No request to file Form 720, which requires details of foreign assets, but is not a form that *Impatriates* must file.

The new company had some success, and took on local employees, but the Spanish market proved more challenging to break into than they had expected, and the company didn't enjoy the strong growth that Lars and Karl had hoped for. The COVID pandemic made matters worse. The company diversified in response, developed a new service that had proved popular in Germany. They started to do some preliminary marketing. Lars's wife, Birgitta, was taken on as an employee and she soon brought in a consulting contract with a major company, strengthening the business. Birgitta did not qualify for Beckham Law status and didn't make an election for it.

Meanwhile, the German consulting company continued to perform well and there was demand from it for Lars's particular expertise. A contract was, therefore, negotiated and agreed between the Spanish company and the German company to provide his services on a normal market basis. That also strengthened the Spanish company.

The continuing success of the German company attracted the attention of a large Swiss multinational.

The Swiss made an unexpected offer for it that was too good for the shareholders to turn down. So, the German company was sold in July 2020. Under the Beckham Law, there was no requirement on Lars to report or pay tax on the gain that he made from the sale and the Form 151s that he was required to file each year didn't contain any questions about sales of non-Spanish assets.

Lars does not know what triggered the audit, which was launched in May 2023, but it has involved an immense information trawl. He has provided everything they have asked for, including details of his personal life and financial affairs, his and his wife's professional activities and their expenses as well as the company's accounting records. The STA has checked and cross-checked bills and invoices from third parties. The Inspectors have interviewed their employees and business contacts. They have approached the Swiss company and tried to get emails about the sale of the German company both from the company itself and through the tax authorities. The whole investigation has been a traumatic experience. The family's private life has been subjected to intrusive inquiries that seem unrelated to any possible tax liability.

The story isn't over yet. Lars has been told that the STA considers that the Spanish company he worked for is a sham, that there was no need for a company to be incorporated. The Inspector said he believes that Lars came to Spain solely to avoid tax on the sale of his shares in the German company, which wasn't remotely being considered when he moved to Spain. He understands that the STA intends to say that he never qualified for Beckham Law status, even though he received a Certificate after the STA saw his contract when he elected for *Impatriate* status, and even though the STA never suggested that he should be filing as a Spanish resident until they heard that he had sold his shares in the German company.

The Inspector has told him that he will have to pay. The STA says he is liable for tax and penalties and interest for 2018 and 2019 and 2020. The Inspector has not yet audited any other year. He has said that Lars will be subject to a criminal prosecution in respect of the sale of his shares in the German company: an STA fantasy with no basis in law. But doing a deal might provide a way out. Lars is afraid that the tax on his gain alone will be more than €1 million. He has heard from his advisers that he can also expect them to demand penalties equal to 125% of the tax they claim is due.

Lars and his family have **been** traumatised by the experience. If they had known that by coming to Spain, they were opening every aspect of their personal affairs and private lives to STA Inspectors, they would never have moved from Germany. Unsurprisingly, in the face of the STA onslaught, Lars has uprooted his family. At the end of 2023, they moved back to Sweden to try to rebuild their lives and start a new business. Another potentially long-term contributor to the Spanish economy has been lost.

Mike's story

In brief: Mike's is another on-going story. He came to Spain in 2018, transferred by his employer to explore the Spanish market for their particular financial services in the aftermath of a Brexit vote that left them outside the EU. He was a senior executive with a love of Spain already and some nascent Spanish-language skills. It wasn't difficult for his bosses to persuade him to go and take up the new challenge. He did what he was asked to do: get a new office set up, explore the local market and do advisory work. Mike was good at his job. He still liked Spain. But while he was there, his employer's business back home was evolving. The EU presence was becoming less of an issue. His employers wanted him back in London, full time. So, he went back. A year later, the STA told him they were going to investigate him. His first two years in Spain were already outside the time limit but they were going to audit the rest. He'd already heard that the STA was targeting Beckham Law people, but he could never have imagined what followed. The endless series of meetings, delegated to his advisers at great expense, the insatiable demands for information, the attitude that he had something to hide. He didn't. Not satisfied with what they got locally, because there was nothing to find, they started an international trawl for information. The grandest of fishing expeditions. Every country where he had a bank account or anything else. The investigation goes on. A year into it, the STA still refuses to say what their Inspectors are looking for. They refuse to give more than the blandest of answers to his questions. They refuse to say whether they are suggesting that he didn't qualify for the *Impatriate* regime. They have had seven years to decide that, but no one can rush the STA, it seems. Mike is a calm person. They don't ruffle him. Even the likelihood that they will say he is a criminal, a fraudster and a tax evader hasn't got to him. He knows he's not. But the STA doesn't like people who stand up to their bullying. There is a long way to go.

Mike was a long-term senior employee of a UK corporate finance firm which advised its clients on investment opportunities around the world. He was already smitten with Spain and his family liked it too. They bought a holiday home in one of its many wonderful regions. The whole family was learning Spanish, and the kids were keen to use it in practice.

So, when his employer suggested a move to Spain, he didn't take a lot of persuading to accept the challenge of relocation, and the family was up for it too.

The company had good reason to want him in Spain. Like many UK-based financial services organisations at the time, the firm was beginning to worry about the implications of the Brexit vote. It could see its MiFID "passport", which allowed it to offer services anywhere in the EU, disappearing. It needed a plan. It was hearing, on the grapevine, that some of the larger, global institutions were thinking about Spain as a new location for their businesses. Of course there was Paris, or Frankfurt, but there were particular reasons why these locations were sub-optimal for the business in which Mike worked.

The company made some preliminary investigations, which confirmed that Spain was interesting from a business perspective. The *Impatriate* regime was the icing on the cake. It looked as if it had been cleverly designed to help employees move and to reduce the cost and hassle for the employer. It seemed a good way to attract talent to Spain: a win-win-win situation.

The company needed someone with considerable experience to check-out the practicalities of setting up an office there, make local contacts, see what might actually work on a day-to-day basis and investigate whether there were any significant barriers to success, alongside doing advisory work.

Mike was going to be a good choice. He had exactly the right experience, the right mentality. And he was pretty negative about the UK after the Brexit vote. He'd always hated the British weather too. This would be a good opportunity for him and for the company. He would be able to check-out the suitability of Spain as the location for the main EU office. He would inevitably continue to travel a lot, but sophisticated IT systems would make sure that he could keep fully in touch.

A top local law firm, which had previously advised the UK company on some Spanish transactions, was

hired to advise on the proposed move. The plan was for Mike's UK employment contract to be terminated. The existing Spanish company would employ him going forward. The law firm would make sure that all the requirements were followed to the letter.

Mike and his family moved to Spain in 2018, initially in rented accommodation. He filed the election for *Impatriate* status on time and received his Certificate promptly. No one, including the STA, suggested that it didn't mean that he had been given *Impatriate* status. In the circumstances, that would have seemed absurd. Mike showed the Certificate to his employer, as required, and the company began to deduct tax from his salary at the flat, *Impatriate* rate. There was no push-back from the STA.

Mike opened a new office, hired staff. As well as doing advisory work, he started putting out feelers in Spain, meeting local entrepreneurs and getting an idea of the business and investment environment. He liked it. Mike was a workaholic, and that didn't change, but he saw that, among those he met, there was a less hurried way of doing business than in London. Mike appreciated it, as he also appreciated the good weather and excellent food.

Back home in the UK, Brexit was having an impact, but it looked as if the firm's business was not going to be as badly affected as first thought by being outside the EU. The clients evolved and reliance on a MiFID passport was not as important as it had first seemed. After a few years, the company decided that it didn't need Mike in the Spanish company any longer. He was asked to reverse the move and return to London and its less-than-perfect weather. With some disappointment, he complied.

When he left Spain, he filed his final Form 151, the form he had used each year as an *Impatriate,* and notified his departure to the STA. He had his on-going filing responsibilities as a property-owner in Spain but, apart from that, he assumed that his relationship with the STA, which had been quiet and calm for the last five years, was at an end.

How wrong he was!

About a year and a half later he received the formal notification that the STA was starting an audit. In one respect it came as a shock, as there had been no significant questions about his returns during all the time he was in Spain, but in another respect, it was more like a volcano erupting after months of small tremors. After he left Spain, there had been some strange developments among people whom he'd known. Some didn't want to talk about it, but it was clear they were being investigated and put through the mill by the STA.

The nightmare started – non-stop questions via his advisers, including demands for things the STA already knew about – his contract of employment, for example, which he had submitted with his application for the *Impatriate* status. Meeting after meeting after meeting. Then demands for access to his whole life: not just his Spanish banks, his local credit cards, utilities, but everything outside Spain as well: things that are irrelevant to the STA, given his *Impatriate* status.

A year into the audit he still has no real idea what the STA is looking for. The Inspector won't tell him. He just says that they're verifying his tax position and his qualification for *Impatriate* status, which he thought had been settled back in 2018, seven years ago. Had he done something wrong? No. He knows he hasn't. But why now? Where is all this going? Why won't they tell him? He's asked them directly.

And now the requests have multiplied. Requests for information sent far and wide around the world. Requests to the tax authorities to obtain the information for them. Sweeping requests that look like wholesale fishing expeditions. Requests to the authorities in places where he just has an investment in a local fund. Requests for anything and everything the STA can think of. One thing seems sure: the Inspectors want to vacuum-up every bit of information they possibly can, to try and pin something on him, anything at all.

They are much less interested in the legal basis for taxing him than in the amount of money he might have. They assert their right to get the information while denying him the ability to challenge the underlying presumption that he is liable to tax at all. Under the *Impatriate* law, he has no liability. He can only guess what they're trying to do. How long will they make him wait? Long enough, presumably, for him to

feel the pressure and be willing to accept a deal they offer. That's what others say they do. He has talked to some Victims. Every day, he waits for the STA to accuse him of being a criminal. A fraudster. Every day he expects the false accusations. Not a technical argument, just an assertion of guilt. He understands that, for the STA, everyone is a criminal, except their own staff... But Mike is calm. He's calm because he's a calm person. And he knows he has done nothing wrong.

⁂

These are just three stories, but some patterns quickly emerge from them that we have noted in many other cases. The common threads are obvious: a move to Spain, election for the Beckham Law not questioned or challenged by the STA, a Certificate issued that - whatever the STA may say - creates a legitimate expectation that the taxpayers have been accepted as *Impatriates*, a filing history that respects and follows all the requirements of the Beckham Law, the sudden awareness in the STA that there is some money around, an audit started around the end of their time as an *Impatriate*, wide-ranging demands for information that has no foreseeable relevance, unevidenced assertions by the STA's Inspectors, threats to make the process criminal, the offer of a deal. These are the traits we have seen time and again in the STA's treatment of *Impatriates*.

1

WHAT IS THE BECKHAM LAW AND HOW HAS IT EVOLVED?

The history of the Law and its key features[19]

The special tax regime for transferred workers, known colloquially as the Beckham Law, began life as Law 62/2003, of 30 December 2003 (*the 2003 Law*), which inserted a new paragraph 5 in Article 9 of the Personal Income Tax Act 40/1998 with effect from 1 January 2004.

In November 2006, it was given the place in the legislation that it still has today, as the more familiar Article 93 of Law 35/2006 (*the 2006 Law*).

It was designed to encourage international businesses to relocate senior executives with high incomes and wealth to Spain.[20] We refer to them as *Impatriates* in this paper. Many of them could also be described as *Victims*.

Professor Aurora Ribes Ribes, Tax law Professor at the University of Alicante, writing about the purpose of the special tax regime in 2015, noted:

> "*The declared purpose of this measure [the Beckham Law] was to attract foreign experts to Spanish institutions and enterprises in order to strengthen Spain's international competitiveness. Evidently, the justification of the regime is founded on the consideration that we are faced with a 'third category of taxpayer', the temporary resident who differs from residents and non-residents stricto sensu, and consequently deserves a different tax treatment that takes their temporary stay in Spain for labour reasons into account.*"[21]

The similarity of the Beckham Law to the much-criticised UK tax regime for non-UK domiciled individuals ("non-doms") was self-evident but there were some significant differences as well, including the shorter time frame for the benefits.

There was little domestic fanfare for the announcement of the preferential tax regime, perhaps because of EU sensitivities, but more likely because, in late 2003, Spain was already in the run-up to the 2004 elections and special tax advantages for foreigners were not seen as vote-winners.

The purpose of the regime was, however, widely noted by lawyers representing companies with an interest in Spain. For example, Spanish tax lawyers LaWants state, "*The law's primary goal was to bolster Spain's appeal as a hub for exceptional talent by easing the tax load for affluent foreign workers.*"[22] For the government, it was enough to ensure that the tax benefits were publicised through the professional networks to potential *Impatriates* and their employers.

The original rules established in the 2003 Law, have been modified a number of times. In this paper we focus primarily on the Beckham Law as it was in the period 2015 to 2022, but we highlight in this section the main changes in substance and policy direction that have been made since its introduction, reflecting the changing political mood and new thinking about targets and objectives. In general terms, the special scheme of taxation for *Impatriates* has enjoyed political support, irrespective of which party was in power.

19 See Appendix 6

20 M. Luisa Abella García in "*El régimen fiscal de los impatriados. Problemas de aplicación y alternativas de reforma*", *p5 https://www.ief.es/docs/destacados/publicaciones/revistas/cf/27_01.pdf*

21 "Expatriate Taxation in Spain: Some Reflections for Debate" Intertax, Volume 43, Issue 6 & 7, 2015, p460

22 *https://www.lawants.com/en/beckham-law*

Who qualifies as an *Impatriate*?

The 2006 Law

The 2006 Law imposed only modest and easily verifiable qualifying conditions on individuals electing for *Impatriate* status:

- That they had not been resident in Spain during the 10 previous years
- That the move to Spain occurred as a result of a contract of employment
- That the work be carried out substantially in Spain

This last condition required some closer definition and ultimately proved unworkable.

Law 26/2009 of 23 December 2009 (the 2009 Law)

The first significant changes were made in 2009. The recent financial crisis had led the Spanish government to introduce austerity measures and, in the face of the impact of those measures on the general population, there was political pressure to set some new limits on the *Impatriate* regime as well. The economic pain should be shared around. The 2009 Law, therefore, imposed a ceiling on the foreseeable annual earnings of *Impatriates*. Those who expected to earn more than €600,000 per year, were automatically excluded from the *Impatriate* regime.

This limit was not applied retroactively, so it did not apply to those who moved to Spanish territory before 1 January 2010. It effectively excluded most highly-paid professional sportsmen and women but they were not formally excluded as a group at this stage.

Law 26/2014 of 27 November 2014 (the 2014 Law)

Further changes followed some years later as economic conditions eased a little and the need for broadly-based tax reform became apparent. In the context of a planned, comprehensive reform of the Spanish tax system, in July 2013, the government appointed a committee of experts to draw up a report that would make a series of non-binding proposals, which became known as the '*Lagares Report*'.[23] For the *Impatriate* regime, the committee's proposals included removing the €600,000 limit, reducing the non-residence requirement prior to relocation to Spain from ten to five years, and extending the welcome it appeared to provide, to a wider group of people moving to the Spanish territory.

However, the changes in the Beckham Law that were actually legislated fell short of the committee's recommendations. With effect from January 1, 2015, the 2014 Law brought about four main changes. In broad terms, it:

- abolished the limit on income earned above €600,000,
- extended the eligibility criteria by including individuals acquiring the status of Director who either did not have a shareholding in the employing company or had a shareholding of less than 25%,
- excluded from the regime professional sportsmen and women employed under Royal Decree 1006 /1985, of 26 June 1985, which regulates the "Special Employment Relationship of Professional Athletes", and
- extended the scope of domestic taxation to all earned income received by the taxpayer, including non-Spanish employment income, while at the same time, removing the complex requirements for the individual's work to be carried out in Spain.[24]

Law 28/2022 of 21 December 2022 (the 2022 Law)

The next round of substantive changes to the Beckham Law came in 2022 and took effect from 1 January 2023. There had been a modest change in 2020, as a result of Law 11/2020 of 30 December

23 The official name of the committee was the Lagares Commission of Experts for the Reform of the Spanish Tax System

24 The legislation also included a provision that the *Impatriates* should not have income which would be classified as being obtained through a permanent establishment situated in Spanish territory.

2020, but this had simply raised the rate of taxation on *Impatriate* income in excess of €600,000 to 47% from 45%, consistent with the general top rate of tax for residents.

The changes made by the 2022 Law, implemented through Royal Decree 1008/2023, were more significant. They included the following:

- The period during which the beneficiary must not have been a tax resident in Spain prior to relocation was reduced from ten to five years.
- The benefit of the regime was extended to a broader group of individuals, including so-called "digital nomads", workers who perform their job remotely using computers and telecommunications, without needing to be "displaced" by an employer.
- Company Directors were included irrespective of the percentage of their participation, unless the company was an asset holding company.
- The spouse and children under 25 years old of the displaced worker could, under certain circumstances, be included in the regime, removing an important impediment to transfers of employees whose spouse had significant assets outside Spain and also facilitating transfers from jurisdictions with very different systems for marital taxation.

The regime, as it stands today, reaches out to a wider group of people than the original model. In principle, this should make it more attractive, and therefore more successful at bringing talented people to Spain. However, dark clouds hang over it from a compliance and enforcement perspective. The heavy hand and legally dubious practices of the STA threaten the regime's ability to deliver this outcome.

What are the compliance requirements?

The compliance requirements for the *Impatriate* regime have always appeared straightforward. They have not changed in substance during the lifetime of the regime, although the reforms implemented in 2023 were accompanied by the issue of some redesigned forms.

The main compliance requirements are as follows:

- The individual is required to make the election for *Impatriate* status using Form 149 and provide their contract of employment for review. Form 149 has always been commendably short. It simply requires the applicant to answer a few factual questions and provide certain documentation. The election has to be made within six months of taking up residence in Spain. The STA is required to respond to the election within ten days, the normal time allowed for taxpayers to respond to questions from the STA. If there are no questions from the STA, or if the questions have been answered satisfactorily, the STA issues a Certificate to the individual (*Certificado de haber ejercitado la opción por el régimen especial aplicable a los trabajadores desplazados a territorio español*[25]).
- Once their Certificate has been issued, *Impatriates* are expected to notify their employer and any other party who will be required to withhold tax on their income, of their new status, to ensure that the lower rate of tax is correctly applied.
- *Impatriates*, although residents of Spain, are required to file Form 151 instead of Form 100. Form 100 is the normal, annual tax return filed by other Spanish residents. In 2023, Form 151 was modified slightly, in line with the new, broader eligibility criteria, for filings from 2024. The form is headed "*Personal*

25 Certificate of having exercised the option for the special regime applicable to workers posted to Spanish territory

Income Tax Return. Special regime applicable to workers, professionals, entrepreneurs and investors relocated to Spanish territory" and was approved in Order HPF/1338/2023, of December 13. The principle of *Impatriates* filing a different tax return from other residents has been maintained.

- *Impatriates* are not required to file Form 720, another annual return required from Spanish residents who have, broadly, more than €50,000 in assets outside Spain. *Impatriates* have no Spanish tax liability in respect of such assets or the related income. Absent qualifying for the Beckham Law, it is almost impossible to conceive that the vast majority of *Impatriates* would not have enough non-Spanish assets to be obliged to file Form 720. Failure by resident taxpayers to file this form is regarded as a serious offence and compliance appears to be rigorously enforced. The penalty regime was originally exceptionally harsh, and in 2022, the Spanish Government was required to amend it following a decision by the CJEU[26] which found, *inter alia*, that the penalties imposed by the Spanish Government were contrary to the free movement of capital enshrined in the TFEU.
- The STA's Certificate recognises that *Impatriates* may terminate the arrangement, prior to its expiration, by filing Form 149 for a second time. Only three types of termination are envisaged:
  - (i) The individual renounces his or her status under the Beckham Law
  - (ii) The individual no longer qualifies (eg on a change to self-employment)
  - (iii) The individual comes to the end of his or her placement/stay in Spain.

Form 149 does not suggest that the individual's status can be changed by the STA, reinforcing the persuasive effect of the Certificate that he or she has Beckham Law status unless they renounce it. There is no explicit provision in Article 93 or the related regulations that allows the STA to revoke it.

It is not clear why, from a legal and administrative perspective, the STA does not require the individual to submit the Form 149 election before relocating to Spain. The effect though, is that *Impatriates* must relocate in reliance on Spain's representations that as long as they meet the legal requirements of the Beckham Law, the STA will approve their special tax status and properly enforce the tax law in accordance with that status. Unfortunately, that reliance appears to be misplaced. The system is apparently wide open to abuse by the STA, presumably undermining the policy intentions of the Ministry of Finance.

What are the benefits for Impatriates?

Although the eligibility criteria for the Beckham Law have been amended a number of times, the main benefits for *Impatriates* under the Beckham Law, have remained very much the same since the introduction of the regime.

The STA website states: "*Individuals who acquire tax residency in Spain as a result of moving to Spanish territory may choose to pay Non-Resident Income Tax, while maintaining their status as taxpayers of Personal Income Tax (IRPF), during the tax period in which the change of residence takes place and during the following five tax periods*". (See Appendix 1)

The tax regime created by the Beckham Law can be summarised as follows:

- Foreign source investment income and gains are excluded from taxation in Spain. *Impatriates* are taxed as if they were non-resident, except in respect of employment income, so non-Spanish assets are excluded from taxes applicable to income and gains and from Net Worth Tax ('*Impuesto sobre el Patrimonio*')
- The first €600,000 of earned income is taxable at a flat, reduced rate of 24%. Earned income

26 *Case C-788/19 Commission v Kingdom of Spain*

includes not only income derived from employment in Spain but also income from non-Spanish employments. Earned income in excess of €600,000 is taxable at the top rate of income tax, currently 47%.

- *Impatriates* are not required to pay the Temporary Solidarity Tax (Law 38/2022 of 27 December 2022: '*impuesto de solidaridad a las grandes fortunas*') on their worldwide assets, but rather in relation to their Spanish assets only.
- Income and gains arising from Spanish investments remain taxable.
- Wealth tax applies on Spanish assets.
- Social security contributions follow the normal rules for employment in Spain, unless the individual has opted and qualified for home-country rules.
- Beckham Law status is valid for the year of arrival and the five-year period thereafter.

The Beckham Law, as commentators have noted, was clearly designed to encourage and facilitate the transfer to, and employment in Spain, of senior employees with high incomes and established wealth outside Spain. No other construction is possible. The exemption of foreign source investment income and gains from Spanish tax provides incontrovertible evidence of this policy intent. If the targets had simply been high earners, rather than the already-wealthy, the exemption from tax of foreign source investment income and gains could easily have been omitted from the law and the net wealth tax provisions amended.

The evolution of the Beckham Law since 2003 shows how successive governments from different points on the political spectrum, have amended its rules to make it, in their view, a better fit with their economic and social policy objectives. These changes have been made in the appropriate manner, through formal amendments to the law.

Regrettably, what we are seeing today from the STA is something quite different: the reinterpretation of the law into what the STA would like it to say rather than what the words in the legislation actually say. This is unacceptable in a country whose Constitution establishes respect for the rule of law and requires Public Authorities to uphold it.

2

WHY DID SPAIN NEED TO ATTRACT *IMPATRIATES*?

When the Beckham Law was first introduced it wasn't obvious, from a purely economic policy standpoint, that Spain needed to attract highly qualified senior executives.

In 2003, the economic prospects appeared to be good. On 17 November 2003, the IMF reported from its 2003 Article IV consultations, "*The Spanish economy has weathered the difficulties posed by the world economic slowdown of the last three years remarkably well. While European economies languished, growth in Spain proved resilient and unprecedently rich in job creation, and real convergence progressed further—in marked contrast to previous slowdowns. As a global recovery emerges, Spain stands out as the major euro area country where the pickup is most evident.*"[27]

In its *EU Stability programme update 2003-2007*, the Spanish government noted, "*International economic forecasts point to a strengthening of growth in all main economic areas. In this more favourable environment, Spain is expected to register growth rates bordering on 3% in the next few years, which will sustain the catch-up process in real per capita income with the European Union.*"[28]

This was a period of optimism for the Spanish government with reforms of both personal and corporate income tax occurring in a positive environment for the public finances, with just a modest increase pencilled in for the tax to GDP ratio over the years ahead, from an actual 36.1% of GDP in 2002 to a forecast 36.8% in 2007.

Yet, this was the time when the first version of the Beckham Law was introduced. It came at a convenient moment for David Beckham, but its genesis was longer than his transfer negotiations with Real Madrid.

The new *Impatriate* tax regime was about Spain positioning itself in the competitive landscape of EU taxation. It was a response to the politics of the day as much as to any economic need.[29] Spain, like many other EU Member States, had long been resentful of the UK scheme of taxation for 'non-doms,' which they regarded as unfairly influential in encouraging "wealthy foreigners" to come to the UK, bringing money, investment and jobs with them. The EU Code of Conduct (Business taxation)[30] proved powerless to require governments to roll back this type of regime because its remit was too narrow, but that did not mean that Member States were content to sit back and allow the UK to maintain its apparent advantage. Spain had not been silent about its dissatisfaction, and, like a number of other countries, it soon had a similar regime in its armoury. Although the Code of Conduct Group was intended to reduce incentive-based tax competition between Member States, governments quickly learned from each other. If a preferential regime was ruled acceptable by the Group, or found to be outside its remit, governments often saw it as a green light to introduce something similar.

This type of special regime was not favoured by the European Commission because of the risk

27 *https://www.imf.org/en/News/Articles/2015/09/28/04/52/mcs111803*

28 *https://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/20_scps/2003-04/01_programme/es_2004-01-12_sp_en.pdf*

29 But see M. Luisa Abella García for the Instituto de Estudios Fiscales (IET - the Spanish public finance research and training centre) in "*El régimen fiscal de los impatriados. Problemas de aplicación y alternativas de reforma", p5. https://www.ief.es/docs/destacados/publicaciones/revistas/cf/27_01.pdf.*

"The aim is to attract qualified human capital, such as researchers and senior management, with the aim of modernising and increasing the profits of companies, and thus making the Spanish economy as a whole more competitive."

On the global race for talent, see also IMF Blog of 7 March 2025, *How talent fuels growth*, by Gita Bhatt, *https://content.govdelivery.com/accounts/USIMF/bulletins/3d51705*

30 *https://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group/*

of distortions in the Single Market. Like the Code of Conduct Group, the Commission had limited power but the Member States that introduced their own regimes did not always choose to advertise the fact in EU circles. Spain introduced its *Impatriate* regime through the 2003 Law, but there is no specific mention of it in its *EU Stability programme update 2003-2007*. This EU-facing report makes only a very oblique reference to employment tax incentives on the penultimate page, noting the government's intention to "*Continue to facilitate the geographical mobility of labour, through subsidies to companies and workers and new tax incentives*."[31]

However, if the Spanish economy had no obvious need, in late 2003, for the competitive stimulus that the *Impatriate* regime might provide, the picture soon began to change. Elections and a new government followed in 2004. As economic performance subsequently weakened, the argument for retaining and building on a tax measure that encouraged skilled and wealthy business people to come and work in Spain, would only gain strength. The *Impatriate* regime, with the benefits it offered, was soon cemented into Article 93 of the 2006 Law.

Since that time, however, Spain's economic performance has been lacklustre. The EU statistical office, Eurostat, publishes comparative data for EU Member States. It shows Spain's GDP growth rate lagging behind the weak performance of the EU as a whole in the period 2005-23. Spain achieved average annual growth of 1.0% compared with the average for the EU of 1.2%.

Table 1. Spain's growth rate 2005-2024

(α) **2005-2014**

Year	Av 2005-2023	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Spain	1.0	3.7	4.1	3.6	0.9	-3.8	0.2	-0.8	-3.0	-1.4	1.4	3.8
EU	1.2	1.9	3.5	3.1	0.6	-4.3	2.2	1.9	-0.7	-0.1	1.6	2.3

(β) **2015-2024**

Year	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	Av 2005-2023
Spain	3.8	3.0	3.0	2.3	2.0	-11.2	6.4	5.8	2.5	3.2p	1.0
EU	2.3	2.0	2.8	2.1	1.8	-5.6	6.0	3.4	0.5	-	1.2

Source: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=National_accounts_and_GDP

This dismal growth record is reflected in the GDP per capita figures.[32] Spain has, for the last decade, persistently underperformed many of its neighbours and competitors including Luxembourg, Ireland, the Netherlands, Denmark, Austria, Belgium, Germany, Sweden, Malta, Finland, France and Italy, and has, more recently, performed worse than Cyprus and Slovenia as well.

Other measures reflect a similar pattern of weak performance by the Spanish economy, for example:

- Real labour productivity, measured by euros per person employed, and by euros per hour worked, were both below the EU average during the period 2005-2023; and

31 *EU Stability programme update 2003-2007. https://ec.europa.eu/economy_finance/economic_governance/sgp/pdf/20_scps/2003-04/01_programme/es_2004-01-12_sp_en.pdf*

32 *https://ec.europa.eu/eurostat/statistics-explained/index.php?title=GDP_per_capita,_consumption_per_capita_and_price_level_indices*

- Total investment as a share of GDP fell significantly between 2005 and 2022 from 29.0 to 20.1 compared with an EU average that rose, in the same period, from 22.5 to 22.9.
- It's a similar story with Spain's stock market. Deutsche Bank research[33] shows that:
- Spain has a stock market capitalisation, in terms of percentage of GDP, that is just over half of that of the UK (LSE) and less than a quarter of Switzerland's.
- Spain has little more than half as many listed companies as the UK. The average stock market capitalisation per listed company in Spain is half the size in the UK and less than one quarter of the size in Germany.
- Spain ranks 6th behind the UK, Germany, the Netherlands, Sweden and Italy, in terms of the total capital raised in European IPOs, with the UK raising four times as much as Spain
- Spain ranks 10th in terms of total number of European IPOs since 2013, by country of listing.

It is not all gloom for the Spanish economy, of course. The latest IMF projections[34] show Spain's economy back on a more positive trajectory and the April 2025 Concluding Statement of its Article IV Mission highlights progress that has been made in 2024 and 2025. However, Spain's debt mountain, its need to catch up with other European economies, its relatively weak investment performance, its employment rate, and especially its youth employment rate, which remain among the lowest in the euro area, its poor record on innovation and its productivity shortfall are all factors in the IMF's assessment of the risks to Spain's economy which it sees as predominantly on the downside. The problem of Spain's fiscal deficits is exacerbated, in the view of the IMF, by a need for more attention to public spending efficiency rather than simply additional taxation.[35]

Over the last two decades, the Spanish government has underperformed its own expectations and those of its citizens. It has also, arguably, underperformed its potential. The Beckham Law was intended to help improve performance, by making it much easier for businesses of all sizes, who needed a trusted, senior executive to help establish, manage or expand, their operations in Spain, to transfer them. The people whom it brought to Spain have made their contribution, but the reality has always been that they could not do it all on their own.

The Beckham Law has its place in the economic narrative of this period, and in the politics that have both driven and hindered economic growth. Its introduction, retention, amendment and expansion tell the story of a continuing need for foreign talent, know-how, innovative capacity, money and business acumen against an ever-changing political background – each of its phases a product of its time.

33 All values cited here are as at 31 March 2024. *https://www.dbresearch.com/PROD/RPS_EN-PROD/PROD0000000000534655/European_stock_markets_%E2%80%93_hidden_champion_Germany.PDF?undefined&realload=JWLe9Sud0/umE~Y4EoRegQSFUZgoOIe36Aw6R4c7sETQ3cJhH4z1lYoLUPRuh~2/*

34 *https://www.imf.org/en/Publications/WEO/Issues/2025/04/22/world-economic-outlook-april-2025*

35 *https://www.imf.org/en/News/Articles/2025/04/10/mcs-041025-spain-staff-concluding-statement-of-the-2025-article-iv-mission*

3

HAS THE TAX ENVIRONMENT IN SPAIN BECOME MORE HOSTILE?

Spain's problem with tax and the public finances

The introduction of the Beckham Law was tacit admission that the Spanish tax system was not as attractive for senior executives as it could be in 2003. It posed many problems for transferees including, but not limited to, the tax on net wealth. Yet Spain does not stand out in the OECD as a country with exceptionally high taxation**.** In 2023, it ranked 13th out of the 38 OECD countries in terms of its tax-to-GDP ratio, with a ratio of 37.3% compared with an OECD average of 33.9%. Ahead of it on this measure were several EU countries.

The top rate of income tax has been high, but it was not unusually high by OECD standards in 2022, when it stood at 45%.[36] Today it stands a little higher, at 47%.[37]

Compared with other OECD countries, Spain raises an average proportion of its revenues from taxes on personal income, profits and gains, less than the OECD average from the corporate sector but substantially more from social security contributions.[38]

While the absolutes may not be exceptional, the same cannot be said of the trend. The trend in Spain has been towards heavier taxation.[39] The tax-to-GDP ratio has risen from below the OECD average in 2009 (29.7%) to well above it (37.3%) in 2023, reflecting a range of factors, including fiscal drag. Since 2000, it has risen by more than 4% while the growth in the OECD average over the same period was just 1%.[40]

People notice this kind of increase. When it reaches the Spanish level, it creates a difficult political dynamic. It becomes problematic to levy additional taxes on individuals and businesses, especially those who have a vote.

At the same time as it has faced a problem raising taxes, Spain has had a persistent problem with high government debt, as Chart 1 shows. It ranked 4th highest in the EU in 2022 and 2023 for government gross debt as a percentage of GDP.[41] Its deficit exceeded the 3% threshold in both 2022 and 2023, one of only 10 Member States to do so. Per capita debt in Spain totalled €33,021 at the end of 2024 compared with €23,362 in 2014 and just €8,996 at the end of 2003 when the Beckham Law was introduced.[42]

The scale of Spain's debt mountain has inevitably increased the pressure to generate additional tax revenue - pressure which was, no doubt, pushed down from the Prime Minister's Office, through the Ministry of Finance to the collection targets of the STA, driving the behaviour of its Inspectors.

It has been a growing problem, as the Spanish government will have been well aware. So, the idea of raising substantial additional taxes from *Impatriates* – mainly foreigners, many of whom had already left the country – must have looked enormously tempting, whether or not there was any legal basis for it.

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36 *https://taxpolicycenter.org/sites/default/files/statistics/pdf/oecd_historical_personal_income_toprate_2.pdf*

37 There are regional factors in Spain that mean that this rate can vary according to location. Spanish tax residents will, for example, pay 45% in Madrid and 54% in Valencia.

38 The burden falls on both employees and employers, typically: 6.48%/30.57% plus a variable rate for occupational accidents (eg 1.50% for office work). PWC Worldwide Tax Summaries *www.taxsummaries.pwc.com*

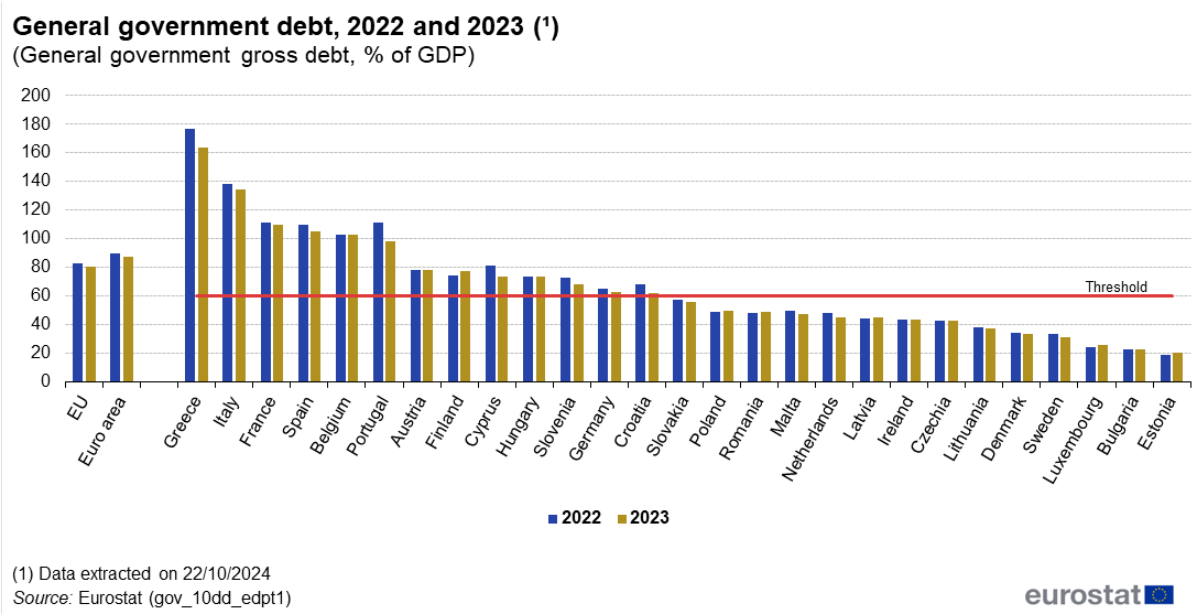
39 See also Impuestómetro 2025**:** *Un estudio crítico de la onerosa carga fiscal soportada por los contribuyentes españoles,* Instituto Juan de Mariana, April 2025 "*Since 2019, Spain has increased its tax burden by 1.9 points of GDP, while the average for the EU-27 as a whole shows a decrease of 0.9 points.*"

40 Source for all figures: *https://www.oecd.org/content/dam/oecd/en/topics/policy-sub-issues/global-tax-revenues/revenue-statistics-spain.pdf*

41 *https://ec.europa.eu/eurostat/statistics-explained/index.php?title=File:General_government_debt,_2022_and_2023_(%C2%B9)_(General_government_gross_debt,_%25_of_GDP).png#filelinks*

42 *https://datosmacro.expansion.com/deuda/espana?anio=2024*

Chart 1: Spain's debt problem



(1) Data extracted on 22/10/2024
Source: Eurostat (gov_10dd_edpt1)

eurostat

Motives and consequences in the STA

While the government had a public finance reason to pick the pockets of the *Impatriates*, the STA has its own motive to increase tax revenues – a motive that has long been hidden. It has an unusual reward structure for its Inspectors, that it tried hard to keep a secret: a bonus system with some dubious criteria. The leadership of the STA long refused to make any information about it publicly available, but the Courts finally left it with no option but to reveal at least part of the uncomfortable and unpopular truth.[43]

Bonus systems drive – and are generally intended to drive – individual and group behaviour. They don't happen by accident. The STA's bonus system is no exception. It seems designed to encourage inappropriate work practices and directly leads to:

- prioritisation of speed over the accuracy of assessments
- "novel" methods of investigation
- disregard for the rule of law, including ethical standards and the Constitution
- pressure on taxpayers to "do a deal" in key areas like the Beckham Law.

It would be a badly designed scheme even in a commercial setting. For staff in a tax administration, the consequences were always bound to be shocking.

The STA has had a dubious reputation for many years. It is widely hated and feared by the Spanish people. It has a well-documented history that includes allegations of:

- abuse of power[44]
- corruption[45] by some senior officials and
- susceptibility to political interference.[46]

43 See Section 5 and Appendix 2. Unfortunately, the Spanish government still appears to be determined to limit citizens' knowledge of exactly how the STA's Inspectors are paid. What price transparency? *https://theobjective.com/economia/2025-04-19/hacienda-calculo-bonus-productividad-inspectores/*

44 *https://cincodias.elpais.com/legal/2020/11/04/juridico/1604512245_725269.html*
https://theobjective.com/elsubjetivo/opinion/2024-10-18/muerte-contribuyente/

45 For example, Ara Redacción, "Sobornos con langostinos y Viagra a funcionarios de la Agencia Tributaria de Málaga", *Ara*, 18 October 2023; *ABC de Sevilla,* Redacción, "Ocho funcionarios de la Agencia Tributaria en Málaga, procesados por falsedad, cohecho y prevaricación", ABC de Málaga, 24 February 2024

46 For example, Carlos Cuesta, "Qué hubiera sido del hermano de Sánchez si Hacienda le hubiera dado el trato de Shakira: a ella control pleno, a él cero", *Libertad Digital,* 10 February 2025; Marcos Pardeiro, "García Ortiz usa un número de teléfono que está a nombre de Hacienda", *Artículo 14,* 23 January 2025

Observers have noted the decline in Spain's standing in the rankings of those fighting against corruption.[47] During the course of our work, we have been shown evidence that political interference occurs in the audit process. This may sound all too familiar to Spanish readers of this paper but, for those from elsewhere, it will be truly shocking that audit investigations may be triggered by political factors, whether against *Impatriates* or others. It is a matter to which we will return.

History reveals that the attack on *Impatriates* is part of a pattern of unacceptable behaviour, already tried and tested on domestic taxpayers and now weaponised against *unprepared foreigners*, rather than just an anomaly. But while it might explain the ferocity of the current onslaught, it does not in any way excuse or justify it.

Over the years, the STA has apparently been a home for some unscrupulous individuals, willing to use improper and coercive tactics on some taxpayers, while remaining protective of those who have close links to political power. *Impatriates*, as foreigners, typically, have no such links and no such access to protection.

The STA's bonus system exacerbates the underlying problems. It is discussed in more detail in Section 5 and the facts that have been revealed are set out in Appendix 2.

There have apparently been over 200,000 complaints registered against the STA last year. This represents a further increase of 20% and highlights the dire situation facing Spanish taxpayers.

47 Sara Selva Ortiz, "España vuelve a empeorar en el ranking mundial de lucha contra la corrupción", *Cadena SER,* 11 February 2025. GRECO, the Council of Europe Group of States against Corruption, has recently published two reports that are highly critical of Spain. It has called on the Spanish authorities to pay closer attention to the particular situation of top executive functions of the central government and the specific risk areas of conflicting interests and corruption they face in their work. It was also noted that a GRECO recommendation regarding the selection system of the General Council of the Judiciary has not been implemented. *https://www.coe.int/en/web/portal/-/greco-publishes-two-reports-assessing-spain-s-progress-in-implementing-its-anti-corruption-recommendations*

4

WHAT IS HAPPENING NOW TO SPAIN'S *IMPATRIATES*?

What do we know about the *Impatriates*?

Data about the *Impatriate* community are scarce. The government publishes no information about its demographics, perhaps correctly. One thing is clear, though: *Impatriates* file and pay taxes. By contrast, there is a solid group of the non-compliant among the local population in Spain, who work in the informal economy and have typically represented as much as 15-20% of those who should file.[48] The informality of Spain's economy has a significant impact on domestic revenues. In 2022, the VAT compliance gap alone was €4.4 billion.[49] *Impatriates*, by definition, self-identify and are entirely visible to the STA, whereas those who work in the informal economy are not.

We have been unable to ascertain exactly how many Beckham law elections are typically made in a 12-month period, whether the numbers have been affected, one way or the other, by the legislative changes and mood swings in 2010, 2015 and 2023, or what resources the STA has dedicated to the task of checking elections and the accompanying documents. There is no published information about the numbers who make the election, although clearly there could be. In 2015, Professor Aurora Ribes Ribes wrote "*It has been calculated that approximately 2,000 individuals benefit each year from this option.*"[50] We have not been able to validate that figure or ascertain the numbers of those who make the election but are rejected.

The government and the STA do, of course, have records of all the *Impatriate* elections that have been made – successful and otherwise - but much information remains unpublished. According to government statistics that are in the public domain[51], there were 10,410 *Impatriate* returns filed in 2020 and a provisional 15,638 in 2022. Other sources quote slightly different numbers. For example, there were media reports in 2023 that the actual number was 11,078.[52] Either way, these are significant but relatively modest numbers in a country with a population of almost 50 million.

The combined taxable income[53] of *Impatriates* is said to have amounted to €1.7 billion in 2020 (provisionally €2.4 billion in 2022). They paid a total amount of income tax of €436 million in 2020 (€632 million in 2022).[54] In both years the effective average income tax rate was more than 25%, above the flat 24% rate applied to the first €600,000 of *Impatriate* income under the Beckham Law. The average amount of income tax payable per individual was €41,883 in 2020 (provisionally €40,414 in 2022), many times higher than the local norm in Spain – perhaps as much as ten times.[55]

48 *https://www.imf.org/en/Publications/WP/Issues/2019/12/13/Explaining-the-Shadow-Economy-in-Europe-Size-Causes-and-Policy-Options-48821* In some countries, fear of having to deal with the tax authority is given as a reason for staying 'in the shadows'. We have not specifically surveyed this in Spain.

49 *https://taxation-customs.ec.europa.eu/taxation/vat/fight-against-vat-fraud/vat-gap_en*

50 "Expatriate Taxation in Spain: Some Reflections for Debate" Intertax, Volume 43, Issue 6 & 7, 2015, p462 It's not clear from the words themselves but it seems likely that the reference is to the number of additional *Impatriates* each year.

51 Cuadro 8.9 *https://sede.agenciatributaria.gob.es/static_files/AEAT/Estudios/Estadisticas/Informes_Estadisticos/Informes_Anuales_de_Recaudacion_Tributaria/Ejercicio_2023/Cuadros_IART23.xlsx*

52 See *https://cincodias.elpais.com/economia/2023-10-06/espana-tiene-10000-beckhams-que-se-acogen-al-chollo-fiscal-y-ahorran-105-millones-al-ano.html*

53 This is not specifically defined in this section of the report but presumably excludes non-Spanish investment income and gains, on which the STA does not normally ask for information

54 Cuadro 8.9 *https://sede.agenciatributaria.gob.es/static_files/AEAT/Estudios/Estadisticas/Informes_Estadisticos/Informes_Anuales_de_Recaudacion_Tributaria/Ejercicio_2023/Cuadros_IART23.xlsx*

55 Authors' calculations

It is difficult to understand why the government claims that it loses tax revenue as a result of the *Impatriate* regime. Nevertheless, from 2020, it has started to publish a figure that it claims represents the negative fiscal impact that the Beckham Law has on the state's finances.[56] An STA paper suggests, without providing evidence, that this is because foreigners replace similarly qualified Spanish workers who would be fully taxable, and that somehow, the Beckham Law results in Spanish citizens leaving Spain and not being taxed at all in their home country.[57] This is, at best, a curious and contrived argument.

Special tax regimes aimed at attracting highly qualified foreigners are often the subject of misleading analysis. This has been true of the "non-dom" regime in the UK, which has seen examples of the worst kind of xenophobic response from the popular media and their readers and viewers, together with a plethora of under-informed quasi academic articles that provide a lop-sided analysis of their impact, counting costs but paying scant regard to the upside. It's much easier to add up a theoretical cost than to calculate the benefits of having additional, highly qualified workers in the country. Many authors, favouring abolition, ignore the dynamic effects that changes of policy bring about in the real world. They assume that those benefiting from the special status will simply remain after it has been abolished and pay the normal taxes borne by a resident. This is invariably a mistake.[58]

According to the "statistics" that the government publishes, the Beckham Law has "cost" the Spanish government €362.6 million in "lost" tax revenue since records began in 2020, including a cost of €98.1 million in 2022 and a projected cost of €105.7 in 2023.[59]

The changing political economy of the Beckham Law

The Ministry of Finance has reacted against these apparent losses by investing in new technology to make inspections more efficient and help identify so-called "tax fraud" by "rich expatriates".

This new focus of attention on the fiscal impact of the *Impatriate* regime is particularly strange in the context of a government that has embraced an expanded Beckham Law with no financial limits and full exclusion of non-Spanish investments. The politics are as muddled as the economics, assuming Ministers actually know what is being done in their name.

Over the years, as we have shown, the Spanish government has displayed a schizophrenic attitude towards the Beckham Law, sometimes regarding it as too harsh, sometimes too generous, sometimes too generous and too harsh at the same time, sometimes simply awkward in a context in which local taxpayers are being asked to pay more than they might have to pay in other countries for similar levels of government services.

The 2010 changes that disqualified those on high salaries from entitlement to *Impatriate* status reflected the political awkwardness of offering lower taxes on income to attract highly skilled foreigners to come and (re)build the Spanish economy.

The 2015 reforms were partly a reaction in the other direction, lifting the limit and sensibly simplifying the "working in Spain" requirements that otherwise cut out those with 21st century jobs that involved some travel, but formally excluding the professional sportsmen and women who had been among the earliest target beneficiaries - the Spanish government's "trophy" *Impatriates*.

The 2023 changes significantly broadened the range of individuals who could benefit and halved the

56 It is presented as a single line item in a broader report: Recaudación y Estadísticas del Sistema Tributario Español 2011-2021

57 M. Luisa Abella García in "*El régimen fiscal de los impatriados. Problemas de aplicación y alternativas de reforma*", p12 https://www.ief.es/docs/destacados/publicaciones/revistas/cf/27_01.pdf

58 Following the recent changes in the UK "non-dom" regime, many have left the UK, reducing the tax revenues to which they previously contributed and likely weakening long-term investment.

59 Ibid, p426. See also *https://cincodias.elpais.com/economia/2023-10-06/espana-tiene-10000-beckhams-que-se-acogen-al-chollo-fiscal-y-ahorran-105-millones-al-ano.html*

required period of prior non-residence, providing a welcome modernisation of the rules that recognised the post-COVID revolution in remote working. But at the same time, the Spanish government, as if unable to figure out what they wanted from the Beckham Law, allowed the STA to launch, in parallel, an unprecedented and unjustified assault on some existing *Impatriates* and many who had already left the country.

Some have suggested that the Beckham Law was never meant to benefit wealthy individuals, only those on middle-order salaries. But the evidence is entirely to the contrary. Through all the changes in the law between 2003 and 2025, no amendment has ever been made to the complete exemption from tax of non-Spanish assets, investment income and gains. It would have been legislatively easy to remove that benefit, and probably politically popular. But it was never done in the law. The current approach of the STA seems designed to remedy that through extra-legal means and aggression. Well-qualified people who have been successful and are, therefore, wealthy will surely avoid Spain in the future.

Special tax regimes that benefit only foreigners and returning citizens who have lived abroad for many years, are politically difficult for governments to manage. They are a natural target for political, media and STA attention.

The popular press has inevitably followed the Spanish government with its own criticism of the *Impatriate* system, invariably focusing just on rates rather than on simplification benefits. It provides easy headlines for the media, given the financial pressure on many Spanish households today, although few readers are likely to show any love for the STA. The anti-foreigner sentiment it all engenders is clearly reflected in the Prime Minister's recent politically motivated attacks on foreign property investors.

How the hostility towards *Impatriates* is manifested in the STA domain

The STA's hostility towards *Impatriates*, which is so evident today, appears to be a relatively recent manifestation, following a period during which there has been little sign of unusual enforcement activity. Few could have anticipated the extremes to which the STA would go in this new environment.

The hostile action currently takes many forms, including:

- **Last-minute audits:** the STA suddenly assails taxpayers who have completed their stay in Spain, who have filed all the required tax returns and who have never had them questioned during their residence there, subjecting them to vindictive investigations. This appears to be a deliberate strategy to maximise the impact on *Impatriate* taxpayers.

- **A culture of denial:** bereft of rational reasons for their actions, the STA Inspectors claim, without foundation, that their own Certificates and filing instructions have no meaning, that promises in the law can be ignored, that taxpayers' rights can be set aside.

- **Fishing expeditions:** the STA has weaponised requests for information, often launching a massive global trawl for information about the foreign assets and foreign investment income of a taxpayer, which are exempt from tax under the Beckham Law and not disclosable in the tax returns which the STA itself requires the taxpayer to file.

- **Pressure on taxpayers:** the STA demands the taxpayer's presence at repeated meetings in Spain, even though they may have been transferred back to their home country, forcing them to appoint, at considerable cost, representatives to attend in their stead. They investigate the children of taxpayers, interview school staff and rifle through social media accounts, ignoring statutory protections. They demand complex historical information at 10

days' notice while failing to respect even statutory deadlines imposed on them.

- **Reputational damage:** the STA tries, without foundation, to criminalise taxpayers in the eyes of their business contacts, by giving all the global financial institutions with whom they do business, as well as other revenue authorities, the impression that they have been evading tax and may also be involved in money laundering. We are aware of *Impatriates* who have evidence that suggests the STA lied about them when making information requests.

- **Non-responses to requests for clarification**: polite and repeated requests for clarification of the legal basis for the STA's action are never properly answered, so many taxpayers who finally succumb to its bullying, never know whether there was any real case against them, or if so, what it was.

- **Penalties for "obstruction":** if the taxpayer pauses his supply of information to the Inspector, to ask why certain items have been requested, the STA issues penalty notices for "obstruction", often for thousands of euros.

- **Threats of criminal proceedings:** a common threat we see from the play list of STA inspectors is that the normal civil and administrative process of the tax inquiry will be made a criminal investigation. Unless the taxpayer agrees to do a deal.

- **Pressure on advisers:** lawyers are afraid, apparently threatened with losing their right to practice if they support a client who resists the STA's pressure to do such a deal. We have been told of firms who have been threatened with VAT audits, a tactic favoured by authoritarian regimes elsewhere. We have seen that lawyers are afraid to take on cases involving defensive actions against the STA. This is a serious barrier to justice.

- **'*Simulación*':** When all the STA's inquiries fail to turn up any evidence of wrong-doing, the STA's Inspectors simply say that it must, by deduction, be a perfect sham. So, they denounce a legally-constituted company, in many cases set up in accordance with EU freedoms, paying taxes in Spain, with clients and local employees also paying taxes, as just a fiction, claiming '*simulación*'. It's a line regularly used by the STA, another standard item on their playlist.

We explore the typical STA investigation more fully in Section 5.

The STA's recent, aggressive stance represents a significant deviation from the straightforward administration of the law. In its 2023 and 2024 "*Plan General de Control Tributario*", the STA indicated a new focus on auditing non-residents, inevitably encompassing beneficiaries of the Beckham Law regime. This raised serious concerns about selective enforcement[60] – concerns which appear to have been fully justified. The STA's actions continue in 2025.[61] They undermine the rule of law in Spain. They are carried out seemingly without regard to any principles of transparency and fairness. They especially affect non-Spanish nationals whom the government had seemed keen to attract to Spain.

60 Resolution of 21 February 2024, of the General Directorate of the State Tax Administration Agency, approving the general guidelines of the Annual Tax and Customs Control Plan for 2024. https://www.boe.es/buscar/act.php?id=BOE-A-2024-3876

61 Resolution of 27 February 2025, of the General Directorate of the State Tax Administration Agency, approving the general guidelines of the Annual Tax and Customs Control Plan for 2025
https://www.boe.es/buscar/act.php?id=BOE-A-2025-5323&p=20250317&tn=1

5

HOW THE RULE OF LAW IS BEING SUBVERTED IN SPAIN

The primacy of the rule of law in Spain is established through both internal and external mechanisms. While the framework of European laws and Conventions establishes the external rules that apply to public authorities and protects the rights of citizens[62], the starting point in Spanish domestic law is the Spanish Constitution of 1978, which sets out the fundamental rights and obligations of the institutions and individuals over whom it has jurisdiction.[63] The Constitution is intended to guarantee that the rule of law will prevail. The Public Authorities are bound by it and by the law, and they are prohibited from taking arbitrary action. The *Preamble* and the *Preliminary Part* highlight the principles on which the Constitution is based.[64] Key elements include the following:

- Spain is to be a country in which
- the economic and social order is to be fair
  - the rule of law prevails
  - effective cooperation with other peoples is to be strengthened
  - public authorities are bound by the Constitution.

- The Constitution guarantees the certainty that the rule of law shall prevail, the accountability of public authorities, and the prohibition of arbitrary action by them.

In our judgement, the STA falls short of meeting these obligations in its treatment of *Impatriates*. We are far from alone in making this assessment.

In this section, we show how, in its actions, the STA fails to uphold the principles in the Constitution and breaches many other requirements of domestic law.

The operationalisation of the Beckham Law

The eligibility criteria

The rules enshrined in the Beckham Law have varied slightly from year to year, as the Ministry of Finance has tinkered with them, but the core requirements in the law for eligibility have remained the same.

In this paper, we focus primarily on the period 2015 to 2020, when those arriving in Spain were able to elect for the Beckham Law status under the following principal conditions.[65]

- They had not been resident in Spain during any of the ten taxable periods before their assignment to Spain
- Their residence in Spain was the result of:
  - an employment contract, as defined, or
  - becoming a Board Director in an entity in which the individual either had no ownership interest or an ownership interest that did not make him a related party in terms of Article 18 of the Corporate Income Tax Law (broadly 25% of the voting rights).

The right to elect for the Article 93 status was unequivocal for those meeting the criteria. Their eligibility could readily be determined in advance.

62 See Section 6

63 See Appendix 4. The English text of the Constitution is available here: *https://www.senado.es/web/conocersenado/normas/constitucion/detalleconstitucioncompleta/index.html?lang=en*

64 We cite the relevant provisions more fully in Appendix 4.

65 The legislation also included a provision that the *Impatriates* should not obtain income which would be classified as being obtained through a permanent establishment situated in Spanish territory.

The Spanish government has always had the ability to set the eligibility criteria for the *Impatriate* election, potentially using them to shape the pool of beneficiaries, making it broader or narrower. Professor Aurora Ribes Ribes, writing in in 2015, noted that, "*Although the expatriate tax rules in Spain are very favourable, the Spanish Government has been exploring ways to make these rules even more flexible in order to widen their application and, therefore, attract not only foreign experts, but also property investors and pensioners to Spain.*"[66] Professor Ribes expressed concern that the law, following the changes, remained too broad, in her opinion, and missed the opportunity to target only "*transferred workers in strategic sectors*".[67]

This was a point recently commented on by Carlos Rodrigo Calderon Maldonado of the STA[68] who said, "*Although various authors and politicians associate this regime as a mechanism to bring talent to Spain, the truth is that the legislator does not require any qualification from the worker or that the services be provided to an employer who is registered in a specific sector of activity, unlike other jurisdictions that do make these distinctions.*"

It is clear that the Spanish Government intended, from 2015, to maintain the Beckham Law as a broad regime (albeit now excluding the professional sportspeople from whom its common name was derived). There was no suggestion from the government that it should be given a narrower focus on strategically important sectors or particular categories of workers, or that wealthy employees should be excluded. It restored the possibility that individuals earning more than €600,000 could be within the regime, with the excess of their income over that amount taxed at the then normal top rate of 45%. No value limit on either the Spanish or worldwide assets owned by the individual, was included, making it clear that wealthy individuals were welcome provided only that they had been assigned to Spain as employees or Directors and had no recent history of residence in Spain.

It's not obvious what checks were carried out on the *Impatriate* elections that were submitted, or by whom, but it is clear that the STA had the opportunity to conduct whatever review was deemed appropriate before issuing a Certificate to the individual concerned.[69] The law leaves no uncertainty. The conditions it imposed were conditions precedent and almost every tax authority in the world would typically check that conditions of this sort had been met before communicating to the individual or their employer about the application of the lower taxes provided by the law. The issuance of the Certificate was not caveated and was understood by the individual and the employer as an affirmative representation by the STA that it had determined that the applicant qualified for the special tax regime under the Beckham Law. Once an individual had received a Certificate, he was entitled to rely and did rely on it. He had an enforceable legitimate expectation that he would be taxed under the *Impatriate* regime.

If, in practice, the STA did not actually review the Form 149 and accompanying documentation, or only did so cursorily, the issuance of the Certificate constituted a knowing misrepresentation by the STA, upon which the taxpayer has often detrimentally relied. The STA should have no right to claim, years later, that the taxpayer did not qualify for the Beckham Law regime at the outset.[70]

The interpretation of the law by the STA should not and cannot be susceptible to the arbitrary mood swings of the government, which has, through parliament (the *Cortes Generales*), the power to change the words in the statute if it wishes.

The rule of law appears to have been set aside by the STA, encouraged by organisational goals of

66 Expatriate Taxation in Spain: Some Reflections for Debate" Intertax, Volume 43, Issue 6 & 7, 2015, p471

67 Expatriate Taxation in Spain: Some Reflections for Debate" Intertax, Volume 43, Issue 6 & 7, 2015, p472

68 In El régimen fiscal de los impatriados. Problemas en su aplicación y alternativas de reforma, p48 *https://www.ief.es/docs/destacados/publicaciones/revistas/cf/28_04.pdf*

69 We have seen Inspectors claim that there was no time to make the checks, but it is an extraordinary complaint. The scheme has been in place for almost 20 years. If it was actually so difficult to administer, the law could have been changed to give them the time they needed. In practice, the STA pays no regard to the 10-day time limit for issuing a Certificate. Time limits are for taxpayers. The STA allows itself whatever time it wants for this function, as we demonstrate elsewhere in this paper.

70 This issue is considered more fully in Appendix 3.

revenue maximisation and influenced by a reward system for Inspectors that prioritises "doing a deal" over the accuracy of assessments. However, when the statute expressly precludes the taxation of *Impatriates*' worldwide assets and investment income, the STA cannot be allowed simply to coerce *Impatriates* into settlements through questionable enforcement tactics.

The importance of the Certificate

(Certificado de haber ejercitado la opción por el régimen especial aplicable a los trabajadores desplazados a territorio español)[71]

The Certificate is a critical document in the operation of the law. It merits further elaboration. Its issuance creates clear expectations and has consequences for several different parties that the STA cannot simply ignore.

Assuming that the taxpayer submits Form 149 and the required accompanying documents, and adequately responds to any follow-up inquiries from the STA, the STA issues the Certificate to the taxpayer, confirming that the individual has made the election for *Impatriate* status. The Certificate is addressed to the taxpayer and is issued in a standard form. It is the only document issued by the STA in connection with the taxpayer's election. It is authoritative and intended not just for the taxpayer, to whom it is sent, but also to be relied upon by third parties, to ensure that they operate the withholding tax rules in a way that will give effect to the correct application of the Non-Resident Income Tax law.

The Certificate is issued in Spanish. In English, it reads:

Tax classification: ***IRPF.***[72] ***Special regime for displaced workers.***

THE HEAD OF THE REGIONAL OFFICE OF THE TAX MANAGEMENT AGENCY

CERTIFIES: *On [date], the taxpayer presented to this office of the Tax Agency his election to be taxed under the special taxation regime for the Tax on the Income of non-Residents, referred to in article 93 of Law 35/2006 of 28 November, of the Personal Income Tax law.*[73]

In view of the submission with supporting documentation, and pursuant to article 119.2 of the Personal Income Tax Regulations, approved by Royal Decree 439/2007 of 30 March, this certificate is issued for the purpose of justifying, to persons or entities obliged to withhold taxes, the status of the taxpayer under the optional special regime of taxation under the Non-Resident Income Tax.

This option, unless renounced or excluded, shall cover the tax periods from 20xx to 20(xx+6).[74]

The wording shows that it is not just a communication to the taxpayer but is intended to be seen and acted upon by third parties. No reference is made to any further action that must be taken by the taxpayer or the STA. No further documents are ever issued by the STA confirming the taxpayer's status. There is no caveat to the Certificate. No further documents are requested by the STA. The individual is simply required to notify the STA if he or she leaves the country altogether or their employment arrangements change, for example to self-employment, in which case the individual would have ceased to be entitled to Beckham Law status.

This interpretation of the Certificate is consistent with that of Professor Begona Perez-Bernabeu, in "The New Tax Regime for Expatriates in Spain"[75] who writes

> "*When the tax administration receives this notification that the option is to be exercised, it will, if appropriate, issue to the taxpayer within ten working days of the notification being filed, a document certifying that the taxpayer has opted*

71 Certificate of having exercised the option for the special regime applicable to workers posted to Spanish territory
72 IRPF is the personal income tax system
73 Impatriate regime, or "Beckham Law"
74 See Appendix 5
75 Intertax Volume 34, Issue 5. 2006 p265

for this special regime. This document accredits before persons or entities obliged to make withholdings or payments on account that the person concerned is a taxpayer under this special regime." (emphasis added)

The validity of the Certificate as a confirmation of the individual's status was reaffirmed by the STA, in a paper by M. Luisa Abella García for the *Instituto de Estudios Fiscales*. She states, without reservation or qualification:

De conformidad con el artículo 119.2 del RIRPF, dicho documento "servirá para justificar, ante las personas o entidades obligadas a practicar retención o ingreso a cuenta, su condición de contribuyente por este régimen especial, para lo cual les entregará un ejemplar del documento".[76]

In English this reads as follows:

In accordance with article 119.2 of the Personal Income Tax Law, this document "will serve to justify, before the persons or entities obliged to withhold or pay on account, their status as a taxpayer under this special regime, for which they will be given a copy of the document". (Emphasis added)

There is evidently no doubt in the minds of these authorities that the Certificate conveys a clear message to the taxpayer and to third parties that his or her election has been accepted. Yet the STA continues to assert that the Certificate has no such meaning.[77]

To see how absurd this suggestion is, it is only necessary to consider the logic. The Certificate arises directly from the making of an election for *Impatriate* status by an individual. The outcome of any election is binary: rejection or acceptance. The STA reviews and rejects some elections. Everyone else receives a Certificate: *ergo* acceptance.

Nevertheless, the STA pretends that, unless the election is rejected, the taxpayer remains in limbo, neither rejected nor accepted. This is not a tenable position.

Employers and employees understand perfectly well that, if the election is rejected, the employee will not be taxed as an *Impatriate*. They also understand that, if the election is not rejected and that, instead of a rejection, the employee receives a Certificate, the only possible interpretation is that the employee's election has been accepted. The authorities quoted above are clearly of the same opinion.

If the matter was not so serious, the STA's position would simply be laughable, but it is very serious indeed. It has cost honest taxpayers many millions of euros.

It appears to be a deliberate act of bad faith on the part of the STA.[78]

The significance of other filings

The Certificate is by no means the only mechanism through which the STA acknowledges to individuals that their Beckham Law status has been approved. Those who have been issued with a Certificate face different filing requirements from resident taxpayers who are outside this special regime. As previously noted, the principal differences can be summarised as follows:

- The annual income tax return that *Impatriates* are required to file is Form 151 rather than Form 100 which other residents file.[79]
- *Impatriates* are not required to file Form 720, a declaration of assets held outside Spain. They have no tax liability in respect of such assets, so a declaration is not in point.
- Similarly, *Impatriates* have not been required to make a filing with respect to non-Spanish

76 M. Luisa Abella García for the Instituto de Estudios Fiscales (IET - the Spanish public finance research and training centre) in "*El régimen fiscal de los impatriados. Problemas de aplicación y alternativas de reforma*" *p10.* https://www.ief.es/docs/destacados/publicaciones/revistas/cf/27_01.pdf

77 The importance of the Certificate in the 'legitimate expectations' argument is set out more fully in Appendix 3, which also explores the STA's assertion that it is merely an administrative document of no real significance

78 See Appendix 3.

79 Note that the STA website contains the following, unequivocal instruction: 'Taxpayers who opt for the Special Regime must submit a **special IRPF declaration** in **Form 151**, adapted to the content of the regime.' (STA emphasis) See Appendix 1.

assets for either the existing wealth tax or the Temporary Solidarity Tax (an additional wealth tax that was introduced in 2022) because their non-Spanish assets are not subject to these taxes.

These filing requirements and exemptions are unique to *Impatriates*.

The STA has not been shy about pursuing anyone who has failed to file a Form 720 when they were required to do so[80] but *Impatriates,* who have been issued with their Certificate, have not been harassed to file this form, even when it will have become apparent to the STA that they have more than €50,000 in assets outside Spain (the threshold for the obligation to file a Form 720). Since 2017, the STA has had access to the information made available through the OECD's Common Reporting Standard (CRS) system which will have helped them to identify such individuals.

The entitlement to Beckham Law status lasts for up to six filing years, so the STA has multiple opportunities to question or inform the taxpayer and his employer, at the time of their respective filings, if they have doubts as to the taxpayer's qualification under it. But in fact, by insisting that the taxpayer file special forms, unique to *Impatriates*, and providing instructions that are unique to *Impatriates*, the STA reinforces the taxpayer's belief and his employer's belief that he has been accepted into the *Impatriate* regime.

By allowing the taxpayer to continue to live and work in Spain on the basis that he has been certified as benefiting from the *Impatriate* regime, in circumstances where the STA does not believe that, the STA misleads the taxpayer, potentially causing him and his employer serious detriment. If, in fact, the conditions had not been met by the taxpayer, the failure of the STA to determine or state that, or even caveat the grant of the Certificate, has the consequence of depriving the taxpayer of an opportunity to agree with his employer that he will leave Spain and, therefore, not be taxed on his worldwide assets under Spanish rules.

This can result in substantial financial detriment to the taxpayer and potentially to the employer, who would never have continued the employment in Spain had the STA not issued the Certificate. By contrast, the Spanish government stands to benefit by keeping the taxpayer in Spain on false pretences and then subsequently taxing worldwide assets that would never, otherwise, have been available to it, using aggressive worldwide investigatory methods that are damaging to the individual's reputation and pressuring the taxpayer into a settlement.

As a result of our research, it has become clear that the STA has been aware, for many years, of problems in the interpretation of the Certificate but has never made changes to it or provided additional guidance. This looks like bad faith by a group of people and an Institution, both of whom have something to gain from the problems the STA itself has caused. It is an indication that it uses the resulting uncertainty as a trap. By accepting the *Impatriates*' filing and non-filing practices the STA has typically acted consistently with its decision to issue a Certificate evidencing that the taxpayer is properly entitled to the benefits of *Impatriate* status. That may also have been a deliberate ploy.

The consequence of legitimate expectation

There can be no doubt that the actions of the STA create a reasonable and legitimate expectation in the mind of the taxpayer and their employer that they have qualified for the *Impatriate* regime. The requirements imposed on Public Authorities by the Spanish Constitution, the clarity, simplicity, and ease of verification of the qualifying criteria in the Beckham Law, the issuance of the Certificate, the filings that the STA requires *Impatriates* to make and the instructions that it issues to taxpayers with a Certificate, all point unequivocally to that conclusion.

Creating such an expectation has, or is likely to have, a significant impact on the behaviour of all those concerned. The taxpayers and their employers would likely have acted differently if they had not been led to believe by the STA that it had accepted the election for *Impatriate* status. This has clearly been the case for the Victims who have approached the authors.

80 See above. *Case C-788/19 Commission v Kingdom of Spain*

For many of the individuals transferring to Spain, taxation of their worldwide assets under regular Spanish rules, would have imposed a much larger tax burden than either their home country tax system or their taxes under the Beckham Law. Faced with a significant, unexpected, additional tax cost, the vast majority would reasonably have asked their employer either to compensate them for the additional cost[81], probably through a tax equalisation arrangement, or to move them out of Spain, perhaps back to their previous country of employment. For the employer, the unexpected cost of having to put in place a tax compensation package, would have had to be weighed very carefully from a business perspective against the expected commercial benefits from the planned transfer. In practice, most employers would have transferred their employee out of Spain immediately if the cost had looked like being significant.

So, both the employee and the employer were likely to have acted differently if the STA had not signalled its acceptance of the *Impatriate* election by the issuance of the Certificate and its acquiescence in the filing of the *Impatriate* tax returns.

The STA would, of course, prefer that the taxpayers stay in Spain. There is revenue – and likely, bonuses – to be gained by keeping *Impatriates* in the snare. Then the STA can claim, years later, that the individuals never qualified for the Beckham Law regime. By ignoring their certification of status, and opening investigations for which they have no justification, they coerce taxpayers into settling when, often, no additional tax is in fact due under the law. This conduct amounts to an arbitrary abuse of power. It is unconstitutional and cannot be sustained.

In our opinion, under the principle of 'legitimate expectations', the STA has no right to assert that individuals treated in this way never qualified for the *Impatriate* regime. That challenge is blocked for the STA. We explore the relevance and significance of the principle of legitimate expectations more fully in Appendix 3 of this paper.

There is also a basic European principle - indeed an international principle - of good faith and fair dealing. For example, in Germany the government provides instructions regarding the application of the German fiscal code and states, "*The principle of good faith, according to which each party must give due consideration to the legitimate interest of the other party and not contradict its previous conduct, must also be applied in tax law. The principle of good faith supersedes the applicable law only in special cases in which, according to the general common sense of justice, the trust of the other party in a certain conduct of the administration is worthy of protection to such a high degree that the principle of legality of the administration must take a back seat*".[82]

The standard pattern of the investigations

Many *Impatriates* who have become Victims of the STA have been in contact with us. We have heard their accounts of how the STA has approached its investigations from a procedural perspective. It is grim. We have highlighted three particular examples already.

As a broader group, the *Impatriates*' stories follow a relatively standard pattern, which is typically like this:

- **The filing of the election**
  The individual files a Form 149 shortly after their arrival in Spain, electing for the *Impatriate* regime created through the Beckham Law.

- **The response**
  The STA may or may not ask questions, then responds, issuing a Certificate to the individual. It is clear that in some cases, the STA

81 See Appendix 7 for an illustrative example.

82 This is contained in an Instruction of the German Federal Ministry of Finance dated 23 January 2023 to the Supreme Financial Authorities of the 16 German States about the application of the German Fiscal Code. It is derived from a decision of the Federal Fiscal Court dated 5 September 2000, IX R 33/97, BStB1 II p676

issues a rejection. This fact is also important in reinforcing the legitimate expectations of those who receive a Certificate.

- **Subsequent filings**
  After the issue of the Certificate, nothing unexpected or untoward usually happens while the taxpayer is resident in Spain. The taxpayer files the required Form 151 tax returns. The employer files Forms 216 and 296.[83] Some standard questions about the completeness of the filings might be asked but no formal inquiry is typically launched. Any under-declarations or other errors are dealt with as normal within the *Impatriate* regime. The application of the Beckham Law regime otherwise runs smoothly. The taxpayer is given no reason to suppose that he is not under the Beckham Law.

- **Departure or change of status**
  In most cases, after a few years, the taxpayer is transferred to another country by his employer, duly notifying the STA of their departure. In some cases, *Impatriates* stay on to work in Spain, recognising that they will fall, thereafter, within the normal tax regime for Spanish residents.

- **Notification of an audit**
  The commencement of an audit is then suddenly announced, typically with no prior indication of concern.

- **The timing of the audit**
  It seems to be standard practice that formal notification of the start of an audit comes very late in an *Impatriate's* tax relationship with Spain. The pattern is so consistent that it looks deliberate, contrived. The STA could arguably audit the *Impatriate* at the end of his first year in Spain. Modern risk-assessment techniques would normally suggest an early audit if there were any material concerns about compliance. Waiting until the last years of *Impatriate* status or beyond, suggests that the STA has little interest in ensuring day-to-day compliance and prefers, from a policy perspective, to make sure that the individual stays long enough to allow it to maximise its revenues from tax, interest and penalties. We've asked the Director General if she can shed some light on this, by publishing or providing figures that show what proportion of *Impatriates* have been audited at the end of their first year and what the average time lag has been between the issue of a Certificate and the start of an audit. She has not replied. As we have already mentioned in this paper, the examples that we have seen of *Impatriates* being audited earlier than "normal" are those who appear to have been targeted for political reasons, where the audit process seems to have been mobilised as a punishment.

- **Audit selection criteria**
  The vast majority of those under the Beckham Law who are audited, appear to be foreigners, who are the natural *Impatriate* community, although the Beckham Law benefits are available to returning Spanish nationals as well. There is strong evidence that the STA primarily targets those who appear to have wealth and investment income outside Spain – not taxable under the Beckham Law – but a natural target for unscrupulous Inspectors who want to increase their own haul, even if this means manipulating the law to their own ends. This pattern of audits would be an unlikely result of normal risk-assessment techniques. The STA seems primarily to use wealth-assessment as its guide.

- **The start of the investigation**
  What usually happens after the formal notification of the start of the audit is that a full-scale investigation is launched by the STA involving the personal, family and business relationships

83 As explained later in this section, these are forms that can only be used by the employer to report withholding taxes for those treated as non-resident for tax purposes – in this case qualifying *Impatriates*

of the victim. Every known business contact, every financial institution with which he or she deals in Spain is drawn into the inquiry. Employees are questioned. Business emails are demanded, diaries, lists of meetings, business cards, email addresses. In many cases, the foreign tax returns of the Victim from before his move to Spain are required. Social media posts are researched. Details of travel by the victim and all his family, within and outside the country, are demanded.

- **The use of VAT data**
  Domestically, the STA likes to leverage whatever data they can reach out for, including that derived from the VAT reporting system, Form 347. By cross-referencing an individual with data from Form 347, the STA can get to know a vast amount about the private life of the taxpayer: which doctor they use, which clinics, which psychiatrist, which lawyer; anyone, in fact, who has provided the taxpayer with more than around €3,000 of goods or services in a particular year. This raises data privacy issues, irrespective of how the information is used or abused in the audit process.

- **Demands for information regarding non-Spanish assets**
  In the international sphere, the STA asks the taxpayer for details of every foreign bank or financial institution with which he has an account: details of all accounts held, credit card transactions, the quantum of investments, income, interests in investment partnerships, KYC[84] files, etc.

- **Challenges to the STA's demands**
  Taxpayers who, at this point, question the right of the STA to ask them for this global information, are treated as refusing to provide it. Those who point out that their non-Spanish investment income and assets are not taxable in Spain – so the information is neither necessary nor foreseeably relevant – are simply threatened with a substantial fine for not co-operating. We have seen cases where the individual, while complying with the other requirements from the STA, has reasonably asked for a proper explanation of the need for the information on non-Spanish assets before providing it. The request has effectively been ignored in what appears to be a breach of Article 147 of the General Tax Law (Law 58/2003, of December 17), and a substantial penalty imposed on the taxpayer under Article 203 of the same Law, for what the STA calls "obstruction". Fortunately, there is an appeal process for this penalty. Unless and until the STA demonstrates that the taxpayer does not qualify for the Beckham Law, the fine seems to constitute unlawful coercion, violates Article 179.1 of the General Tax Law, breaches the obligation on the STA to prove that the taxpayer acted with malice or negligence, and is impermissible in a case where the taxpayer has acted on the basis of a reasonable interpretation of the rule, as provided by Article 179.2 of the General Tax Law.

- **The STA's use of international Exchange of Information (EoI) mechanisms**
  While still pursuing the taxpayer himself for information about worldwide assets, in some cases using coercion, in the form of the threatened or actioned use of penalty notices, the STA often turns to the international EoI mechanisms to try to obtain what it wants through other tax authorities, using the mechanism of a tax treaty that it seems happy to ignore when it benefits the taxpayer.

- **The doubtful legitimacy of the STA's international requests**
  The STA appears to provide the requested tax authority with few if any details of the reason in law why the information is required and

84 Know Your Client information collected by banks and other financial services providers primarily to show that they comply with global anti-money laundering regulations.

foreseeably relevant. It seems to be enough, under the current arrangements, simply to make the request, however sweeping its scope. The EoI rules, unsurprisingly, are written with a presumption in favour of the requesting tax authority, encouraged by the OECD, that it is acting reasonably and legitimately – a presumption that seems rarely to be examined in practice.

The OECD tests the response times of tax authorities to EoI requests through its peer review process but pays scant attention to the underlying legitimacy of the requesting authority's demands or the quality and thoroughness of the requested authority's examination of that legitimacy before collecting and releasing information about a particular individual. It is after all, a kind of mutual club. Today's requested authority is tomorrow's requesting authority, so no one should rock the boat in case they get their own requests sent back.

A reasonable standard against which the tax authority might test legitimacy is suggested in the OECD Commentary on the Model Treaty[85], namely that the requesting authority should be required to provide "*the specific facts and circumstances that have led to the request, an explanation of the applicable law and why there is reason to believe that the taxpayers for whom information is requested have been non-compliant with that law, supported by a clear factual basis*".

- **Reputational damage caused by the STA**
  Where the requested tax authority acquiesces, the requests it makes on the STA's behalf to financial institutions, label the individual, in the mind of his bankers and financiers, as at least a person of interest to the tax authorities, a likely tax evader and a possible money launderer. It damages the individual's reputation with business associates. And that seems to be exactly the effect that is intended: not so much a request for information, rather a blatant attempt at intimidation. We have seen how a taxpayer, who has neither committed nor been found guilty of tax evasion, has been refused services by an international provider as a direct result of an STA information trawl. As we demonstrate elsewhere in this paper, the STA uses reputational damage as a weapon against taxpayers, sometimes in breach of the law.

- **The negative impact of tax authority secrecy**
  The level of secrecy maintained by the requested authority with regard to the STA's information requests, reduces the taxpayer's ability to challenge their legitimacy. Curiously, in an environment where transparency is a central theme, the OECD, in its EoI initiative, firmly backs the rights of the tax authority not to inform the taxpayer of the request for information at any point. This is the approach that is apparently taken in many countries, including a country like Sweden, which otherwise has a strong commitment to transparency.[86] This emphasis on secrecy puts the Victim in the same position as if a money laundering inquiry was under way, with anti-tipping off notices accompanying information requests.

  As with banks and business contacts, the predictable side effect is that the Victim is seen as a criminal by the tax authorities who receive the requests. This inevitably causes serious, and potentially irreparable, damage to the Victim's reputation. '*Guilty until proved innocent*'. Many believe that is always the STA's opening position with both domestic and Impatriate taxpayers, unless the taxpayer happens to be politically connected.[87]

85 OECD (2019), Model Tax Convention on Income and on Capital 2017 (Full Version), OECD Publishing. *http://dx.doi.org/10.1787/g2g972ee-en*. Commentary on Article 26 concerning exchange of information, 5.2

86 Global Forum on Transparency and Exchange of Information for Tax Purposes, Peer Review Report on the Exchange of Information on Request SWEDEN 2024 (Second Round, Combined Review), para 303 Only 5 taxpayers in Sweden were notified of information requests during the review period from 1 April 2019 to 31 March 2022.

87 https://www.vozpopuli.com/espana/la-agencia-tributaria-ve-normal-que-el-informe-sobre-el-hermano-de-sanchez-no-tuviera-su-logo.html

Fortunately, in some other jurisdictions, the taxpayer's human rights are better protected, and the revenue authority is required to notify the taxpayer of international requests for information. For example, in the UK, HMRC is obliged by law to notify the taxpayer when a Financial Institution Notice (FIN), requesting financial information on behalf of another tax authority, is issued. Typically, it will be couched in such terms as: "*The Spanish Tax Authority are currently checking your tax position regarding Income Tax and Wealth Tax. To help with their check they need some information and documents… HMRC has a legal obligation to assist the Spanish Tax Authority… The Spanish Tax Authority have explained that the information and documents will assist them to determine your taxation liabilities in Spain.*" This does, at least, afford the taxpayer an opportunity to protect his reputation and, potentially, ask for judicial review of the decision to provide the information, before disclosure takes place. This is a valuable safeguard.

- **Barriers to ensuring the legitimacy of requests for information**
  Even when a taxpayer has received notice of the request for information by the STA it, has often proved difficult to establish what procedures the requested revenue authority has used to check its legitimacy and establish whether it is relevant to the supposed reason for the request, without resort to a procedure such as judicial review. We have seen cases where there is no rational connection whatsoever between the information requested and the reason stated for requiring it. Worldwide investment income, gains and assets are explicitly not taxable in Spain for those under the Beckham Law. Inquiries about such income, gains and assets are not, therefore, *prima facie*, legitimate unless the taxpayer's disqualification from the benefits of the Beckham Law has first been properly demonstrated.

- **Quantum before cause?**
  Almost uniformly, the cases we have seen show that the STA appears to be interested in the quantum of the assets and income of the taxpayer long before it has demonstrated that there is any basis on which they might be taxable in Spain. The inquiries reveal no interest in the question of whether any such income or assets might actually be taxable in Spain. Only the amount.

- **The denial of basic rights**
  Typically, the STA refuses to say whether it is asserting that the individual is not entitled to the benefits of the Beckham Law regime. It may simply say that the STA is trying to ascertain his liability to tax. In societies where the rule of law prevails, it is expected that the tax authorities will engage with the taxpayer and demonstrate a liability to tax before inquiring about the quantum of his worldwide assets and income, and before abusing the privileges afforded under the various bilateral and multilateral treaties. In Spain, it appears that the STA is trying first to determine whether it is worth "going after" the taxpayer before trying to find a basis on which they might pursue him or her. This is fundamentally wrong.

The tactics are clear. The STA Inspectors hope to frighten the taxpayer into agreeing to a settlement by appearing to expose all of their worldwide assets, investment income and gains to Spanish tax. This action constitutes an arbitrary abuse of state power. It is not in accordance with the Spanish Constitution. By facilitating the STA's approach, other tax authorities become, probably unwitting, accomplices in this policy of coercion, damaging trust beyond Spain's borders and undermining the legitimacy of the OECD's Exchange of Information initiative.

The STA's system of reward

The Inspectors have an incentive to do all of this. The new bonus scheme for STA staff signed on 9 April 2025 confirms this beyond any doubt. It will be ridiculous for STA leadership to continue to deny it, as they have done in the past.

In 2023, "Productivity bonuses" paid to STA staff totalled more than €267 million – equivalent to the average annual state pensions paid to 16,000 pensioners in Spain. Published figures for the award categories are opaque but what is clear is that the bonuses have more than doubled in the last ten years.[88]

Other countries have bonus schemes that reward exceptional performance by civil servants. Some, like Italy, have schemes that include revenue authorities and provide an incentive for individual productivity. In Italy there has been media criticism of the revenue authority bonus scheme, but it appears to be on a very different scale from the reward scheme in Spain. The bonus payments that attracted negative media comments in April 2024 amounted to just €1,047.[89]

We have undertaken a comparative analysis of bonus schemes for revenue authority staff in Spain, France, Germany, Belgium, Italy, Portugal and the UK. Bonus schemes are not all transparent, but the available information suggests that:

- The STA scheme for Inspectors is an international outlier, with the highest levels of financial incentives compared to the UK, France, Germany, Belgium, Italy, and Portugal. Substantial amounts are paid in Spain based on subjective assessments and the performance of individuals and small groups.
- Spain's tax inspectors received an average aggregate bonus of €243 million each year between 2018 and 2022. The country with the closest absolute amount seems to be Italy, with an average pool of roughly €165 million per year for the same period, although the average bonus per employee is very much smaller.[90] In Portugal, we understand that the total productivity bonus for tax inspectors has been calculated on the basis of 5% of the total collected funds. In December 2023, this figure was approximately €53 million.
- In France, Germany, Belgium and the UK, remuneration of tax inspectors is determined to be broadly commensurate with that of other categories of civil servants and bonuses are negligible compared to Spain.

For years, the STA refused to provide any information about the shadowy incentive scheme for Inspectors, which it operates but, in the end, the Central Administrative Court Number 4 of Madrid left them no option. What they published, which was far from the complete picture, leaves a lot of questions unanswered but it nevertheless reveals the extent to which bonuses are subjective.[91] The disclosure made by the STA about their bonus scheme identifies a number of so-called "coefficients" that determine their pay.

It shows, for example, that persuading taxpayers to reach a settlement rather than assessing the right amount of tax is likely to result in bigger bonuses: "*The third coefficient… rewards the percentage of files that are sealed with an agreement between inspector and taxpayer, promoting prompt payment and avoiding litigation.*" These are carefully chosen words that put a fine gloss on a process through which taxpayers are coerced into doing a deal, even when there may, in law, be no liability. Lawyers working on Beckham Law cases have estimated that more than 80% of such cases have been settled through this mechanism - by a deal done between the STA and the taxpayer - contrasting strongly with the normal process through which assessments are issued and agreed. We have asked the Director General of the STA to provide statistics

88 Source: Expenditure Budget Settlement Statement in the STA annual reports

89 https://tg24.sky.it/economia/2024/04/02/pnrr-bonus-dipendenti-agenzia-entrate

90 The OECD's Tax Administration 2024: Comparative Information on OECD and Other Advanced and Emerging Economies (TAS 2024) shows that Italy had 28,435 FTE employees in 2024, collecting €498,302 million of net revenue, compared with Spain's 20,691 FTE employees collecting €255,463 million of net revenue. *https://www.oecd.org.*

91 *https://inspectoresdehacienda.es/wp-content/uploads/filr/4335/20220927_Expansion_Bonus_IHE_%20Ranses%20.pdf?utm_source=chatgpt.com* See Appendix 2

that would support or help refute this estimate, but we have had no reply. We draw our own conclusions. Spanish lawyers believe that there is a marked contrast between Beckham Law cases and cases of other types.

The system of reward also places emphasis on the speed with which an audit is completed. This encourages the STA Inspectors to cut corners and to subvert the rule of law by applying undue pressure on taxpayers to settle. We have seen such cases. The less time the official audit takes, the greater the bonus potential. Reward is the driver. The rule of law has been abandoned back down the road.

Historically, the STA has counter-claimed that the element of the bonus that relates to audit adjustments is only a small percentage of Inspectors' total remuneration. This is a spurious argument:

- The offer of any reward for achieving audit adjustments, increasing collections, making deals, has the effect of removing entirely the objectivity of the Inspector. There are no shades of grey. It is black and white. The Inspector has a financial incentive to achieve a particular outcome.
- The STA has provided no evidence that its incentive scheme for Inspectors, functions in the way they claim. So, the claim remains unsubstantiated. The STA believes it can get away with providing a much lower standard of evidence than it requires from taxpayers. Publication of the full details might be painful for STA's leadership, but requiring publication appears to be a necessary step for any politician wanting to rebuild trust in this government institution.

Most citizens, wherever they live, and most members of parliament, recognise the risk of paying tax inspectors by results and try to discourage it. We understand that the bonuses paid to Inspectors are never clawed back, even where – as often seems to be the case – the taxpayer wins on appeal. This is a concern that has particularly been raised by Aedaf, the Spanish Association of Tax Advisors.

The Spanish media has repeatedly been critical of the STA's bonus system since its existence was confirmed in 2022.[92] But the government has so far been deaf to the widespread concerns and blind to the need to challenge the way in which the STA goes about its business. Instead, pouring fuel onto the flames, the STA entered into a new bonus arrangement with its staff on 9 April 2025 that will provide bonuses of €125 million if additional personal income tax and VAT collection targets are met for 2025. This will further incentivise aggressive and likely unlawful processes.

The authors have heard how not only taxpayers, but their advisers as well, are pressured to agree to a deal, irrespective of the facts or the law. By international standards, there are relatively few tax cases in Spain that have reached the courts. Professional firms seem to live in fear of the revocation of their licence if their clients prove resistant, under the premise that the advisers must be the source of the taxpayers' attempts to evade their tax liabilities and should not, therefore, have their licence renewed. Few are willing to stand up to the STA and risk their firms and their careers in the face of this intimidation. *Impatriates* have found it very difficult to obtain legal representation for cases involving the STA.

All of this is troubling in the context of the obligations on Public Authorities that are set out in the Constitution.

At the very least, an independent inquiry is needed: an audit of the whole incentive system and the outcomes it produces, carried out by a firm that is outside the reach of the STA. This will either set taxpayers' minds at rest about the bonuses or provide the evidence they need to press for what looks like much-needed reform.

92 For example, Juande Portillo, "Así son los bonus de los inspectores que Hacienda ha revelado por orden judicial", *Expansión,* 27 September 2022; Alejandro Nieto González, "El bonus de los Inspectores de Hacienda debe cambiar: incentivar lo que queremos como sociedad es fundamental", *El blog salmón,* 5 October 2022; Javier de Antonio, "Los bonus de los inspectores de Hacienda: a dedo y de hasta 32.000 euros aunque los expedientes no prosperen", *La Razón,* 30 October 2022; Beatriz García, "Polémica por el bonus de los inspectores de Hacienda: ¿cómo se calcula el importe que hace temblar al contribuyente?", *Libertad Digital,* 10/ November 2022; Daniel Viaña, "Hacienda mejora el bonus por recaudación de los inspectores justo antes de la campaña del IRPF", *El Mundo,* 4 April 2023; Ignacio Ruiz-Jarabo, "Más 'bonus' para los inspectores de Hacienda", *The Objective,* 5 April 2023; Mercedes Serraller, "Hacienda ofrece un bonus de 125 millones a su plantilla a cambio de recaudar más IRPF e IVA", *VozPopuli,* 3 April 2024.

Criminalisation

The threat of criminal proceedings is a very serious matter. We have shown how it has been used by the STA in some individual cases to push a taxpayer into making a quick settlement that may have no merit in law. Designation as a criminal offence may occur in cases where the STA claims that the tax at issue is €120,000 or more. This adds to their leverage. They seem to use the threat frequently.[93] It is part of their playlist.

When someone looks as if they will resist even this pressure, the STA simply turns up the heat. In some cases, they engage the full power of the media. That can be enough. Those who are innocent and have previously been determined not to give in to threats, can finally be frightened into settling. There have been some famous cases, which will have encouraged the STA to go even further.[94]

Our work has revealed just how extensively the warning or threat of possible criminal proceedings is used in relation to Beckham Law cases. It is not clear what internal procedures (if any) are required within the STA before an Inspector can use it, formally or informally. We believe it is serious enough to require both transparency and formality. We have seen that it often breaks honest taxpayers.

In order to address the very real concerns, and provide accountability, we believe that the use of the criminality threat or warning, should require formal sign-off by the most senior official in the directorate – in this case, probably the Director of the Department of Financial and Tax Inspection – and that a register of its use should be maintained. This would help restore transparency and taxpayer confidence that the rule of law is being respected by the STA.

The STA's ethical code

Of course, the STA has its own Code of Ethics, formally published on its website.[95] Enshrined in the Code is the principle of observing the Constitution and the laws of Spain.

> "*The staff of the Tax Agency carry out their activity in a regulated environment, in which the Constitution and the laws establish the framework of rights and duties of both citizens and the staff of the Tax Agency itself. They derive principles that guarantee objectivity, neutrality, impartiality, equality before the law, legal certainty and respect for fundamental rights and public freedoms*."

Regrettably, this has all the hallmarks of an elaborate sham: a mere façade with nothing behind it. It is impossible to see how the actions of the STA accord with these principles.

The word "fairness" is notably absent from the Code of Ethics. Perhaps this should be seen as a warning.

Opacity, random processes and hostility

Although there is strong evidence of some central themes in the STA's campaign against *Impatriates* as a group, there appears to be something of a lottery at work in how the STA handles individual *Impatriates*. This arbitrariness, together with the lack of transparency and candour in the audit process and, it seems,

93 Self-evidently, statistics on the extent to which the STA threaten the use of this power are not published, but such threats have often figured in the cases that we have heard from Victims, as illustrated in the case studies presented. There is no transparent mechanism that would prevent an STA Inspector from artificially inflating the underlying tax bill, by denying deductions etc, as we have seen in some cases.

94 For example the Shakira case *https://www.hollywoodreporter.com/news/music-news/shakira-tax-fraud-settlement-spain-1235665269/*

95 https://sede.agenciatributaria.gob.es/static_files/Sede/Tema/Agencia_tributaria/Codigo_etico_AEAT.pdf

a lack of proper training for Inspectors, contributes to the taxpayers' sense of vulnerability to random attacks:

- There is an apparent lack of centralised guidance. While some countries publish manuals that set out the principles of how the tax code is interpreted and how they are applied in practice by their own tax administration – internal instructions given to Inspectors for handling particular types of issue – the Spanish system is opaque. There are no published STA manuals that could inform a taxpayer, just the briefest of introductory guides.[96]
- Whether unpublished central instructions exist or not, there appears to be no uniform application of the rules between Inspectors. For example, Inspectors in Barcelona seem to be much more likely to initiate investigations into *Impatriates* than their colleagues in Madrid.
- Inspectors, individually, or collectively, or via regional or national direction appear to make up the rules as they go along, for example by inventing an entirely non-statutory "motive test" for the transfer of an employment to Spain.
- Inspectors seem to have, or at least to claim in some cases, almost open-ended investigation powers and use intimidation and fear to achieve the outcomes they want. Some of this may be the result of a cultural problem within the STA which its leadership has either failed, or possibly not attempted, to correct. Internationally, many police forces have a similar problem, but it tends to be less of a problem in revenue authorities elsewhere. In Spain, it may also be the result of changes in the training process for Inspectors. We have heard that, over the years, the training provided for Inspectors has been cut back significantly. Inspectors previously had to complete 18 months of formal training in a college environment followed by a minimum of six years of additional training before they were permitted to take on cases. Now there is said to be much less attention given to training. Inspectors, therefore, come into their roles with less experience, seeking to make up for that and their lack of knowledge by aggression. They want to prove themselves without regard for the niceties of the law or the impact of their behaviour on taxpayers.
- As we have noted, the STA rarely provides a detailed explanation of the nature and scope of the audit at its commencement, as seems to be required by Article 147 of the General Tax Law, (Law 58/2003, of December 17). We have seen cases where they continue to deny the taxpayer the right to know exactly what they are investigating, months after the audit has started.
- The STA seems to be well-practiced in the art of manipulating the asymmetries in Spanish law to its own advantage – part of the cultural norms of the STA. Taxpayer rights are limited and, in practice, almost impossible to enforce during the life of an investigation. Candour and disclosure are lacking. Hence the difficulty that taxpayers have in finding out what an investigation is actually about. The STA simply gives a contemptuous and generic answer: '*We are investigating your tax affairs…*'. Taxpayer rights are much stronger when the STA finally puts a case on the table. There are two important points to note here:
  - Very often the damage will already have been done to the taxpayer before the second stage is reached. His morale has been sapped. He has been treated, in front of all his business associates and banks, without charge or evidence, as if he was a tax evader. He has had his children investigated. He has been given no substantive information on which to raise a challenge for more than a year. In the international sphere, there may have been

96 For example: *https://administracion.gob.es/pag_Home/en/Tu-espacio-europeo/derechos-obligaciones/ciudadanos/trabajo-jubilacion/fiscalidad/impuesto-renta.html#-5caab634b701*

complete secrecy about information requests. The STA refuses to explain to the taxpayer why this is happening. So, he has been groomed for the offer of a deal and is likely to be susceptible to accepting it out of fear.

- If he is able to resist, the taxpayer's rights become stronger when the STA has played its cards. There are formal legal processes, appeal and information rights. These are far from satisfactory, as we have demonstrated elsewhere, but they are at least, stronger than before. This asymmetry of rights, before and after disclosure of the STA's case, is unsustainable. There has to be convergence. The taxpayer should have much stronger information rights, and rights to intervene, in the first, investigative phase. These rights should be exercisable in both law and practice. Culturally, the STA should also be open to discussion across the table, rather than driven by its macho cultural norms and groupthink, into hostility to taxpayers. These are not criminal cases. The STA rarely uses more than the threat of criminal proceedings, for very good legal reasons that it understands well but which taxpayers generally do not. There is no excuse for the STA's behaviour.

We plan to return to all of these troubling issues in further work on the legality of the STA's actions and behaviour.

For the taxpayer, the apparently random nature of the STA's attacks, the lack of transparency, the missing links between law and practice, the inconsistencies, mean that there is no possibility of certainty about how tax law will be interpreted and applied. In the specific case of *Impatriate* taxation, there is a strong case that, given the way in which the law is being administered, Article 93 is effectively void for vagueness, to borrow an American concept. The pervasive, apparently long-term uncertainty that the STA believes it has the right to impose on *Impatriates*, affects employers and employees alike.

This is clearly not compatible with the Constitution[97], with the rule of law, with normal concepts of legality or, presumably, with the intentions of the government and the *Cortes Generales* in establishing the Beckham Law to attract foreign talent to Spain.

The STA pays only lip service to its duty of good administration. Its actions demoralise citizens and *Impatriates* alike and damage the international reputation of Spain among investors.

The system of "pay-to-appeal"

The problems with the rule of law that we have described, are exacerbated by a major issue with the system for appealing against tax assessments in Spain.

Most governments, including their tax authorities, now accept that they cannot simply deny taxpayers access to justice, either in law or practice. Yet, in many cases, the Spanish system does just that. The law has the same effect on citizens and foreigners alike but, in practice, it bites particularly hard in relation to those who arrive from outside Spain, elect for the Beckham Law, and subsequently find themselves subject to disproportionate and discriminatory action by the STA.

Taxpayers have the right to appeal against excessive tax assessments issued by the STA but, no matter how well-founded the appeal might be, it does not prevent the collection of the full amount of tax assessed in the meantime. All of the assets that the individual owns, not just in Spain but throughout the world, are at the mercy of Spain's tax enforcers. Most people cannot afford to see them put at risk in that way. If the taxpayer cannot pay, the STA's media machine will apparently still go into full swing, labelling the appellant a tax debtor through the whole life of the appeal, which can last for many years.

97 See Appendix 4. Article 9.3 is fundamental to the issue of legality, rule of law and the conduct of public authorities in Spain.

Unless the tax assessed is a trivial amount – and that is typically not the case for *Impatriates* victimised by the STA – this is a very serious problem. It is one of the many pressures that pushes taxpayers into doing a deal, even when they know they have no liability. It is simply wrong.

The right to audit

The right to audit taxpayer returns is enshrined in Spanish Law. It is a right that should be exercised only by an organisation that demonstrably complies with the full requirements of Spanish law, with the Spanish Constitution, with EU laws, with the treaties to which Spain is a signatory and with other applicable law. It should be exercised only by an organisation whose officers are not incentivised by personal gain, to achieve adjustments or to generate additional tax revenues. Regrettably, the STA fails those tests.

While we take the view that the rule of law requires that *Impatriate* tax returns, like those of Spanish citizens, should be open to audit when modern techniques of risk assessment have identified a significant likelihood of error or misstatement, we believe that the rule of law also requires that audits should not be mandated merely because the tax authority has become aware that the taxpayer has assets outside Spain that the government has decided, for policy reasons, not to tax under Spanish law.

The right to audit begins and ends with auditing returns for accuracy and completeness. In the case of *Impatriates*, once the STA has reviewed a taxpayer's Form 149 and issued a Certificate, it should have no general right to revisit the taxpayer's status. The STA cannot justly argue that the Certificate is meaningless. The Certificate contains a clear statement of effect on which the taxpayer was entitled to rely.

If, in fact, the STA did not mean what it represented through the Certificate, then the Certificate is a false statement. At the very least it is misrepresentation by the STA of the taxpayer's status, including the implication that the STA had determined that the taxpayer qualified for Beckham Law status, based on the election and accompanying documents submitted by him. The taxpayers themselves have relied on this statement, or misrepresentation, and proceeded to work and live in Spain, apparently to their detriment and their employers have relied on it as well, with moral and financial consequences. By making no attempt to correct this misrepresentation when the taxpayer submitted the tax filings required only by those with Beckham Law status year after year, and by issuing instructions that confirm acceptance, the STA has aggravated its misconduct.

The use of this tactic by the STA can be construed as an attempt to maximise a taxpayer's apparent exposure and increase the pressure for a settlement. This is an unconscionable result that does not meet the most basic requirements of fair public administration and cannot be allowed.

The STA has stepped over that line on multiple occasions and should be held properly to account for it, as the Constitution, domestic law and EU law requires.

For the future, in the interests of accountability, the Director General of the STA should be required personally to confirm that the organisation has at all times complied with all applicable laws, when submitting the STA's annual report.

6

WHY SPAIN HAS A PROBLEM UNDER EU LAW AND THE ECHR AS WELL

We have shown, in the previous section, how the STA violates Spanish law, but it is not only Spanish law that it violates. The STA also acts in breach of EU Law and the ECHR, ignoring the requirement to respect the substantive protections that they provide.

The CJEU established, in its landmark ruling in Factortame[98], that Member States are obliged to disapply or prevent the application of domestic measures that conflict with EU law. State agencies must not undermine the supremacy and direct effect of EU law.

EU law establishes fundamental freedoms which include free movement rights (free movement of people and capital, and freedom of establishment) and rights in relation to data protection (i.e., GDPR).

Where EU law is engaged, Spain must act in accordance with the general principles that underpin it (non-discrimination, proportionality, legal certainty) and fundamental rights (now also codified in the Charter), including the principle of good administration, which itself includes the right to an impartial hearing and access to STA files.

Wherever the conduct of the tax authorities falls within the scope of EU law, the rights in the Charter apply as well.[99]

EU law provides for the protection of these rights through enforcement mechanisms. EU law can be enforced by the European Commission bringing a case in the CJEU in Luxembourg – as it has just done against Spain for other breaches relating to the taxation of non-residents – or by private individuals in Spanish courts (as EU courts). Spanish courts can refer questions of EU law to the CJEU.

As a High Contracting Party of the Council of Europe, Spain is also bound by the ECHR. The ECHR is an international human rights treaty to which Spain is a signatory. It protects fundamental human rights including privacy rights, property rights, and the right to effective judicial protection. Many of the ECHR rights are enshrined in the Charter, but ECHR rights apply even where Spain is not acting within the ambit of EU law. The victim of a violation of ECHR rights can apply directly to the ECtHR in Strasbourg for just satisfaction provided they have first invoked their rights before the Spanish courts.

These two international mechanisms for the protection of fundamental or human rights – EU law and the ECHR – are connected and the provisions of the Charter are interpreted in the light of the case law of the ECtHR[100], but they are distinct systems with separate scopes and enforcement mechanisms. The ECHR provides a separate layer of protection from EU law.

There are many areas where the actions of the STA towards *Impatriates* appear to be in conflict with both EU Law and ECHR rights. So, those actions must be assessed under both frameworks to ensure compliance not only with Spain's EU obligations but also with its wider human rights obligations under international law. Spain must respect and uphold key protections guaranteed both by the Charter and the ECHR.

The rule of Law

The rule of law underpins both EU and ECHR law. It is "*one of the founding principles and… one of the main values on which the [European] Union is based*."[101] It figures in Article 2 TEU, which provides,

98 'Factortame II' (the substantive claim): Case C-221/89 The Queen v Secretary of State for Transport, ex parte Factortame Ltd and Others, ECLI:EU:C:1991:320, available at *https://curia.europa.eu/juris/showPdf.jsf?text=&docid=96817&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=26833647*

99 Case C-617/10 Åklagaren v Åkerberg Fransson [2013] 2 C.M.L.R. 46; Case C-682/15 Berlioz Investment Fund SA [2018] 1 CMLR 1, §44

100 See C-673/16, Coman, EU:C:2018:385, paragraphs 47-50; Case C-482/01 and C-493/01, Orfanopoulos and Oliveri, EU:C:2004:262, paragraphs 97 and 98

101 European Commission, Rule of Law Framework, p. 1

"*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights…*"

As a Member State for almost 40 years, the Government of Spain will be well aware that respect for the rule of law is a precondition for EU membership (Article 49 TEU) and also well aware of the powers that have been put in place to preserve it. In 2014, the European Commission established a framework "*to prevent the emerging of a systemic threat to the rule of law in [a] Member State that could develop into 'a clear risk of a serious breach' within the meaning of Article 7 TEU.*"[102] The Rule of Law Framework "*seeks to resolve future threats to the rule of law in Member States before the conditions for activating the mechanisms foreseen in Article 7 TEU would be met… It is not an alternative to but rather precedes and complements Article 7 TEU mechanisms*"[103] The Commission notes that "*all Member States need to be concerned if the rule of law principle is not fully respected in one Member State.*"[104]

The principles that define the rule of law as a common value of the EU, in accordance with Article 2 TEU include: legality, legal certainty, prohibition of arbitrariness in the application of executive powers, independent and impartial courts, effective judicial review including respect for fundamental rights and equality before the law.[105] This is a non-exhaustive list.

The rule of law is also a fundamental principle of the Council of Europe, of which Spain has been a member since 1977. The Council of Europe was founded after World War II *to promote democracy, human rights and the rule of law across Europe and beyond.*[106] Spain's Minister for Foreign Affairs, European Union and Cooperation, Jose Manuel Albares Bueno, sits on its Committee of Ministers, and Spain has a delegation of 12 representatives in the Council's Parliamentary Assembly. As one of 46 members of the Council of Europe, Spain has a duty to uphold its values and cannot ignore the implications of membership, just as it cannot ignore the obligations of its membership of the EU.

However, our work has led us to believe that the way in which the STA operates, as illustrated by its handling of *Impatriates*, subverts the rule of law. This should be a matter of concern, not just for the citizens of Spain but for the other Member States and for the European Commission.[107] It appears to be indicative of a wider malaise that requires treatment before it can get worse.

Free movement

EU law enshrines fundamental freedoms, to which all EU citizens are entitled: free movement of persons, capital, goods, and services and freedom of establishment.

The treatment of *Impatriates* by the STA appears, *prima facie*, to infringe the right of EU citizens to move freely between Member States. There is an obligation on any Member State that takes measures which may have the effect of restricting the right of free movement to ensure that they are strictly justified. The CJEU has consistently upheld this principle, making it clear that derogations from free movement must be interpreted narrowly and applied only in exceptional circumstances.

The CJEU rarely accepts additional justifications for restricting fundamental freedoms.[108] Even if a

102 European Commission, Communication to the European Parliament and the Council: A new EU Framework to strengthen the Rule of Law, COM(2014) 158 final, 11 March 2014, p. 6

103 European Commission, Rule of Law Framework, p. 3

104 Ibid, p. 5

105 Ibid. p. 4

106 https://www.coe.int/en/web/portal/the-council-of-europe-at-a-glance

107 The CJEU has become more diligent in its actions against breaches of the rule of law, as Laurent Pech and Dimitry Kochenov demonstrate in *Respect for the Rule of Law in the Case Law of the European Court of Justice: A Casebook Overview of Key Judgments since the Portuguese Judges Case* – SIEPS 2021-3. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3850308

108 Case 120/78 Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein, ECLI:EU:C:1979:42, available at *https://curia.europa.eu/juris/showPdf.jsf?text=&docid=90055&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=28048747*).

restriction falls within a recognised derogation, it must still pass the proportionality test, ensuring that it is necessary, suitable, and does not exceed what is required to achieve its objective.

> "*...a national measure that is liable to obstruct the exercise of freedom of movement for persons may be justified only where such a measure is consistent with the fundamental rights guaranteed by the Charter, it being the task of the Court to ensure that those rights are respected*".[109]

Free movement of persons applies not just to those who already have jobs but includes a right to enter a country to look for work.[110] This entitlement underlines the breadth of the EU's commitment to ensuring that people can move to live and work freely within its borders without unjustified interference from national authorities.

The EU citizens who came to Spain as *Impatriates*, were exercising their right to freedom of movement. The actions of the STA have infringed that fundamental right. Furthermore, the STA is creating legal uncertainty and placing an unfair burden on those who relocated to Spain in good faith.

In case C-370/90 Surinder Singh[111], the CJEU clearly established the principle that Member States cannot impose measures that discourage individuals from exercising their right to free movement. The court ruled that UK immigration rules restricting the ability of EU citizens to return with non-EU family members created an unlawful deterrent effect. This decision underlines the principle that any national measure that discourages individuals from moving freely within the EU is incompatible with EU law.

The STA's current actions mirror the kind of restrictive and unlawful measures that the CJEU struck down in Surinder Singh. By retroactively challenging the status of those who have moved to Spain, and imposing unforeseeable tax liabilities, it is creating legal uncertainty and discouraging individuals from relocating to Spain. The STA's actions not only undermine confidence in the *Impatriate* regime, they also violate fundamental EU law protections, making Spain an unpredictable jurisdiction for cross-border workers, and contradicting the principles that underpin the EU's internal market.

Direct taxation generally falls outside the scope of EU law, but in so far as the tax authorities take action or seek information that affects – or potentially affects – the exercise of EU law rights and/or general principles, then EU law is engaged, and that is the case here. Requiring a person, who is exercising the right to freedom of movement, to provide information that is irrelevant to his tax liability potentially constitutes a restriction on that right which cannot be justified.

Spain is using its rules to exploit and abuse free movement rights. Those who exercise their free movement rights to move to Spain to work, and who do so on the basis that they can elect to be taxed under the Beckham Law (and are then granted a Certificate confirming that they can properly do so, and subsequently given instructions and filing requirements only in point for accepted *Impatriates*), exercise their right to free movement on the basis of a promise made by the Spanish government.

In the context, therefore, of the exercise of their right to free movement under Article 21 the TFEU (and Article 45 of the Charter), they had a legitimate expectation, as a matter of EU law, that they would be entitled to benefit from the Beckham Law. Indeed, by enacting the special tax regime, Spain actively and intentionally induced individuals to exercise their free movement rights and become *Impatriates*, offering them simple tests to determine their eligibility that could easily be seen to be met at the start of their residence in Spain. Furthermore, by issuing a

109 C-673/16, Coman, EU:C:2018:385. See, by analogy, judgment of 13 September 2016, Rendón Marín, C-165/14, EU:C:2016:675, paragraph 66

110 Case C-292/89 The Queen v Immigration Appeal Tribunal, ex parte Gustaff Desiderius Antonissen ECLI:EU:C:1991:80, available at *https://curia.europa.eu/juris/showPdf.jsf?text=&docid=96732&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=28009062*

111 Case C-370/90 The Queen v Immigration Appeal Tribunal and Surinder Singh ex parte Secretary of State for Home Department, ECLI:EU:C:1992:29 (see paras 19-23 of the judgment), available at *https://curia.europa.eu/juris/showPdf.jsf?text=&docid=97660&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=28009062*.

Certificate, confirming the application of its benefits, and imposing filing requirements only applicable to *Impatriates*, the STA made clear that they had met the relevant conditions for the Beckham Law.

The extraordinary, unsubstantiated demands for information with which many *Impatriates* have now been burdened can, in that context, be seen as clearly abusive. Spain, through the STA, is using the exercise of EU free movement rights by individuals as a premise for carrying out an intrusive trawl for private information about the worldwide income and assets of *Impatriates*, such income and assets being, by the government's own choice, outside the scope of Spanish taxation.

When, as we have seen, the STA acts as if it is entitled to have access to virtually all a person's financial information, irrespective of whether it is relevant to his tax liability in Spain, it breaches his legitimate expectation and obstructs freedom of movement.

A restriction on the right to freedom of movement for persons – where the restriction is independent of the nationality of the persons concerned – may be justified if it is based on objective public-interest considerations and if it is proportionate to a legitimate objective pursued by national law.[112] However, for it to be proportionate, it must not only be appropriate for securing the attainment of the objective pursued, it must also not go beyond what is necessary in order to attain that objective.[113]

It is difficult to see how the STA demands for information about *Impatriates'* global financial affairs, could possibly meet that test. It cannot be justified as being necessary to meet a "*serious threat to the fundamental interest of society*". The position might be different if the tax authorities were claiming that they needed the information to determine whether a criminal offence of tax evasion had taken place. But that is generally not the position. The STA rarely argues that they are investigating tax evasion. Indeed, were it to do so, the requirement placed on an individual to provide the requested information would constitute a violation of the right not to incriminate oneself, as guaranteed by Article 47 of the Charter and Article 6(1) of the ECHR. *Impatriates* would be entitled to refuse to provide information on the basis that it would infringe that right.[114]

It is clear from the "*Plan General de Control Tributario*," (the Audit Plan) of the STA[115], that its leadership has prioritised investigations into non-residents, many of them EU citizens exercising their right of free movement, focusing particularly on verifying worldwide income, with heightened scrutiny of those who have elected to be taxed under the Beckham Law. This raises the additional likelihood that the STA is also breaching the fundamental right in Article 18 of the TFEU of EU citizens not to be discriminated against as compared with nationals of the Member State itself.

Data protection

EU *Impatriates* are also protected under EU law by the GDPR.

The STA itself acknowledges that it is subject to and required to comply with the GDPR.[116]

The GDPR will apply to the collection of the tax information by the STA in so far as they have not stated that they are seeking the information for the purposes of bringing criminal proceedings.[117] Accordingly, the tax authorities must comply with

112 See, to that effect, judgments of 14 October 2008, Grunkin and Paul, C353/06, EU:C:2008:559, paragraph 29; of 26 February 2015, Martens, C359/13, EU:C:2015:118, paragraph 34; and of 2 June 2016, Bogendorff von Wolffersdorff, C438/14, EU:C:2016:401, paragraph 48

113 See judgment of 26 February 2015, Martens, C359/13, EU:C:2015:118, paragraph 34

114 J.B v Switzerland App. No. 31827/96, §§48, 63-66 and Articles 47 and 48 of the Charter

115 Resolution of 21 February, 2024, of the General Directorate of the State Tax Administration Agency, approving the general guidelines of the Annual Tax and Customs Control Plan for 2024. https://www.boe.es/buscar/act.php?id=BOE-A-2024-3876

116 *https://sede.agenciatributaria.gob.es/Sede/en_gb/condiciones-uso-sede-electronica/datos-personales/informacion-sobre-proteccion-datos.html*

117 Case C-175/20 SIA 'SS' v Valsts ieņēmumu dienests, 24 February 2022, §§42-47

the data protection principles laid down in Art. 5(1) GDPR. In particular, the data requests and transfers must be necessary in the context of the specific purposes for which they are collected (Articles 5(1)(b) and (c)); and the period of time to which the collection of such data relates must not exceed the duration strictly necessary to achieve the objective (Article 5 (1)(e)).[118]

The "*tax authorities of a Member State cannot derogate from the provisions of Article 5…in the absence of a clear and precise legal basis in Union law or in national law [in so far as permitted by Article 23(1) GDPR], the application of which is foreseeable for those subject to the law, providing for the circumstances and conditions in which the scope of the obligations and rights provided for in that Article 5 may be limited*".[119]

Article 5 (1) of the GDPR provides, inter alia that personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency');
(b) collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; ...
(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation').

Article 5 (2) states: "*The controller (the STA) shall be responsible for and be able to demonstrate compliance with paragraph 1 (accountability)*"

As the GDPR is an instrument of EU law, any interference with personal data must respect the broader fundamental rights framework established by EU law.

The STA is under a duty to establish that, in accordance with Article 25(2) GDPR, it has sought to minimise as far as possible the amount of personal data to be collected.

The information requests sent out by the STA have to meet the test of 'foreseeable relevance' following the criteria established in the Berlioz case.[120] In many cases, it is clear that the information requests made by the STA, including those made to other tax authorities, go well beyond what is necessary or foreseeably relevant, and potentially infringe the rights of third parties who have no nexus with Spain.

Requests by STA Inspectors to the schools which the young children of *Impatriates* attend, obtaining, retaining and using information about the language skills of the children and their parents' engagement with the school, are a clear and reprehensible breach by the STA of the requirements of Article 5(1) of the GDPR.

Legal certainty

The entire justification for the STA's onslaught on the *Impatriate* community is predicated on an unresolved and (on their interpretation, unresolvable) state of legal uncertainty related to the taxpayer's election for the Beckham Law, giving weight to the idea that the arrangements are "*void for vagueness*". The STA claims that the Certificate issued to those electing *Impatriate* status does not give certainty that the taxpayer has qualified. The STA provides no other certification at any point and no other resolution of the election. In many cases, it has never raised a single question about the taxpayer's entitlement to Beckham Law status – even if there has been other correspondence – until the taxpayer has completed his or her employment in Spain and left the country. This would typically be after five or six years. Often the inquiries arise even later because of the four-year audit window.

118 SIA 'SS' §§46-47. §74 further states: "*It follows that the controller, including where it acts in connection with a task which it has been charged with carrying out in the public interest, may not proceed, in a general and undifferentiated manner, with the collection of personal data and it must refrain from collecting data which are not strictly necessary in relation to the purposes of the processing.*"
119 ibid §57
120 CJEU, Berlioz Investment Fund SA v Directeur de l'administration des contributions directes, Case C-682/15, 16 May 2107

So, it is perfectly possible for the state of uncertainty (in the STA's view) to remain for at least eleven years. If this were permissible, it would create a level of uncertainty that would be completely unacceptable under the principles enshrined in the Charter. According to the European Commission, legal certainty "*requires inter alia that rules are clear and predictable and cannot be retrospectively changed*."[121] In the words of the Venice Commission, "*legal certainty requires that legal rules are clear and precise, and aim at ensuring that situations and legal relationships remain foreseeable*."[122] The application of the Beckham Law by the STA provides no foreseeability of outcomes for the taxpayers.

This is part of a much wider problem in Spain – the lack of legal certainty in tax matters and the pernicious effects it generates.[123] It has raised concerns among commentators, including lawyers and academics.

Fair and impartial treatment

The STA's conduct is also a breach of the right of taxpayers to protection against arbitrary or disproportionate intervention by public authorities in the sphere of their private activities, which constitutes a general principle of EU law.[124]

The STA's apparent focus on maximising revenue through aggressive audits and investigations focused primarily on *Impatriates*, as shown in the Audit Plan, is a violation of the right to fair and impartial treatment under EU law, as outlined in Article 41 of the Charter (the right to good administration) and the right to non-discrimination in Article 18 TFEU.

Indeed, the STA's revenue maximisation incentive scheme violates the requirements of fairness and impartiality, giving rise to arbitrary abuse of executive power. This "revenue-motivated" approach to enforcement creates an environment of legal uncertainty and represents unfair treatment for the foreign nationals who become *Impatriates*.

This is also an issue that touches upon the fundamental rights guaranteed under the Charter, including the right to fair and equal treatment (Article 20) and the right to an effective remedy (Article 47). In addition, best practices in tax administration, as outlined by authorities such as the OECD and the WCO, recognise the need for fair and transparent procedures in handling tax matters, which the STA's practices seem to contravene.

EU principles, including the right to a fair trial under Article 47 of the Charter and the principle of proportionality, require that *Impatriates* should not be subject to excessive audits, unfair tax administration practices, and the potential seizure of assets for the collection of taxes assessed but under appeal.

It is clear that the Spanish Authorities are interfering with the right of EU *Impatriates* to freedom of movement and denying them an effective remedy in respect of that right, as guaranteed by Article 47 of the Charter.

Furthermore, the treatment of *Impatriates* by the STA appears to infringe the right to due process enshrined in Article 6 ECHR, including, in some cases, the presumption of innocence (Article 6(2)) which is manifestly absent from '*simulación*' arguments seen to have been put forward by its Inspectors.

121 European Commission, Rule of law Framework, Annex 1, p1

122 European Commission for Democracy through Law (Venice Commission), *Report on the Rule of Law*, 2011, CDL-AD(2011) 003rev, para 46

123 Ana P. Alarcos, "La inseguridad jurídica es el mayor problema en materia fiscal de España, según la Aedaf", *Idealista,* 14 March 2025; Clemente Juan Checa González, "La inseguridad jurídica en la esfera tributaria: causas de la misma y perniciosos efectos que genera". (2020). Anuario De La Facultad De Derecho Universidad De Extremadura, 36, 165-218. *https://doi.org/10.17398/2695-7728.36.165;* Instituto Coordenadas, "El Instituto Coordenadas denuncia la inseguridad jurídica generada por la Agencia Tributaria", *Instituto Coordenadas de Gobernanza y Economía Aplicada,* 24 May 2023

124 Case C-682/15 Berlioz Investment Fund SA [2018] 1 CMLR 1, §51 citing Hoechst AG v Commission (46/87 & 227/88) [1991] 4 C.M.L.R. 410 at §19, and Roquette Frères v Directeur général de la concurrence, de la consommation et de la répression des fraudes Fraudes (C-94/00) EU:C:2002:603; [2003] 4 C.M.L.R. 1 at §27, and Minoan Lines v Commission (C-121/04 P) at §30

Non-discrimination

The actions of the STA against foreign workers, including *Impatriates,* are discriminatory. They are in breach of Article 18 TFEU, Article 21 of the Charter and Article 14 of the ECHR, and represent disproportionate enforcement faced by foreign residents, which undermines Spain's commitment to upholding EU principles, including the principle of non-discrimination and the principle of proportionality. Foreign residents who qualify for tax incentives, such as the Beckham Law, should not face undue or disproportionate enforcement actions based on their status.

Privacy, reputation and peaceful enjoyment of property

There is a strong argument that by demanding excessive information from *Impatriates* under the threat of sanctions, such as significant financial penalties, the STA is guilty of interference in the *Impatriates*' rights under Articles 8 and Article 1 of Protocol No. 1 to the ECHR (and/or the analogous provisions in the Charter).

Furthermore, the requirement to provide the information in such circumstances is arguably an interference in the private life of the *Impatriates* and their right to privacy of communications, as provided in Article 7 of the Charter and Article 8 of the ECHR.

Any interference in the rights to privacy must be based on clear and accessible law that is sufficiently certain to enable individuals to regulate their conduct, that is, it must be foreseeable. This test of certainty is failed by the STA in relation to the Beckham Law. Indeed, had prospective *Impatriates* known that by residing in Spain and electing for the Beckham Law, they opened up the entirety of their global financial situation to investigation and unexpected taxation by the STA, even in circumstances where they had been certified as having met the requirements of the special tax regime, most would very likely not have agreed to move to Spain or would have moved away from Spain immediately when they found out. We have heard *Impatriates* state that directly and unequivocally.

7

WHAT REMEDIES ARE AVAILABLE?

Impatriate taxpayers might reasonably feel that there is no remedy to their plight. They have done everything they should under the law but still their frightened advisers recommend settling. This is all wrong.

We believe that there are three main routes through which remedies can be achieved:

Intervention by the Spanish government

The Government itself, led on this issue by the Ministry of Finance, should see that the onslaught by the STA on the *Impatriate* community is wrong in law, completely counterproductive and will seriously damage Spain's international standing. It will be an embarrassment to them in many international fora including the EU Code of Conduct Group (Business taxation) which Spain currently chairs. It will stem the future flow of talent and investment into Spain that the Beckham Law was specifically designed to encourage.

The principle of legality and the rule of law should be restored immediately in Spain. This is a matter of the utmost importance and, if necessary, the Ministry of Finance should be given additional powers to enforce implementation of the list of recommendations made here regarding the STA.

The government, through the Ministry of Finance, should require the STA to

- abandon its attack on the *Impatriate* status of everyone to whom it has issued a Certificate in the past; and
- formally accept that existing Certificates are proof of entitlement under the *Impatriate Law.*

Beyond that, there is a long list of issues that need to be addressed in the STA. We mention just a few of the most relevant points here:

- The STA needs reform. A thorough, independent investigation of the bonus incentive scheme is required to root out historical wrong-doing. There is no place for an incentive scheme for tax auditors tied to audit outcomes. The incentives that encourage maladministration and even malfeasance must be abolished. Again, the Ministry of Finance should lead on this reform.
- The widespread, discredited use of the '*simulación*' argument must be brought under control, if necessary with the threat of criminal penalties against those found to be making, or to have made, a knowingly false or fictitious accusation. This is particularly important in the light of the characteristics of the incentive scheme that the STA operates today. The Ministry of Justice should lead this work.
- The equally widespread use of the threat of criminal proceedings also needs to be brought under proper control and radically pared back. The use of the threat should require sign-off by the relevant Director, or Head of Department, who would be personally responsible for validating that criminal intent has been evidenced. This should be recorded in a register and the statistics of its use should be published. Anyone against whom this threat is made, should be given a clear statement of their rights at the time it is used. The law should be amended to support these administrative reforms.
- Inspectors should be required to set out the precise legal basis of a challenge to the

taxpayer's filing position before demanding the production of detailed financial information, on the principle, *cause before quantum*.

- International requests for information are not permitted to be '*fishing expeditions*'.[125] The STA must demonstrate that it has exhausted its domestic procedures to obtain the information before making an international EoI request.[126] It must evidence, in the request, the detailed legal reasons why the information is required at that time, and a rational connection shown between the requested information and the issue to be resolved. This practice is not followed at present. It is not clear whether this is simply because of ignorance on the part of junior staff who may be responsible for drafting the requests, or failures at a more senior level. In any event, compliance in respect of each and every request, should be independently verified by the Head of Spain's Competent Authority team. The OECD has an important role to play here in preventing the actions of the STA bringing the whole system of EoI into disrepute.

These are all issues of considerable significance in the context of the STA's on-going campaign against *Impatriates*.

At a higher level, the Government, through the Ministry of Finance, must ensure that the rule of law is upheld by the STA. The Ministry should establish an independent, systemic review of the STA, recognising the importance of the rule of law issues, with a full commitment to implementing its recommendations. This will be a necessary first step in what will be a long process of restoring public confidence in this important institution. Alternatively, such a review could be carried out under the auspices of the European Commission, referencing its Rule of Law framework.

Once reform has been undertaken and the pattern of the wrong-doing corrected, the STA will be entitled to:

- strengthen its vetting of future applicants for *Impatriate* status at the point of application, potentially before an employee actually relocates, if it has concerns about abuse. It could have changed the vetting arrangements, including the time period for making inquiries, many years ago if there were difficulties; and
- train its Inspectors properly and focus their minds on doing their job which is auditing the completeness and accuracy of taxpayer returns that are filed in a manner that upholds the Constitution, acting with objectivity, neutrality and impartiality, respecting the principles of equality before the law and legal certainty, and upholding the fundamental rights and public freedoms, as the STA Code of Ethics requires.

It is crucial that the Spanish government proves itself strong enough to force through all these reforms. Today, the STA acts as if the rule of law is really just someone else's dream, and as if it has *carte blanche* to do as it chooses. The government, through the Ministry of Finance, should act now to prevent further harm.

Action through Spain's domestic courts

An alternative source of remedy is potentially Spain's domestic court system, even though Spanish courts are overworked and, consequentially, notoriously slow, so a tax case can take eight or nine years to be resolved. Regrettably, many will be put off from using it because of this, and because access to justice

125 OECD (2019), Model Tax Convention on Income and on Capital 2017 (Full Version), OECD Publishing. *http://dx.doi.org/10.1787/g2g972ee-en*. Commentary on Article 26 concerning exchange of information, 5.

126 Ibid, 9. "the regular sources of information available under the internal taxation procedure should be relied upon in the first place before a request for information is made to the other State".

is, in practice, severely restricted by the factors we have shown.

As scholars and lawyers are only too well aware, by international standards, there have been relatively few reported tax cases in Spain. Some would argue that the STA's bonus-driven predilection for "doing a deal" militates against complex cases being properly examined in the courts, as they are in other countries, so that precedents can be set and followed.

It is also a fact that cases are by no means always published.[127] It is, therefore, very difficult for practitioners and taxpayers to find out what exactly was argued and what the basis was for any judgement. This inevitably hampers the development of a coherent and usable body of jurisprudence. It has a particularly negative impact for taxpayers. The STA can be represented in each case and will have its own notes, whether the case is reported or not, but taxpayers have no such access. There is, therefore, asymmetry of information between the Administration, in the form of the STA, citizens and others.

The domestic courts have, nevertheless, shown that they can put a stop to the arrogance of the STA. In fact, when issues are finally brought to court, the STA very often loses and has to refund the tax that it has wrongly required a taxpayer to pay.[128] Some put the loss-rate as high as 40-50%. This would be an astonishingly bad outcome for the Spanish government by international standards.[129] A survey of countries with readily accessible data shows Germany and the UK with success rates well over 80% and over 70% in Australia and South Korea. The STA is known to have lost 255 cases in 2024 alone.[130] The cost of these repeated defeats is borne by Spanish taxpayers generally. The figures are not publicised, but one commentator put it as high as €1 billion a year on average.[131]

The Spanish Supreme Court delivered an important judgement on 7 January 2025, relating to the STA's excessive use of information powers to gather information that was beyond its reach. It was a criminal case, and the Spanish system draws an unusual distinction between what matters for civil cases and what matters in criminal cases. Nevertheless, it looks set to have wide repercussions. The STA's information rights, set out in Royal Decree 1065/2007, Article 115 of the General Tax Code (Law 58/2003) and only mildly restrained by Article 66 and Article 66 bis of the same Law, are astonishingly broad for a country that is normally regarded as a democracy today.

The principle of legitimate expectations is a key point for the domestic courts. The Certificate is of particular importance in this connection. As we have noted, the issue of the Certificate to the taxpayer, with its third-party impact, together with a whole series of other forms and instructions that the STA has designed and issued, creates a legitimate and

127 We have been advised that more than 12,000 cases were resolved in the TEAC in 2023, of which more than 4,000 related to personal income tax. But only 265 have been published. In principle, these cases are binding on the STA but, when taxpayers and advisers have no access to these cases, it becomes impossible for them to make an argument based on prior cases or to ensure conformity. The STA, of course, has full access, showing how asymmetrical access to information and knowledge has become a factor in Spain's tax system.

128 There are numerous media reports, including: Ramón Muñoz, "Hacienda pierde otro pleito con Telefónica y tendrá que devolverle más de 1.000 millones en impuestos", *El País,* 18 November 2021; Fernán González, "Hacienda pierde 1.174 juicios contra ciudadanos y ha tenido que pagar 5 millones en costas en 5 años", *OKDiario,* 14 March 2022; Fran Serrato, "Hacienda paga 750.000 euros cada año por sus derrotas judiciales ante los contribuyentes", *The Objective,* 5 May 2022; Fran Serrato & Isabel Acosta, "Hacienda pierde en los tribunales la mitad de las reclamaciones que hacen los contribuyentes", *The Objective,* 10 December 2022; Europa Press Redacción, "Los tribunales vuelven a enmendar a Hacienda absolviendo a empresarios multados por fraude al fisco", *Europa Press,* 1 January 2023.

129 Redacción Guada News, "Hacienda pierde en los tribunales el 50% de los pleitos que plantea el contribuyente", *Guada News,* 13 October 2022; Beatriz García, "El abuso al contribuyente: Hacienda pierde el 40% de los casos con los ciudadanos que se atreven a ir a los tribunales", *Libertad Digital,* 14 March 2024.

130 Elsa Pacios, writing in The Objective on 6 April 2025, states that, on the basis of information obtained through its Transparency Portal, the STA has lost 2912 cases between 2015 and 2024. "This number of legal proceedings lost by the Tax Agency, as pointed out by the entity, are only those in which the institution was a direct party to the process, that is, it does not include the majority of tax disputes, since the contentious-administrative *trials* (which deal with disputes over the legality of administrative decisions, such as those taken by this body), which are the most common, for the most part do not directly involve the tax administration." *https://theobjective.com/espana/tribunales/2025-04-06/agencia-tributaria-perdido-2900-juicios/*

131 Blanca Martínez Mingo, "Las sentencias judiciales desfavorables para el Estado suponen un coste medio de 1.000 millones al año", *El Economista*, 13 March 2025.

entirely reasonable expectation that the individual has been welcomed into the Beckham Law regime. There can be no other meaning. Nothing else is necessary in law, or required in practice, to legitimise the taxpayer's status under the Beckham Law. The STA is, therefore, precluded from challenging the taxpayer's status. It has had its opportunity to review the underlying facts. In our opinion, whether that review was undertaken well, or badly, the STA has no general right to revisit it.

We elaborate the application of the principle of legitimate expectations to the Beckham Law issues in Appendix 3. This is an issue that the Spanish courts need to explore further.

Action through the European Courts

The third remedy is through the European Courts: the CJEU and the ECtHR. Court cases in Spain could lead to a referral.

As we have demonstrated, there are many areas in which the actions of the STA against EU *Impatriates* breach their rights under the laws and principles of the EU, including the right to the free movement of people, legal certainty, data protection, the right to fair and impartial treatment, the right to privacy, reputation and peaceful enjoyment of property and the right to fair proceedings and the right to an effective remedy. The Charter is an important factor in all of this.

The doctrine of legitimate expectations is also significant consideration for the CJEU, just as it is for Spain's domestic courts.

The quest for remedies through the ECtHR and CJEU can, unfortunately, involve a long process and leave *Impatriates* who follow this route, unfairly exposed to the collection powers of the STA once an assessment has been issued.

Yet the remedies that the European Courts provide are ultimately accessible. The Commission has already put down a marker with its very recent referral of Spain to the CJEU in respect of Spain's treatment of non-resident taxpayers, reflecting wider concerns about the Spanish tax system. Beyond that lie a series of potential remedies for systemic infringement of the rule of law, including the ultimate use of Article 7 of the TEU. Nothing is off the table.

The *Impatriate* community is not, therefore, without some prospect of remedy.

To help the process along, there is also the Court of Public Opinion that can be engaged. This Court has no legal standing but has been found to be influential on decision-makers at every level.

Nothing spooks investors more than the unpredictable use of state power and disrespect for the rule of law.[132] Investors have already taken note of the hostile attitudes of the STA on both a corporate and a personal level and its blatant disregard for the law, including instances where it has inflicted reputational damage on the taxpayer. This is an on-going concern.[133]

We have heard from many who have made up their minds, based on what they have seen and noted. They will not now be heading to Spain. They will invest in other countries and send their top people

132 Investors will already be nervous of Spain. In terms of compliance with Investment Treaty Arbitration Awards, Spain was reported as having the worst record for the number of unpaid awards against it in November 2024 ; the highest number of ECT disputes initiated in 2014; and globally third in the value of unpaid awards in 2024 (behind only Russia and Venezuela). "*As in the past year, Spain ranks number 1 in the world in terms of the number of unpaid Awards, ahead of Venezuela and Russia. Indeed, over the past 12 months, arbitral tribunals have issued 9 new final adverse Awards against Spain, raising the number from 15 to 24 unpaid Awards, which Spain continues to refuse to pay.*" *https://www.internationallawcompliance.com/wp-content/uploads/2022/08/FULL-Report-2024-DEF-1-Nov-2024.pdf* p3

133 A clear example is the National Court ruling reported on 18 April 2025, in which it was found that Marillion - an Andalusian company linked to the hydrocarbon sector - was added to the tax authorities' blacklist because the debts for which it was included were not final. 'The ruling, to which *El Confidencial* has had access, is explicitly based on the doctrine of the **Supreme Court**, with up to four rulings handed down at the beginning of 2023, on the **reputational damage** caused by including companies on this list without the result of the inspections being final, and the need for extreme caution in its application.' EL Confidencial La Justicia echa por tierra el criterio de Hacienda para publicar su lista de morosos en-GB.pdf. https://www.elconfidencial.com/juridico/2025-04-18/justicia-hacienda-empresas-lista-negra-deudas_4109866/

elsewhere. The Spanish economy will suffer as a result and continue to underperform both its neighbours and its own potential. GDP per capita will lag behind many of Spain's natural competitors. These are real outcomes. People and firms still have a choice and will choose friendlier environments where legality is observed, and the rule of law is more secure.

What we have seen and heard in undertaking this research, has been quite shocking, even for hardened observers of government behaviour. The STA, apparently supported up to now by the Spanish government, has emerged as a pariah organisation: its treatment of *Impatriates* has fallen woefully behind expected international standards.

In writing this paper, we make no apology for addressing the Court of Public Opinion, but we hope and expect that decision makers in other circles and courts will also hear and listen.

It is a very sad irony that all of this is happening in the context of an initiative by the Spanish government to attract the best-qualified people, the best minds, people with a history of success, to power-up the Spanish economy. Thanks to the STA, it will have the opposite effect. Existing *Impatriates* will leave, never to return. Only Spain's competitors will benefit.

APPENDIX 1

THE STA SUMMARY OF THE BECKHAM LAW

Note: The *Agencia Tributaria* website contained the following information at 27 January 2025. The website uses bold type in places. We have reproduced it here.

Special regime for expatriates art. 93 Personal Income Tax Law

Regulations: Article 93 and Transitional Provision 17 Law IRPF; Articles 113 to 120 of the Personal Income Tax Regulations; Order HAP /2783/2015, of December 21, approving models 151 and 149 and Order HFP /1338/2023, of December 13, approving the new models 151 and 149.

(With effect from 1 January 2023, Article 93 of the Personal Income Tax Law, which regulates the special tax regime applicable to workers, professionals, entrepreneurs and investors relocated to Spanish territory, has been amended by the Third Final Provision of Law 28/2022, of 21 December, on the promotion of the start-up ecosystem (BOE of 22 December). The aforementioned amendment reduces the prior period of non-residence in Spain to five years and extends the possibility of opting for the special regime to new groups of people, teleworkers, entrepreneurs and professionals, as well as to members of their family unit, under certain conditions. Consequently, in the new regulation of the special regime there will be two figures, a main taxpayer and other taxpayers associated with him, coming from his family nucleus, linked to the main taxpayer in terms of the periods of application of the regime)

Individuals who acquire tax residency in Spain as a result of moving to Spanish territory may choose to **pay Non-Resident Income Tax, while maintaining their status as taxpayers of Personal Income Tax** (IRPF), during the tax period in which the change of residence takes place and during the following five tax periods, when the following conditions are met:

- **Until December 31, 2022:**
  a. That they have not been residents in Spain for the ten tax periods prior to the period in which they transferred to Spain.
  b. That the transfer to Spain took place as a result of any of the following circumstances:
     1. As a result of an employment contract, **with the exception of the special employment relationship of professional athletes regulated by Royal Decree 1006/1985, of June 26.**
     2. This condition will be deemed to be met when an employment relationship, ordinary or special, other than the one indicated above, or statutory, is initiated with an employer in Spain, or when the transfer is ordered by the employer and there is a transfer letter from the employer.
     3. **As a consequence of acquiring the status of director** of an entity in whose capital he does not participate or, otherwise, when the participation in the same does not determine the consideration of a related entity in the terms provided for in article 18 of the Corporate Tax Law.
  c. That it does not obtain income that would be classified as obtained through a EP located in Spanish territory.

- **From 1 January 2023** (the new regulation of the regime applies to taxpayers who acquire their tax residence in Spain from 2023 and includes taxpayers who acquire their tax residence in Spain in 2023 as a result of a move to Spanish territory in the second half of 2022):
  a. That they have not been residents in Spain during the five tax periods prior to the one in which they move to Spanish territory.

b. That the transfer to Spanish territory occurs, either in the first year of application of the regime or in the previous year, as a result of any of the following circumstances:
   1. As a result of an employment contract, with the exception of the special employment relationship of professional athletes regulated by Royal Decree 1006/1985, of June 26, which regulates the special employment relationship of professional athletes.
   2. This condition will be deemed to be fulfilled when an employment relationship, ordinary or special, other than the one indicated above, or statutory, is initiated with an employer in Spain. Likewise, this condition will be deemed to be met when the transfer is ordered by the employer and there is a letter of transfer from the employer or when, without being ordered by the employer, the work activity is carried out remotely, through the exclusive use of computer, telematic and telecommunications means and systems. In particular, this circumstance will be deemed to be fulfilled in the case of employees who have the visa for international teleworking provided for in Law 14/2013, of September 27, on support for entrepreneurs and their internationalization.
   3. As a consequence of acquiring the status of administrator of an entity. In the event that the entity is considered a patrimonial entity in the terms provided for in article 5, section 2, of the Corporate Tax Law, the administrator may not have a stake in said entity that determines its consideration as a related entity in the terms provided for in article 18 of Law 27/2014, of November 27, on Corporate Tax.
   4. As a result of the realization in Spain of an economic activity qualified as entrepreneurial activity, in accordance with the procedure described in article 70 of Law 14/2013, of September 27.
   5. As a result of the performance in Spain of an economic activity by a highly qualified professional who provides services to emerging companies within the meaning of article 3 of Law 28/2022, of December 21, on the promotion of the ecosystem of emerging companies, or who carries out training, research, development and innovation activities, receiving for this purpose remuneration that represents in total more than 40% of all business, professional and personal work income.

c. That he does not obtain income that would be classified as obtained through a permanent establishment located in Spanish territory, except in the case provided for in letter b). 3.º and 4.º of this section.

The spouse of the taxpayer referred to in the previous section and his or her children, under twenty-five years of age or whatever their age in the case of disability, or in the event of non-existence of a marital bond, the parent of these children, may also choose to pay the Non-Resident Income Tax, while maintaining the status of taxpayers for the Personal Income Tax, provided that the following conditions are met:

1. That they travel to Spanish territory with the taxpayer referred to in the previous section or at a later time, provided that the first tax period in which the special regime applies to the taxpayer has not ended.
2. That they acquire their tax residency in Spain.
3. That they meet the conditions referred to in letters a) and c) of the previous section.
4. That the sum of the taxable bases of the taxpayers in each of the tax periods in which this special regime applies to them is less than the taxable base of the taxpayer referred to in the previous section.

The special regime will be applicable during the successive tax periods in which, if these conditions are met, it will also be applicable to the taxpayer provided for in the previous section.

Taxpayers who choose this option are not considered residents for the purposes of applying a Double Taxation Agreement, as they are subject to taxation only on income they obtain from sources located in Spain.

The **option**, waiver or exclusion from the special regime is carried out using **form 149**. The communication of the option must be accompanied by the documentation provided for in article 119 of the Personal Income Tax Regulations.

As of December 16, 2023, the date of entry into force of Order HFP/1338/2023, of December 13, the new model 149, approved in the aforementioned Order, replaces the previous one approved in Order HAP/2783/2015, of December 21.

Taxpayers who opt for the Special Regime must submit a **special IRPF declaration** in **form 151**, adapted to the content of the regime.

The new form 151 of "Personal Income Tax Return. Special regime applicable to workers, professionals, entrepreneurs and investors relocated to Spanish territory" approved in Order HPF/1338/2023, of December 13, will be used for the first time for the presentation of the declaration corresponding to the 2023 tax period to be submitted in 2024. Declarations corresponding to tax periods prior to 2023 will continue to use Form 151 approved in Order HAP/2783/2015, of December 21.

Withholdings and payment on account

Withholdings and payments on account for personal income tax will be made in accordance with the regulations on non-resident income tax.

However, **the percentage of withholding or payment on account of work income will be 24%.** When the remuneration paid by the same payer of employment income during the calendar year exceeds 600,000 euros, the withholding percentage applicable to the excess will be the one in force according to the year of accrual (see table).

Withholding percentage applicable to excess of 600,000 euros:			
Year of return	**2015**	**2016 to 2020**	**2021 and beyond**
Retention percentage	47	45	47

https://sede.agenciatributaria.gob.es/Sede/en_gb/ayuda/manuales-videos-folletos/manuales-practicos/manual-tributacion-no-residentes/regimenes-opcionales/regimen-especial-impatriados.html

APPENDIX 2

THE STA INCENTIVE SCHEME FOR TAX INSPECTORS

"This is what tax inspectors get as bonuses"[134]

134 idealista news quoting Expansion https://inspectoresdehacienda.es/wp-content/uploads/filr/4335/20220927_Expansion_Bonus_IHE_%20Ranses%20.pdf?utm_source=chatgpt.com

September 27, 2022, 10:40

Last July, the Central Administrative Court number 4 of Madrid upheld an appeal by the Spanish Association of Tax Advisors (Aedaf) that demanded disclosure of the salary incentives of tax inspectors. Now the complex system of variable remuneration is public, which requires a minimum number of annual actions to collect the bonus that varies according to the agility, quality and complexity of the actions. The variable represents 25% of the total salary but the amount settled only represents 1.4% of every 100 euros of their total remuneration.

According to the newspaper Expansión, the bonus system is regulated by the resolution of April 27, 2018, signed by the General Directorate of the Tax Agency. Each year this resolution is modulated by the Department of Financial and Tax Inspection. The variable amount that the tax inspector receives comes from a closed zero-sum pool whose amount is set each year and is distributed by teams, so the amount will depend on the team's performance.

70% of the pool depends on the job and performance of each inspector, which is assessed based on their performance, dedication to hours, teamwork or personnel in charge. In other words, this assessment is subjective, since it is carried out by the superiors of each inspector.

The remaining 30% of the bonus is based on the so-called Inspection Scale, which attempts to objectively measure the inspector's work. This scale requires the fulfilment of a specific number of "valued scheduled actions", assigned based on the size and complexity of the taxpayers to be analysed, or the years to be evaluated, given the difference between a partial audit of a taxpayer and the comprehensive review of the tax payment of a multinational group, for example.

The result is four groups of variables that decide access to the productivity bonus and its size. What are the four groups of variables?

The quality coefficient in the processing of the inspection procedure: modulates the bonus upwards or downwards depending on the agility of the actions. For example, inspections completed six months in advance of the maximum legal deadline (18 months in general and 27 for large companies) are rewarded.

The coefficient that measures the quality of the performance through the use of techniques that allow the detection of unknown operations in the underground economy.

The third coefficient is related to the collection of settlement acts and the reduction of conflicts, it rewards the percentage of files that are sealed with an agreement between inspector and taxpayer, promoting prompt payment and avoiding litigation.

The fourth coefficient assesses both the regularised amount and the discovery of hidden tax bases, or the improvement in voluntary compliance with the tax obligations of the person under investigation and his or her entourage.

The average salary of an inspector can be around 60,000 euros per year, of which variable remuneration accounts for 25%. A chief inspector now earns 80,000 euros, which raises the total average.

APPENDIX 3

THE PRINCIPLE OF LEGITIMATE EXPECTATIONS AND THE DOCTRINE OF ESTOPPEL

The underlying principles

In this appendix, we summarise how the principle of legitimate expectations and the doctrine of estoppel are relevant to the Beckham Law issues. Estoppel is a common law concept but one that has found its way into the laws and practices of civil law jurisdictions as well, where it is better understood as the principle of legitimate expectations.

We start, briefly, with estoppel, with which many of the US and UK Victims of the STA will be familiar. Estoppel has a number of forms. In the form of promissory estoppel, which is in point here, it applies in a situation where there is no formal contract between two parties that can be enforced, but where one party has been induced into a particular course of action by a statement made, or an action taken, by the second party that has the status of an unequivocal promise or commitment. The "promise" has been relied upon.

This could, for example, be in point in a situation in which a company has decided to keep an employee in Spain for five years as a result of the offer embedded in Article 93 and an unequivocal communication from the STA to withhold tax at the lower rate on his or her salary, which is only allowed where the individual is within the Article 93 (*Impatriate*) regime. The communication from the STA confirms that the election has not been rejected and allows the employer to be certain that no costly tax compensation arrangements will be necessary in the employee's remuneration. The company relies on it. Under the legal principle of estoppel, the second party is "estopped" from "unmaking" the promise.

Similarly, under the principle of legitimate expectations, the party which has created those expectations – in this case the Spanish government - is unable subsequently to act in a way which runs contrary to them. It cannot go back on its promise because the first party had a reasonable and legitimate expectation based on the actions and pronouncements ('*actos propios*') of the second party and has acted accordingly.

We focus on 'legitimate expectations' here because of its particular relevance for the Spanish and European courts.

The Spanish Supreme Court

The Spanish Supreme Court has embraced the principle of legitimate expectations in relation to the actions of the Administration. In its Judgement of 22 January 2013,[135] it concluded that "*the Administration may be obliged to observe towards the future the conduct it has followed in previous, unequivocal and definitive acts, creating, defining, establishing, fixing, modifying or extinguishing a certain legal relationship, and this to the extent that the security that should preside over legal traffic (Article 9.3 of the Constitution (EDL 1978/3879)) and for the sake of the principle of good faith, aimed at protecting those who acted believing that such was the criterion of the Administration, the latter is constrained to carry out the conduct that those previous acts made foreseeable, not being able to carry out others that contradict, contradict or rectify them*."

The Court of Justice of the European Union

The Court of Justice of the European Union has also analysed the concept of legitimate expectations in various judgments, concluding in its judgement of 14 September 2006[136] that:

> "*31. In this respect, according to the settled case-law of the Court of Justice, the principles of protection of legitimate expectations and legal certainty form part of the Community legal order.*

135 *https://www.poderjudicial.es/search/indexAN.jsp*. Case: STS 244/2013-ECLI:ES:TS:2013:244

136 *https://curia.europa.eu/juris/showPdf.jsf?text=&docid=64053&pageIndex=0&doclang=EN&mode=lst&dir=&occ=-first&part=1&cid=17487892*

For that reason, they must be respected by the Community institutions and also by the Member States in the exercise of the powers conferred on them by Community directives (see, inter alia, Case C-398/99 Belgocodex [1998] ECR I-8153, paragraph 26, and Case C-3445/99 Goed Wonen [2005] ECR I-3445, paragraph 32). It follows that the national authorities are required to respect the principle of the protection of the legitimate expectations of economic operators.

32. As regards the principle of the protection of the legitimate expectations of the beneficiary of the favourable act, it must first of all be determined whether the acts of the administrative authorities have given rise to reasonable expectations on the part of a prudent and diligent economic operator (see, to that effect, judgments of 10 December 1975, Union Nationale des Coopératices Agricoles de Céréales and Others v Commission and Council, .../74 to .../74, .../75 and .../75 [1975] ECR 1615, paragraphs 43 to 45, and Case .../77 Lührs [1978] ECR 169, paragraph 6). If the answer to this question is affirmative, it would be necessary, as a second step, to determine the legitimate nature of that reliance...."

It follows from both domestic and EU case law that, if the Administration's actions have led other parties, reasonably and legitimately, to expect a certain behaviour on its part, that behaviour cannot be different. The "promise" cannot be unmade.

The application of the principle of legitimate expectations to Impatriate cases

Taking into account the relevant case law, the question arises as to whether any of the STA's actions, prior to the initiation of an audit process of investigation and verification, including statements made and actions taken, involving the setting of specific requirements by it or by the wider machinery of government, could and should be considered as creating and/or reinforcing a reasonable and legitimate expectation that the taxpayer had been accepted as qualifying for the *Impatriate* regime, such that the STA has no right to deny it.

We examine the evidence here.

Article 93 of the 2006 Law

Article 93 represents an offer made by the Spanish government. It does not have mandatory application. It only comes into effect if an employee makes an election for it to apply and that election is not rejected by the STA. It provides an incentive aimed at inducing the employer to transfer one or more employees to Spain.

Article 93 offers, and is designed to offer, employers the ability to transfer highly-skilled and experienced workers to Spain at a lower cost than would otherwise be the case. That is the core of the incentive.

By transferring the employee, the employer accepts the deal that the Spanish government has offered it through Article 93. The employer is bound in by its offer to its employee and by the financial effects. The employee is bound into the deal by his election, the legal structure and the effects of the incentive. The Spanish government is bound in by Article 93 and reaps the economic benefits.

The employer naturally expects the employee to make the election. If, for any reason, he was not able to do that, the employer would typically have to withdraw its offer or face the financial burden of increasing the gross pay of the relocated employee very substantially to provide equivalent, competitive reward. In practice, without Article 93, no transfer or hire would occur, depriving Spain of the additional expertise.

The Certificate

The tripartite deal between the government, the employer and the taxpayer, is sealed by the STA issuing a Certificate: '*Certificado de haber ejercitado la opción por el régimen especial aplicable a los trabajadores desplazados a territorio español*'.

This Certificate is a document of considerable significance. It is the only document that the STA will issue to the employee that has a bearing on his status under Article 93. Before issuing it, the STA reviews the employee's election, transmitted through Form 149, and the accompanying documentation. The wording of the Certificate reflects that review.

The STA asks any questions that it needs to ask in order to satisfy itself that the employee meets the qualification criteria. The nature of the criteria is such that qualification can be determined at the time at which the election is submitted. In law, the STA has only 10 days in which to do this, but in practice the STA can take more than five months, whether or not there are points to be resolved. There are no consequences of this delay for the STA. So, it has all the time it needs to do thorough checks.

The fact that the STA rejects elections made by some taxpayers, as we have commented earlier in this paper, is highly significant. It evidences the fact that the STA does carry out a review of the election and the documentation provided. It also creates a bright line between rejection and acceptance. The STA's arguments rest on the outcome of the election being either rejection or some indeterminate status for the individual that is neither acceptance nor rejection. This is obviously completely illogical, for the reasons outlined in Section 5. The employer and the employee both understand, when the election has not been rejected, that it has been accepted and the issuance of the Certificate confirms their reasonable and legitimate expectations that it has been.

The Certificate itself

- is explicitly designed to be provided as evidence to others, principally the employer.[137]
- requires the individual to show it to third parties who are obliged to withhold tax from his or her income, thereby "*justifying to the persons or entities obliged to withhold income tax as a personal income taxpayer under this special taxation option scheme for non-resident income tax*" i.e., the Certificate is authorisation to the employer to withhold tax at a reduced rate in accordance with the law and Regulations
- indicates that it is valid for the specified year of arrival of the individual and the five subsequent years, unless the employee gives notice to the STA of a change of circumstances that would bring his entitlement to the *Impatriate* regime to an end
- leads the taxpayer, his employer and the STA itself, directly into the specific and unique legally binding filing requirements that apply only to *Impatriates*. We elaborate these below
- does not raise any issues or warnings about the validity of the election
- does not suggest that it is, or might represent, a provisional assessment of the employee's status
- does not propose any further steps to verify the employee's entitlement to, or qualification for, *Impatriate* status
- does not suggest that it will be subject to annual or subsequent review
- does not state that, notwithstanding its issuance, the status of the taxpayer, not just his returns, is subject to audit.

The STA is understandably very keen to keep attention focused, narrowly and precisely on what the Certificate says and has convinced many advisers that they should do the same, but the taxpayer's legitimate expectations are built not only on what the Certificate says, but also on a range of other factors, including the fact that it has been issued at all, as well as what it doesn't say, and on other actions taken by the STA.

In a recent National Court case, the judgement states "*The decisive factor lies in the fact that, regardless of how it is expressed, the will must appear unequivocal and definitive, so that, given the certainty that must preside over legal transactions (Article 9.3 of the Constitution) and for the sake of the principle of good faith, aimed at protecting those who acted in the belief that this was the criterion of the Administration, the latter is constrained to carry out the conduct that those previous acts made foreseeable, not being able to carry out others that contradict or rectify them (in this sense, for example, judgement of the Supreme Court of 4 November 2013, rec. 3262/2012, FJ 2).*"[138]

137 It's more than curious that the STA uses this roundabout way of notifying the employer. They have the employer's name and address from the employment contract. They can easily communicate directly as it is the employer's obligation to withhold tax.

138 Judgment of the National Court of 25 February 2025 (Appeal Nº 906/2020) Audiencia Nacional, Sala de lo Contencioso-administrativo, Sección 4ª, Sentencia de 25 Feb. 2025, Rec. 906/2020. ECLI: EN:AN:2025:1074.

This makes it clear that it is the *appearance* (to the person affected, the taxpayer), of the unequivocal and definitive nature of the actions and statements of the public authorities that is critical. It is not the form in which they are expressed or even the intention of the public authority that is relevant.

The STA has been aware for many years that taxpayers have expectations based on the Certificate and that the Certificate, from their perspective, can be misconstrued. Yet it has taken no steps whatsoever to address the issue. The wording of the key paragraph – even after 20 years – is still a muddle in both Spanish and English. The STA could have reworded it.[139] It could have made its own interpretation clear on its website. The STA has chosen not to do so. It is no accident. The inference is obvious. The STA likes it the way it is. It leaves the taxpayer potentially vulnerable.[140] The actions and inaction of the STA represent bad faith.

The financial, economic and legal effects of the issuance of the Certificate

A number of parties are affected by the STA's issuance of the Certificate. It has real financial, economic and legal effects that the government has created and that the STA has operationalised. They serve to strengthen the parties' legitimate expectations:

- For the employer, the Certificate creates a requirement to withhold tax at the special, reduced rate for the tranche of the employee's annual income up to €600,000 with a higher rate thereafter – a legal obligation which the employer is required to implement. The employer, therefore, has a reasonable and legitimate expectation, arising from the Certificate, that the employee has been granted *Impatriate* status, as it has been instructed unequivocally and definitively to apply a lower rate of withholding on the employee's salary which is only available for *Impatriates*. The employer can, therefore, be confident that it will not have to compensate the employee for any additional Spanish tax that would result from the application of the general Spanish income tax law.
- For any other third parties, required to withhold tax from the individual's income, a similar analysis applies. The Certificate creates a legitimate expectation that the individual has been granted *Impatriate* status as they have also been instructed, unequivocally and definitively, to apply the special rate of withholding on the individual's income.
- For the taxpayer, to whom the Certificate is addressed, it is seen to have the force of law for similar reasons, as it contains an unequivocal and definitive instruction to his or her employer to withhold tax at the special rate to which no one except an *Impatriate* is entitled.
- For the STA, the Certificate also has, unequivocally and definitively, the force of law. It triggers a series of filing requirements, that the Government of Spain imposes through law, regulation and by the STA itself, which are legal obligations and are unique to *Impatriates*.

The filing requirements

The filing requirements for employees and employers confirm the status of the employee as someone who *is taxed* as an *Impatriate*, in accordance with Article 93, not merely someone who has *opted or elected* for that basis of taxation.

Article 96(6) of the 2006 Law creates a broad power for the Minister to make Regulations to operationalise the Law itself, including the provisions of Article 93 relating to *Impatriates*. The Minister

139 We have examined, in Spanish and in English translation, the versions of the Certificate used historically by the STA, namely the 2005 version, the 2008 version, the 2015 version and the 2023 version. There have been no substantive changes in the wording of the Certificate, only minor amendments, mostly technical, consequent on specific changes in the legal base.

140 The STA does not publish detailed guidance about the Beckham Law regime, in marked contrast to some other countries. It publishes the briefest of introductory guides, shorter even than the text in Appendix 1. https://administracion.gob.es/pag_Home/en/Tu-espacio-europeo/derechos-obligaciones/ciudadanos/trabajo-jubilacion/fiscalidad/impuesto-renta.html#-5caab634b701

In the UK, HMRC publishes guidance about the residence and "non-dom" rules, including worked examples, so that there is a much higher degree of certainty about the way in which the law works and how it is implemented. https://www.gov.uk/government/publications/residence-domicile-and-remittance-basis-rules-uk-tax-liability/guidance-note-for-residence-domicile-and-the-remittance-basis-rdr1

has made such Regulations, and the latest version is Order HAC/56/2024 of January 25, 2024.[141] Those Regulations set out the filing requirements for *Impatriates*. The Regulations, the STA's own instructions and the tax forms themselves, are quite clear about the status of the individuals concerned. They do not refer to taxpayers who have *merely elected* for the *Impatriate* regime. A few examples will suffice:

- HAC/56/2024 refers only to individuals who *are* taxed under the Article 93 regime. It does not refer to anyone who has '*elected to be taxed*' under the *Impatriate* regime.

- The current instructions for completing Form 149, on which the Article 93 election is made, state unequivocally, "*Taxpayers to whom this special regime applies will be required to submit the* ***declaration*** *for Personal Income Tax, on a special form (form* ***151****)*".[142]
  Again, there is no mention of persons who have *merely elected for Impatriate* status.

- The Official Bulletin, publishing the latest version of Form 151, uses the word '*applicable*': "*Article 114.4 of the Personal Income Tax Regulations determines that taxpayers to whom this special regime is applicable will be obliged to file and sign a Personal Income Tax return, in the special form approved by the head of the Ministry of Finance and Public Function which will establish the form, place and deadlines of its presentation*".[143]

- Form 151 has been designed specifically and only for *Impatriates*. The heading of the form confirms this: *Régimen especial aplicable a los trabajadores desplazados a territorio español*. It is clearly intended to be filed by taxpayers who have been issued with a Certificate and only by such people: people who have been accepted into the *Impatriate* regime. No one else can or should file it.

- Similarly, the *Impatriate's* employer is required to file special forms (Forms 216 and 296) in respect of any employee who is "*a taxpayer of Personal Income Tax under the special tax regime applicable to workers, professionals, entrepreneurs and investors transferred to Spanish territory, as referred to in Article 93 of the Personal Income Tax Law*". [Emphasis added] Employers are required to make these filings either monthly or quarterly (depending on the employer's size) through Form 216, with an annual Form 296 to be submitted as well. These are the only forms that can legally be used. It is, therefore, clear that the status of the employee who is the subject of these returns is that of a someone already accepted by the STA as an *Impatriate*.

The STA has made a great deal of the fact that the title of the Certificate refers only to the individual's *election* for *Impatriate* status rather than stating directly that it is a Certificate that *confirms Impatriate* status. This apparent ambiguity is not seen in the other documentation issued by the STA that relates to taxation under Article 93. In relation to the Certificate, the STA's assertions are simply a smoke screen, created and perpetuated by the STA itself. By contrast, the forms and instructions that the STA issues leave no room for doubt that the taxpayer has been accepted as an *Impatriate*.

The particular significance of the design of Form 151

The design of Form 151 is incomprehensible in the context of the STA's representation that the issuance of the Certificate does not constitute acceptance of an individual into *Impatriate* status and is incompatible with that assertion.

It gives rise to a number of significant questions:

Who should file it?

Form 151 has clearly been designed for people who have been granted *Impatriate* status, as the title

141 https://www.boe.es/buscar/doc.php?id=BOE-A-2024-1772

142 https://sede.agenciatributaria.gob.es/Sede/en_gb/todas-gestiones/impuestos-tasas/impuesto-sobre-renta-personas-fisicas/modelo-149-irpf-comunicacion-opcion-exclusion_/instrucciones-cumplimentar-comunicacion.html STA translation and emphasis.

143 Machine translation

demonstrates. The STA asserts that the Certificate does not confer that status but, if that was the case, there would never be any individual or group of individuals who could legitimately file Form 151. The STA's absurd denial that the Certificate evidences acceptance into the *Impatriate* regime means that, in their view, no one is formally within it at any time. In practice, of course, the STA not only accepts but requires Form 151 to be filed by those (and only those) who have been issued with a Certificate[144], thereby making a nonsense of their own contention.

Why does it not require disclosure of foreign assets and investment income?

Form 151 does not require any information to be disclosed about the taxpayer's non-Spanish assets and investment income. Form 100, filed by residents other than *Impatriates*, requires such details to be entered, if relevant and Form 720 to be filed if appropriate. If Form 151 had been designed for people who had elected for, but not yet been accepted into, the *Impatriate* regime, it would have required information about non-Spanish assets and investment income to be declared, to ensure that the STA had the necessary information available to assess their liability, in case they were subsequently found not to qualify.[145] It does not require that information, even in the very latest version. It is clearly designed to be filed by people – confirmed *Impatriates* – who are not subject to tax in relation to their foreign assets and investment income – a class of person whom the STA asserts does not exist.

Why was Form 151 created?

If the STA genuinely believes the Certificate does not give certainty to the taxpayer about his status, there is, in fact, no need at all for Form 151. Everyone could simply be required to use the normal Form 100 and Form 720 instead. This would capture, contemporaneously, all the information that could conceivably be necessary. The fact that Form 151 exists and was specifically designed for *Impatriates,* as its title evidences, is a clear indication that the STA's argument about the effect of the Certificate is spurious and contrived. It is made in bad faith.[146]

The STA's contention

Nevertheless, the STA contends that Article 93 and the provision of the Certificate to a taxpayer and his employer do not and should not create any expectations that the taxpayer has been accepted as an *Impatriate* that are reasonable or legitimate.

In summary, the STA's perspective is that

- the Certificate is merely informative
- it has no legal effect
- no certainty is intended or conveyed
- the filing requirements and instructions are irrelevant
- the individual and employer should be aware that nothing is ever agreed unless and until he or she has been audited.

The logic of this argument would mean that the vast majority of individuals who have elected for the *Impatriate* regime, would not know, during the entire period of their residence in Spain and for some time thereafter, whether they had qualified and been accepted within it. This period of uncertainly would typically last for 11 years or more (the duration of the regime for an individual plus the 4-year audit window and audit period).

144 Note that the STA website contains the following, unequivocal instruction: Taxpayers who opt for the Special Regime must submit a **special IRPF declaration in Form 151,** adapted to the content of the regime. (STA emphasis) See Appendix 1.

145 There is no reason, in principle, why the STA should not request this information. In many countries, companies with tax holidays are nevertheless required to file tax returns. In the Spanish system, residents of Autonomous Communities which have a 0% net wealth tax are still required to provide a return showing all their assets each year.

146 The STA could, if it wished, help people to understand how it interprets the Impatriate legislation, by publishing guidance. This should, as a minimum, cover the following:
How is an employment defined for the purposes of Article 93?
What (common) employment issues cause denial of Impatriate status?
How should a transfer of employment be documented to ensure compliance?
What exactly is meant by non-residence in the prior 10/5 years?
What is required of prior period Tax Residency certificates to demonstrate compliance?
What exactly is the PE rule and what is it trying to prevent, from a policy perspective?

From the perspective of both Spanish and EU concepts of legal certainty, this would seem to be problematic.

The opposing view

An alternative point of view to that of the STA would be that:

- the issuance of the Certificate is of material significance and not "merely informative"
- the Certificate, taken together with the forms and filing instructions also issued by the STA, confirms that the individual's election has not been rejected and has been put into effect
- this documentation creates legitimate expectations (and indeed they are the only expectations that can be created) that the individual's election for the *Impatriate* regime has been accepted and results in actions by third parties that are not correct or lawful except in relation to those with *Impatriate* status, including
  - the operation of the lower rate of withholding by employers
  - the quarterly or monthly filing of Form 216 by employers in respect of the employee remuneration and withholdings rather than the regular Form 111
  - the annual filing of Form 296 by employers in respect of annual employee remuneration instead of the regular Form 190
- the issuance of the Certificate by the STA leads to requirements of the taxpayer that are not correct or lawful unless he has *Impatriate* status, including
  - the filing of Form 151 as an annual return
  - the non-filing of Form 720
  - the non-filing of a Solidarity Tax returnfrom which the STA does not demur.

Taken together, the actions of the public authorities, including the STA, unequivocally and definitively demonstrate that the STA has accepted the individual as an *Impatriate* such that it cannot later deny that this is the case. These actions create legitimate expectations for the individual and his employer that have to be maintained for the sake of the principle of good faith, and for the certainty that must preside over legal transactions as required by Article 9.3 of the Constitution.

This is a perspective that seems better-supported by the facts.

In conclusion

The issuance of the Certificate and the related documentation and requirements imposed by the STA are clearly an unequivocal and definitive confirmation that the individual has been accepted within the *Impatriate* regime, and the expectations of both the employer and employee arising from this are reasonable and legitimate.

APPENDIX 4

THE SPANISH CONSTITUTION OF 1978: KEY EXTRACTS

The Spanish Constitution of 1978 sets out the fundamental rights and obligations of those institutions and individuals over whom it has jurisdiction.

In the Preamble, it highlights the principles on which it is based. These include the following:

Preamble

The Spanish Nation, desiring to establish justice, liberty, and security, and to promote the well-being of all its members, in the exercise of its sovereignty, proclaims its will to:

Guarantee democratic coexistence within the Constitution and the laws, in accordance with a fair economic and social order.

Consolidate a State of Law which ensures the rule of law as the expression of the popular will.

[……]

Cooperate in the strengthening of peaceful relations and effective cooperation among all the peoples of the earth.

The following Articles are of particular relevance to concerns about the STA's handling of the *Impatriate* regime.

Article 1

(1) *Spain is hereby established as a social and democratic State, subject to the rule of law, which advocates liberty, justice, equality and political pluralism as highest values of its legal system.*

Article 9

(1) *Citizens and public authorities are bound by the Constitution and all other legal provisions.*

(2) *It is the responsibility of the public authorities to promote conditions ensuring that freedom and equality of individuals and of the groups to which they belong are real and effective, to remove the obstacles preventing or hindering their full enjoyment, and to facilitate the participation of all citizens in political, economic, cultural and social life.*

(3) *The Constitution guarantees the principle of legality, the hierarchy of legal provisions, the publicity of legal statutes, the non-retroactivity of punitive provisions that are not favourable to or restrictive of individual rights, the certainty that the rule of law shall prevail, the accountability of public authorities, and the prohibition of arbitrary action of public authorities.*

Article 10

(1) *The dignity of the person, the inviolable rights which are inherent, the free development of the personality, the respect for the law and for the rights of others are the foundation of political order and social peace.*

(2) *Provisions relating to the fundamental rights and liberties recognized by the Constitution shall be construed in conformity with the Universal Declaration of Human Rights and international treaties and agreements thereon ratified by Spain.*

Article 24

(1) *All persons have the right to obtain effective protection from the judges and the courts in the exercise of their rights and legitimate interests, and in no case may there be a lack of defence.*

(2) *Likewise, all have the right to the ordinary judge predetermined by law; to defence and assistance by a lawyer; to be informed of the charges brought against them; to a public trial*

without undue delays and with full guarantees; to the use of evidence appropriate to their defence; not to make self-incriminating statements; not to plead themselves guilty; and to be presumed innocent. The law shall specify the cases in which, for reasons of family relationship or professional secrecy, it shall not be compulsory to make statements regarding allegedly criminal offences.

Article 31

(1) *Everyone shall contribute to sustain public expenditure according to their economic capacity, through a fair tax system based on the principles of equality and progressive taxation, which in no case shall be of a confiscatory scope.*

Article 103

(1) *The Public Administration shall serve the general interest in a spirit of objectivity and shall act in accordance with the principles of efficiency, hierarchy, decentralization, deconcentration and coordination, and in full subordination to the law.*

(2) *The organs of State Administration are set up, directed and coordinated in accordance with the law.*

(3) *The law shall lay down the status of civil servants, the entry into the civil service in accordance with the principles of merit and ability, the special features of the exercise of their right to union membership, the system of incompatibilities and the guarantees regarding impartiality in the discharge of their duties.*

It is clear from the Constitution that

- Spain is to be a country in which
  - the economic and social order is to be fair
  - the rule of law prevails
  - effective cooperation with other peoples is to be strengthened
  - public authorities are bound by the Constitution

- it guarantees the certainty that the rule of law shall prevail, the accountability of public authorities, and the prohibition of arbitrary action of public authorities

This provides an important and significant backdrop to the actions of the STA with regard to the Beckham Law.

APPENDIX 5

THE *IMPATRIATE* LAW CERTIFICATE

CERTIFICATE OF HAVING EXERCISED THE OPTION THROUGH THE SPECIAL REGIME APPLICABLE TO WORKERS DISPLACED TO SPANISH TERRITORY

DOCUMENT IDENTIFICATION

N.I.F.[147]:
Name
Reference:
Tax classification: **IRPF**[148]**. Special regime for displaced workers.**

THE HEAD OF THE REGIONAL OFFICE OF THE TAX MANAGEMENT AGENCY

CERTIFIES: On [date], the taxpayer presented to this office of the Tax Agency his election to be taxed under the special taxation regime for the Tax on the Income of non-Residents, referred to in article 93 of Law 35/2006 of 28 November, of the Personal Income Tax law.

In view of the submission with supporting documentation, and pursuant to article 119.2 of the Personal Income Tax Regulations, approved by Royal Decree 439/2007 of 30 March, this certificate is issued for the purpose of justifying, to persons or entities obliged to withhold taxes, the status of the taxpayer under the optional special regime of taxation under the Non-Resident Income Tax.[149]
This option, unless renounced or excluded, shall cover the tax periods from 20xx to 20(xx+6).

Electronically signed document (Royal Decree 1671/2009, article 21.c), by •, •by substitution Art.13 Law 40/2015, 31May, 2017. Verifiable authenticity through ***Secure Verification Code*** *• at www.agenciatributaria.gob.es*

147 NIF a tax ID number. In this case, actually an NIE (issued to non-Spaniards)
148 IRPF is the personal income tax system
149 *Impatriate* regime, or "Beckham Law"

CERTIFICADO DE HABER EJERCITADO LA OPCIÓN POR EL RÉGIMEN ESPECIAL APLICABLE A LOS TRABAJADORES DESPLAZADOS A TERRITORIO ESPAÑOL

IDENTIFICACIÓN DEL DOCUMENTO

N.I.F.:
Nombre
Referencia:
Concepto tributario: **IRPF. Régimen especial para trabajadores desplazados.**

EL JEFE DE LA DEPENDENCIA DE GESTIÓN TRIBUTARIA

CERTIFICA: Que el contribuyente ha presentado con fecha […], ante esta oficina de la Agencia Tributaria la comunicación de su opción por el régimen especial de tributación por el Impuesto sobre la Rente de no Residentes, a que se refiere el artículo 93 de la Ley 35/2006, de 28 de noviembre, del Impuesto sobre la Renta de las Personas Físicas.

A la vista de la comunicación y documentación justificativa presentadas y conforme al artículo 119.2 del Reglamento del Impuesto sobre la Renta de las Personas Físicas, aprobado por el Real Decreto 439/2007, de 30 de marzo, se expide el presente certificado a los efectos de justificar ante las personas o entidades obligadas a retener la condición de contribuyente del IRPF por este régimen especial de opción de tributación por el Impuesto sobre la Renta de no Residentes.
Esta opción, salvo renuncia o exclusión, abarcará los períodos impositivos 20XX a 20XX.

Documento firmado electrónicamente (Real Decreto 1671/2009, artículo 21.c), por ***[…]****, la Jefa de la Dependencia Regional de Gestión Tributaria por suplencia Art.13 Ley 40/2015, […]. Autenticidad verificable mediante* ***Código Seguro Verificación […]*** *en www.agenciatributaria.gob.es*

APPENDIX 6

THE EVOLUTION OF THE *IMPATRIATE* LAW, 2003-25

	1. Text in force from 1 January, 2004	2. Text in force from 1 January, 2007	3. Text in force from 1 January, 2010	4. Text in force from 1 January, 2015
Characteristics of the regime:	Applicable in the year of the change of residence and the following five years (six years in total). Taxed under the Non- Resident Income Tax, which generally provides for a significantly lower tax rate than the Personal Income Tax: • Employment income – 25% (Spanish source income, this is only on work performed physically in Spain). • Capital gains – 15%	Applicable in the year of the change of residence and the following five years (six years in total). Taxed under the Non- Resident Income Tax, which generally provides for a significantly lower tax rate than the Personal Income Tax: • Employment income – 24%. • The work must actually be carried out in Spain. A limit is introduced for work carried out abroad (15% or 30% for work in favour of groups of companies). • Capital gains – 18%	Applicable in the year of the change of residence and the following five years (six years in total). Taxed under the Non- Resident Income Tax, which generally provides for a significantly lower tax rate than the Personal Income Tax: • Employment income – 24%. • The work must actually be carried out in Spain. A limit is applied for work carried out abroad (15% or 30% for work in favour of groups of companies). • Level of remuneration below €600,000. • Capital gains – 19%	Applicable in the year of the change of residence and the following five years (six years in total). Taxed under the Non-Resident Income Tax with special rules, progressive taxation: • Employment income: all employment income is considered to be obtained in Spain from the arrival date until the departure date. • Up to €600,000 → 24% • Over €600,000 → 45% • Restrictions on (i) level of remuneration and (ii) services rendered outside Spain removed. • Capital gains from 19% to 23%.
	Obligation to pay Wealth Tax under real obligation (for assets located in Spain).	Obligation to pay Wealth Tax under real obligation (for assets located in Spain).	Obligation to pay Wealth Tax under real obligation (for assets located in Spain).	Obligation to pay Wealth Tax under real obligation (for assets located in Spain).
	Not having been a resident in Spain in the 10 years prior to relocation.	Not having been a resident in Spain in the 10 years prior to relocation.	Not having been a resident in Spain in the 10 years prior to relocation.	Not having been a resident in Spain in the 10 years prior to relocation.
Requirements for the application of the regime:	• Relocation to Spain must be due to an employment contract. • The work must be effectively carried out in Spain. • The work must be provided for a company resident in Spain or a permanent establishment of a foreign entity in Spain. • The employment income derived from this work must not be exempt from Non-Resident Income Tax.	• Relocation due to a Spanish local employment contract or by international assignments within a Group (secondment letter). • Work performed in Spain (up to 15-30% may be abroad). • The work must be provided for a company resident in Spain or a permanent establishment of a foreign entity in Spain (services must benefit these entities). • The employment income derived from this work must not be exempt from Non-Resident Income Tax.	• Relocation due to an employment contract or by international assignments within a Group (secondment letter). • Work performed in Spain (up to 15-30% may be abroad). • The work must be provided for a company resident in Spain or a permanent establishment of a foreign entity in Spain (services must benefit the Spanish entity). • The employment income derived from this work must not be exempt from Non-Resident Income Tax. • Compensation from the employment contract must not exceed €600,000 per tax period.	• Relocation to Spain due to: • An employment contract signed with a Spanish employer (expressly excluding professional athletes) or by international assignments within a Group (secondment letter). • Appointment as a member of the board of directors of a company without ownership interest or with a participation that is not considered a related entity (below 25%). • Not obtaining income that would be classified as earned through a permanent establishment in Spain.

	5. Text in force from 1 January, 2021	6. Text in force from 1 January, 2023	7. Text in force from 1 January, 2025
Characteristics of the regime:	Only the applicable tax rates are modified: • Employment income: • Up to €600,000 → 24% • Over €600,000 → 47% • Capital gains from 19% to 26%	Applicable in the year of the change of residence and the following five years (six years in total). Taxed under the Non-Resident Income Tax with special rules, progressive taxation: • Employment income: all employment income is considered to be obtained in Spain from the arrival date until the departure date. • Up to €600,000 → 24% • Over €600,000 → 47% • Capital gains from 19% to 28%. Possible extension to family members (spouse and children).	Only the applicable tax rates on capital gains are modified: from 19% to 30%.
		Obligation to pay Wealth Tax under real obligation (for assets located in Spain).	
Requirements for the application of the regime:		Not having been a resident in Spain in the previous 5 years. Relocation to Spain due to • An employment contract with a Spanish employer (expressly excluded professional athletes) or by international assignments withing a Group (secondment letter). • Teleworkers (digital nomads). • Appointment as a member of the board of directors of a company irrespective of the percentage of participation (if any), except if the company is an asset-holding company. • Officially recognised entrepreneurial activity. • Highly qualified professional working in startups or R&D+I. • Not obtaining income that qualifies as earned through a permanent establishment in Spain (except entrepreneurs and highly qualified professionals).	

APPENDIX 7

THE FINANCIAL IMPACT OF THE DENIAL OF *IMPATRIATE* STATUS

Spain's tax regime for *Impatriates* – the Beckham Law – was designed as an incentive scheme to attract foreign nationals to come to Spain to work and to encourage long-term Spanish emigres to return.

Incentive schemes only work if they provide certainty. The Beckham Law regime has been exposed as failing catastrophically to do that. For Victims of the STA, after 6 years, there can be a huge difference between the tax liability that they expected to face under Article 93 and the liability that the STA asserts they owe.

On the facts set out below, instead of a total tax bill of €1,297,656, Erik, the taxpayer in our example, who lives in Madrid, would face a bill of €4,561,497 plus interest.

Even before the addition of interest charges, the bill is €3,263,841 more than he expected. It is equivalent to 56% of Erik's total assets.

No one comes to Spain with the intention of gambling so much on qualifying for Beckham Law status. It is clear that the government's incentive scheme for foreign workers is operated by the STA as a lure and trap. The Ministry of Finance may be unaware that this is the case.

The facts:

Erik's income:	
Salary	€750,000
Investment income (Spain)	€5,000
Investment income (Worldwide excl. Spain)	€250,000

Erik's assets:	
Spanish real estate	€1,000,000
Spanish investments	€100,000
Worldwide real estate (excl. Spain)	€2,000,000
Worldwide investments (excl. Spain)	€5,000,000
Total assets	€8,100,000

The assumption:

As this White Paper has demonstrated, many *Impatriates* are audited by the STA either very late in their assignment to Spain or after they have been transferred to another country.

The analysis below follows that typical fact-pattern and assumes that Erik is audited at such a point as to expose six years of his financial history to examination by the STA's Inspectors.

Erik's tax bill	
Erik's annual Spanish tax liability	
Impatriate regime	€216,276
Excluded from *Impatriate* regime	€458,042
Annual difference in tax liability	€241,766

Cumulative impact on Erik of exclusion	
Cumulative 6-year difference in tax liability	
(6 x €241,766)	€1,450,596
Typical penalties @ 125% of 'unpaid tax'	€1,813,245
Additional liability (excluding interest)	**€3,263,841**

ABOUT THE AUTHORS

Robert Amsterdam

Robert Amsterdam is an international lawyer and public advocate with 45 years of experience in high-profile disputes. His firm, Amsterdam & Partners LLP, operates from London and Washington DC, specializing in complex litigation, arbitration, and white-collar defence cases with political dimensions.

Amsterdam has been engaged in numerous political cases, often involving prominent global leaders. Recent mandates have included acting on behalf of the Democratic Republic of Congo against Apple Inc., as well as an ongoing representation of the Ukrainian Orthodox Church as it resists its disestablishment at the hands of political authorities. Amsterdam played an important role in the Yukos case involving the defence of tax related criminal charges.

In 2013, Amsterdam received the Global Pro Bono Dispute Award from American Lawyer for a trial that resulted in the sanctioning of major figures in the United Nations. In 2025, he delivered the Lloyd N. Cutler Lecture on the Rule of Law in Washington, DC. His writings have appeared in publications such as the New York Times, Financial Times, Wall Street journal and Washington Post, and he has appeared on news networks such as CNN, BBC, and Fox News.

A member of the International Bar Association, Amsterdam is qualified as a Solicitor Advocate in England and Wales. He holds an LLM in U.S. Law from the George Mason University Antonin Scalia Law School, an LLB from Queen's University, and a BA from Carleton University. Amsterdam is a lawyer in good standing in the Law Society of Upper Canada.

Christopher John Wales

Chris Wales is an independent adviser to governments and private sector clients. He has worked with Prime Ministers and Finance Ministers in many countries, on economic and fiscal policy, fiscal institutions, revenue administration, labour market issues and pension policy. He was a member of the Council of Economic Advisers for the UK Government (1997-2003) where he had overall responsibility for the development of tax policy for the UK. He was heavily involved in the negotiations that led to the 2003 EU Tax Package and one of the main drivers of the EU Code of Conduct (Business taxation). He has worked in and for governments in Europe, the Gulf States, sub-Saharan Africa, Central Asia, the South Pacific and the Caribbean.

Chris has also had extensive experience in the private sector. He led the Global Tax and Governance Team at PwC (2012-16). He was a partner in the tax practice of Arthur Andersen (1990-97). He was a Managing Director at Goldman Sachs and later Managing Director of a life assurance company.

Chris has been Chairperson of the Rwanda Social Security Board, Senior Research Associate at ODI and Senior Research Adviser with the International Centre for Tax and Development. He has also been a member of the Advisory Board of the Oxford University Centre for Business Taxation, which he was instrumental in founding, and a member of the Council of the Institute for Fiscal Studies. He has worked extensively with think tanks and civil society.

Chris has an MA and PhD from Cambridge University. He is also a chartered accountant (ICAEW). He has authored many articles on taxation and public policy issues.